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([1]) Text with EEA relevance

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EN

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

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

EN

([1]) Text with EEA relevance

I

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

REGULATIONS

COMMISSION REGULATION (EC) No 96/2008

of 1 February 2008

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 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ([1]), and in particular Article 138(1) thereof,

Whereas:

(1) Regulation (EC) No 1580/2007 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 138 of Regulation (EC) No 1580/2007 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 2 February 2008.

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

Done at Brussels, 1 February 2008.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

([1]) OJ L 350, 31.12.2007, p. 1.

ANNEX

to Commission Regulation of 1 February 2008 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	IL	138,6
	JO	84,0
	MA	39,8
	SN	192,7
	TN	120,5
	TR	99,5
	ZZ	112,5
0707 00 05	EG	190,8
	JO	202,1
	MA	54,5
	TR	136,3
	ZZ	145,9
0709 90 70	MA	63,9
	TR	152,1
	ZA	79,4
	ZZ	98,5
0709 90 80	EG	191,8
	ZZ	191,8
0805 10 20	EG	47,9
	IL	59,5
	MA	69,9
	TN	52,7
	TR	64,1
	ZA	22,3
	ZZ	52,7
0805 20 10	IL	107,2
	MA	102,9
	TR	101,8
	ZZ	104,0
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	83,7
	EG	57,6
	IL	73,0
	JM	103,1
	MA	110,9
	PK	46,3
	TR	69,1
	US	60,1
	ZZ	75,5
0805 50 10	EG	74,2
	IL	120,5
	MA	83,8
	TR	122,7
	ZZ	100,3
0808 10 80	CA	103,4
	CL	60,8
	CN	77,0
	MK	39,9
	US	116,4
	ZZ	79,5
0808 20 50	CL	59,3
	CN	83,9
	TR	159,1
	US	94,8
	ZA	93,9
	ZZ	98,2

(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 97/2008

of 1 February 2008

fixing a complementary quantity of raw cane sugar originating in the ACP States and India for supply to refineries for the marketing year 2007/2008

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 of Article 29(4),

Whereas:

(1) Article 29(4) of Regulation (EC) No 318/2006 lays down that, during the 2006/2007, 2007/2008 and 2008/2009 marketing years and in order to ensure adequate supply to Community refineries, import duties on a complementary quantity of imports of raw cane sugar originating in the States referred to in Annex VI to that Regulation are to be suspended.

(2) That complementary quantity should be calculated in accordance with Article 19 of Commission Regulation (EC) No 950/2006 of 28 June 2006 laying down detailed rules of application for the 2006/2007, 2007/2008 and 2008/2009 marketing years for the import and refining of sugar products under certain tariff quotas and preferential agreements [2], on the basis of an exhaustive Community forecast supply balance for raw sugar. For the 2007/2008 marketing year, the balance indicated the need to import a complementary quantity of raw sugar so that the Community refineries' supply needs can be met.

(3) Commission Regulation (EC) No 1545/2007 of 20 December 2007 fixing the complementary quantity of raw cane-sugar originating in the ACP States and India for supply to refineries in the period from 1 October 2007 to 30 September 2008 [3] fixed a first complementary quantity of 80 000 tonnes to meet the most urgent supply needs for the first months of the 2007/2008 marketing year. Within the framework of the Economic Partnership Agreements, the additional market access of sugar will be for the 2008/2009 marketing year only. Adequate supply of raw sugar for refining for the refining industry for the 2007/2008 marketing year therefore depends on the availability of complementary quantities. To ensure this supply, it is appropriate to open a supplementary quantity of complementary sugar of 120 000 tonnes for the marketing year 2007/2008.

(4) This adequate supply of the refineries can only be guaranteed if the traditional export agreements between the beneficiary countries are respected. Therefore a breakdown between the beneficiary countries or group of countries is needed. For India, a quantity of 4 000 tonnes is opened. This brings India's complementary quantity for the 2007/2008 marketing year in line with its share of the total complementary quantity of the 2006/2007 marketing year. The remaining quantities should be fixed for the ACP States, which have collectively undertaken to implement between themselves procedures for the allocation of the quantities in order to ensure the appropriate supply of the refineries.

(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

In addition to the quantities laid down in Commission Regulation (EC) No 1545/2007, a complementary quantity of 120 000 tonnes of complementary raw cane sugar in white sugar equivalent is fixed for the marketing year 2007/2008:

(a) 116 000 tonnes expressed as white sugar originating in the States listed in Annex VI to Regulation (EC) No 318/2006 except India;

(b) 4 000 tonnes expressed as white sugar originating in India.

(1) OJ L 58, 28.2.2006, p. 1. Regulation as last amended by Council Regulation (EC) No 1260/2007 (OJ L 283, 27.10.2007, p. 1).
(2) OJ L 178, 1.7.2006, p. 1. Regulation as last amended by Regulation (EC) No 371/2007 (OJ L 92, 3.4.2007, p. 6).
(3) OJ L 337, 21.12.2007, p. 67.

Article 2

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

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

Done at Brussels, 1 February 2008.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

COMMISSION REGULATION (EC) No 98/2008

of 1 February 2008

amending several regulations as regards the combined nomenclature codes for certain beef and veal products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 234/79 of 5 February 1979 on the procedure for adjusting the Common Customs Tariff nomenclature used for agricultural products [1], and in particular Article 2(1) thereof,

Whereas:

(1) Commission Regulation (EC) No 1214/2007 of 20 September 2007 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff [2] provides for amendments to the combined nomenclature for certain beef and veal products.

(2) Regulations amending Annex I to Council Regulation (EEC) No 2658/87 [3] in previous years have also introduced changes to the combined nomenclature for certain beef and veal products, and not all of these amendments are reflected in the following Regulations governing the common organisation of the market in beef and veal: Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal [4]; Commission Regulation (EC) No 1731/2006 of 23 November 2006 on special detailed rules for the application of export refunds in the case of certain preserved beef and veal products [5] and Commission Regulation (EC) No 545/2007 of 16 May 2007 opening and providing for the administration of an import tariff quota for frozen beef intended for processing (1 July 2007 to 30 June 2008) [6].

(3) Regulations (EC) No 1254/1999, (EC) No 1731/2006 and (EC) No 545/2007 should therefore be amended accordingly.

(4) The amendments provided for in this Regulation should apply from 1 January 2008, the date of entry into force of Regulation (EC) No 1214/2007.

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

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(1) of Regulation (EC) No 1254/1999 is amended as follows:

1. Point (a) of the table is amended as follows:

   (a) the CN code '0210 90 41' for 'Thick skirt and thin skirt, salted, in brine, dried or smoked' is replaced by the CN code '0210 99 51';

   (b) the CN code '0210 90 90' for 'Edible flours and meals of meat or meat offal' is replaced by the CN code '0210 99 90'.

2. Point (b) of the table is amended as follows:

   (a) the CN codes '0206 10 91' and '0206 10 99' for 'Edible offal of bovine animals excluding thick skirt and thin skirt, fresh or chilled, other than for the manufacture of pharmaceutical products' are replaced by the CN code '0206 10 98';

   (b) the CN codes '0206 21 00', '0206 22 90' and '0206 29 99' for 'Edible offal of bovine animals excluding thick skirt and thin skirt, frozen, other than for the manufacture of pharmaceutical products' are replaced by the CN codes '0206 21 00', '0206 22 00' and '0206 29 99';

(1) OJ L 34, 9.2.1979, p. 2. Regulation as last amended by Regulation (EC) No 3290/94 (OJ L 349, 31.12.1994, p. 105).
(2) OJ L 286, 31.10.2007, p. 1.
(3) OJ L 256, 7.9.1987, p. 1. Regulation as last amended by Commission Regulation (EC) No 1352/2007 (OJ L 303, 21.11.2007, p. 3).
(4) OJ L 160, 26.6.1999, p. 21. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).
(5) OJ L 325, 24.11.2006, p. 12.
(6) OJ L 129, 17.5.2007, p. 14.

(c) the CN code '0210 90 49' for 'Edible meat offal of bovine animals, salted, in brine, dried or smoked, other than thick skirt and thin skirt' is replaced by the CN code '0210 99 59';

(d) the CN codes '1602 50 31 to 1602 50 80' for 'Other prepared or preserved meat or meat offal, of bovine animals, other than uncooked meat or meat offal and mixtures of cooked meat or offal and uncooked meat or offal' are replaced by the CN codes '1602 50 31' and '1602 50 95'.

Article 2

Article 1 of Regulation (EC) No 1731/2006 is replaced by the following:

'*Article 1*

Scope

Without prejudice to Regulation (EC) No 800/1999, the payment of an export refund on preserved products falling within CN codes 1602 50 31 9125, 1602 50 31 9325, 1602 50 95 9125 and 1602 5095 9325 (hereinafter the preserved products) shall be subject to compliance with the conditions laid down by this Regulation.'

Article 3

In Article 2(1) of Regulation (EC) No 545/2007, the first subparagraph is replaced by the following:

'For the purposes of this Regulation, an A-product shall mean a processed product falling within CN code 1602 10, 1602 50 31 or 1602 50 95, not containing meat other than that of animals of the bovine species, with a collagen/protein ratio of no more than 0,45 and containing by weight at least 20 % of lean meat, excluding offal and fat, with meat and jelly accounting for at least 85 % of the total net weight.'

Article 4

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

It shall apply from 1 January 2008.

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

Done at Brussels, 1 February 2008.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 10 July 2007

on State aid C 20/06 (ex NN 30/06) implemented by Slovenia for Novoles Lesna Industrija Straža d.d.

(notified under document number C(2007) 3223)

(Only the Slovenian version is authentic)

(Text with EEA relevance)

(2008/90/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas:

I. PROCEDURE

(1) On 1 December 2004 the Commission received a complaint concerning alleged aid to the Slovenian wood-processing firm Novoles Lesna Industrija Straža d.d. (hereinafter Novoles Straža).

(2) The complaint concerned financial measures allocated to Novoles Straža on 27 May 2004 by decision of the Slovenian Government pursuant to Article 21 of the Slovenian Act Governing Rescue and Restructuring Aid for Companies in Difficulty. This measure was not notified to the Commission on the grounds that it had been approved by the Slovenian State Aid Monitoring Commission on 23 April 2004, i.e. prior to accession. However, since the relevant criterion for determining when aid is granted is the legally binding act by which the competent national authority undertakes to grant state aid, the Commission considered that the measure in question constituted new aid, which should thus have been notified on the basis of Article 88 and assessed under Article 87 of the EC Treaty [2].

(3) By letter dated 16 May 2006 the Commission informed Slovenia that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* [3]. The Commission invited interested parties to submit their comments on the aid/measure.

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

[1] OJ C 194, 18.8.2006, p. 22.

[2] Details of the procedure were described in the decision to open the procedure (see footnote 1) and remain relevant for the purpose of the present decision.

[3] Cf. footnote 1.

(6) Slovenia submitted observations by letter dated 17 July 2006. Additional information was requested by letters dated 11 October 2006 and 23 February 2007 and submitted on 30 November 2006 and 23 April 2007. In addition, a meeting was held between Commission services and the Slovenian authorities on 28 June 2006.

II. DETAILED DESCRIPTION OF THE AID

1. The beneficiary

(7) Novoles Straža manufactures semi-finished wood products and furniture. It is located in Straža, Slovenia, which is an assisted area within the meaning of Article 87(3)(a) of the EC Treaty. In 2003 it had about 800 employees and it is one of the bigger employers in the wood and furniture sector in Slovenia.

(8) The company has holdings in two companies, Novoles-Primara, d.o.o. (100 %) and Pohištvo Brežice, d.d. (93,7 %). Slovenia submitted that both those companies were also in poor financial condition. While the former generated a very small profit in 2003, the latter made a loss.

(9) The company is owned by a number of natural and legal persons. However, ownership is so widely spread that none of them is able to exercise control over the company to the extent that it could be considered as part of a larger group. In fact the biggest shareholders are employees and former employees, who are not linked by any kind of share agreement and who hold 22,3 %. Besides that, a number of 'PIDs' hold a total of 33,4 %. However, the Commission understands that these PID investment funds are merely administrative bodies managing the shares of private shareholders. These shareholdings are the result of the privatisation of 'social capital' in Slovenia, i.e. the concept that companies belonged to everybody. Ownership of this social capital was transformed by issuing ownership certificates to citizens, who could exchange them for shares. PIDs were formed to enable citizens to participate in this transformation of ownership by exchanging the certificates into shares. The Slovenian authorities confirmed that the PIDs have no resources available to help the company overcome its difficulties.

2. Financial situation of the beneficiary

(10) The company's poor financial situation stems from the fact that it lost a significant amount of its registered capital of SIT 1,262 billion (about EUR 5,3 million [4]), which had fallen to SIT 0,75 billion in April 2004. The main financial and operating indicators taken from its balance sheet, income statement and cash flow statement are indicated in the following table:

Table 1

Financial indicators for Novoles Straža

Indicator	1999	2000	2001	2002	2003
Net sales revenue	6 341 790	6 507 932	6 602 106	8 093 436	6 014 466
Inventories	880 544	936 471	1 113 218	955 305	1 279 940
Claims	930 585	1 053 433	1 218 067	1 676 595	1 133 643
Profit (Loss)	78 809	109 884	128 843	110 215	(511 149)
Debt ratio	42,1	44,7	47,2	50,2	57,6

(11) The Slovenian authorities explained that the company's losses stem mainly from the failure to meet its sales plan while on the other hand its financial costs increase. This is evidenced by the fact that the company's debt ratio was constantly increasing and by the increase in average inventories.

(12) In response to the opening of the procedure, the Slovenian authorities explained that the volume of sales had also decreased from 2000 to 2001 and from 2002 to 2003, while the increase in 2002 was due to extraordinary events, i.e. construction work in Croatia (equipping large hotel complexes), the introduction of a new furniture range and the inclusion of revenues from two subsidiaries, which were integrated into Novoles on 1 January 2003.

(13) Furthermore, the Slovenian authorities furnished the Commission with documentary evidence that the company was unable to obtain a sufficient amount of fresh capital from the capital markets. In particular, banks rejected Novoles Straža's application for new funds because it had a poor credit worthiness and insufficient security to make up for such a poor standing. Even a State guarantee covering 65 % of the amount requested was considered insufficient.

[4] At the beginning of 2006, EUR 1 = Slovenian Tolar (SIT) 240.

3. **Restructuring programme**

(14) In order to overcome its difficulties, in April 2004 Novoles Straža presented the Ministry of Economy with a restructuring plan from March 2004 concerning a restructuring period from 2004 to 2008.

(15) The plan cites as the reason for the current situation the decline of economic growth in its main export markets (in particular Germany and USA), where it sold 60 % of its products. Moreover, demand for intermediate products had fallen. The fall in revenues in 2003 culminated in the company's inability to settle liabilities from its own resources and hence in an increase in debts and financial charges. Moreover, the company's organisational structure did not enable it to tailor production to demand.

(16) In order to overcome its difficulties, a financial restructuring operation was envisaged — and has since taken place — aiming at transformation of mortgage-backed short-term loans of SIT 1 669 940 776 into long-term liabilities with the help of a State guarantee of SIT 1,1 billion for some loans which were 65 % mortgage-backed, while the remaining refinancing of SIT 569 940 776 was financed without state aid but with a mortgage ratio of more than 100 % of nominal value.

(17) Moreover, Novoles Straža aims to redirect its activities as follows:

— A change in its marketing strategy, consisting of a partial switch from the EU and North American markets towards the markets of Eastern Europe and Russia. The Slovenian authorities have provided evidence of several sales projects commencing inter alia in Russia, Slovakia and Serbia. Sales to foreign markets will increase to 77 % in 2008 compared with 70 % in 2004, with sales to Eastern European markets accounting for 8 % (compared with 0 %).

— A reduction in the proportion of intermediate products in favour of final products. Finished products will account for 33 % in 2008 (compared with 26 % in 2003) and own brand products will account for 26 % in 2008 (compared with 20 % in 2003) while intermediate products will decline from 41 % to 31 % in 2008. Intermediate products will, nevertheless, remain an important part of production, but will not consist solely of plywood, thereby increasing the value added. The company's advantage here lies in its production of smaller quantities for a known producer.

(18) In addition, the redirection is accompanied by technological restructuring aimed at more cost-efficient production and the adaptation of technological equipment to demand-driven production which also meets ecological standards. Investments amounting to SIT 1 455 million (EUR 6,06 million) are envisaged, focusing in particular on measures to increase productivity, improve working conditions, improve the use of materials, save energy and meet ecological standards. The Slovenian authorities have provided the Commission with a table of investments, which comprise measures such as modernising the plywood profit centre, introducing a computer-controlled drying process, modernising production at the new product range profit centre, overhauling the energy system and introducing a new information system. The Slovenian authorities have indicated some delays in the implementation of some of the key investments, such as production at the new product range profit centre or the overhaul of the energy system, due to lack of funds (these investments were mainly to be financed by own resources).

(19) Finally, personnel restructuring will aim at reducing the workforce by 96 employees and providing special and general training for the remaining employees. The costs of SIT 537 million will be covered partly by a subsidy of SIT 283 million (EUR 1,2 million).

(20) Slovenia presented five-year business projections indicating that the restructuring plan would enable Novoles Straža to restore viability.

(21) The Slovenian authorities have provided the Commission with data in support of the sales forecasts. First, the projections took into account growth from 2005 to 2007 of around 10 % in the Western European markets and around 20 % in the Eastern European markets [5]. Second, they factored in the shift of production from intermediate products to finished products (59 % finished products rather than 46 %).

[5] This information is based on assessments by Euromonitor, 2003.

(22) On the basis of these assumptions, together with sales executives' forecasts based on information obtained at trade fairs, through agents and directly from buyers, Novoles Straža has produced a sales plan for the period 2004 to 2008.

(23) On the basis of realistic forecasts, it is projected that, over the period 2003-08, annual growth will be between 3,6 % and 5,7 % in domestic sales and 6,5 % to 8,4 % in foreign sales. Consequently, the restructuring will result in an operating margin of 11,7 % in 2008. The operating profit in relation to equity capital will increase to 12,6 % in 2008.

4. **Costs and financing of restructuring**

(24) The table below gives an overview of the financing of the restructuring costs:

Table 2

Costs and financing of restructuring

Financing required (in SIT 000)	Own funds	Subsidies	Guarantee	Total
Financial restructuring	369 000 (*)		1 100 000	1 469 000
Marketing and development restructuring	675 000			675 000
Technological restructuring	1 456 000		200 000	1 656 000
Personnel restructuring	253 988	282 771		536 759
Total	2 384 988	282 771	1 300 000	4 337 699

(*) Figure introduced by the Commission.

(25) The company received state aid totalling SIT 1 583 million (EUR 6,6 million), however apparently only at the end of 2004 and not as planned in mid-2004.

(26) The main support consists of a State guarantee for four loans totalling SIT 1,3 billion, which enable Novoles Straža to reschedule its existing debt. The deadline for repayment is seven years, including a two year moratorium. Thereafter the interest rate is 4,5 %, including a lumpsum payment amounting to 0,1 % for concluding and managing the credit transaction. The guarantee will cover 100 % of the loans and will be additionally secured by a mortgage of at least 65 %.

(27) Slovenia submits that SIT 2 385 million of the restructuring costs is financed from the company's own funds. However, the Commission considers it appropriate to add another SIT 569 million from the private financing of the loans (amounting to 8,5 %). Some of the own funds were to be generated by disinvestments (SIT 1 323 million, i.e. 30,5 %) and by amortisation and depreciation (29,76 %). The Slovenian authorities have provided the Commission with a detailed list of the disinvestments. While around SIT 300 million was already disinvested in 2005, further divestments were planned (and have been partly realised) for 2006 (around SIT 600 million) and for 2007 and 2008 (SIT 450 million).

5. **Market situation and compensatory measures**

(28) Novoles Straža produces the following products, for which its market shares in the EU-25 are as follows:

Table 3

Market shares

Product	2003 market share	2005 market share
Plywood (*)	0,14 %	0,13 %
Chairs and parts (**)	0,07 %	0,04 %
Furniture and parts (***)	0,08 %	0,05 %
Average	0,09 %	0,06 %

(*) US Harmonised system codes 4412 14 00, 4412 19 00, 4412 93 00.
(**) US Harmonised system codes 9401 61 00, 9401 69 00, 9401 90 30.
(***) US Harmonised system codes 9403 60 10, 9403 60 90, 9403 90 30.

6. **Other aid**

(29) Correcting the figures quoted in the decision opening the procedure, the Slovenian authorities stated that Novoles Straža did indeed benefit from favourable loans in 2004, but that these loans, granted from public and private sources for environmental purposes, amounted to only SIT 115,2 million (EUR 0,48 million) and had a net grant equivalent of SIT 14,9 million (EUR 62 000). This aid was given under the 'Environmental Investment Cofinancing' scheme and approved in February 2004.

(30) Slovenia also reported that the aid received in 1999 consisted only of SIT 18,1 million (EUR 75 000) in interest rate subsidies, SIT 11,5 million (EUR 48 000) in employment aid, SIT 3,6 million (EUR 15 000) in aid for research and development and SIT 1,1 million (EUR 4 600) in export aid.

(31) The first aid mentioned in the previous paragraph, which was originally assumed to be restructuring aid, was merely an interest rate subsidy granted because interest rates in Slovenia were relatively high compared to foreign interest rates. In fact, one of the conditions for benefiting from the programme was that the companies had to have an A, B, C or D credit rating and were not allowed to be in bankruptcy proceedings. The company furnished proof that it had an A/B rating at that time.

III. **REASONS FOR OPENING THE PROCEDURE UNDER ARTICLE 88(2) OF THE EC TREATY**

(32) In its letter of 16 May 2006, the Commission held that the measures in question constituted new aid and should thus be notified on the basis of Article 88 EC and assessed under Article 87 EC. To this end, the Commission reiterated that the relevant criterion is the legally binding act by which the competent national authority undertakes to grant state aid, which was adopted in May 2004.

(33) In addition, the Commission expressed doubts on the compatibility of the measure with the common market, and in particular with the 1999 Community Guidelines on aid for rescuing and restructuring firms in difficulty [6], on the following grounds:

— It was not sure whether the company showed the usual signs of a company in difficulty, given that its sales increased in 2003 and inventories decreased in 2002. Moreover, it was not clear whether the company was part of a larger group.

— It was not clear how the company was to restore its long-term viability, in particular as data underlying the financial projections for the future was missing.

— It was unclear whether the company was providing a significant own contribution to the restructuring for want of a clear explanation as to how the own funds mentioned were to be sourced.

— No market analysis was provided to justify the non-existence of compensatory measures.

— Compliance with the 'one time, last time' principle was doubtful, given that the company had already received restructuring aid in 1999.

IV. **COMMENTS FROM SLOVENIA**

(34) Slovenia insisted that the state aid for Novoles Straža was allocated before Slovenia's accession to the European Union, since the state's economic exposure was known before accession.

(35) Second, Slovenia sought to allay the European Commission's doubts regarding whether or not Novoles Straža belongs to a larger business group by explaining the particularities of the ownership structure in Slovenia, as presented above, and by correcting the percentages of the participating interests of the shareholders.

(36) Third, Slovenia put forward evidence that Novoles Straža is a 'company in difficulties', explaining more fully the overall trend of financial difficulties the company has been facing since 1999 (as evidenced by growing inventories and debt and a decrease in sales, with certain extraordinary events causing the increase in 2002), culminating in its inability to obtain external financing in 2004.

(37) Fourth, the Slovenian authorities provided information indicating that Novoles Straža's strategy is based on market research and forecasts confirming relatively high furniture sales.

(38) Fifth, as regards compensatory measures, Slovenia submitted a market study showing that Novoles Straža's market share in the relevant product market in the EU-25 is very small. The Slovenian authorities also pointed out that Novoles Straža is located in an assisted area within the meaning of Article 87(3)(a) EC.

[6] Community Guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 288, 9.10.1999, p. 2).

(39) Finally, as regards state aid received in the past, Slovenia corrected some clerical errors regarding the sums received and, above all, stated that the aid originally identified as restructuring aid was not allocated for rescue and restructuring as defined in the Guidelines.

V. ASSESSMENT OF THE AID

1. Existence of state aid

(40) According to Article 87 EC, 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, insofar as it affects trade between Member States, constitutes incompatible state aid unless it can be justified under Article 87(2) or (3) EC.

(41) The Commission notes that the aid is granted through State resources to an individual company. This clearly applies to a direct grant, but also to a guarantee, in particular where a company is in difficulty and 100 % security for the loan is provided [7]. Indeed, the guarantee allowed the company to secure a larger loan than it would have been able to obtain without the guarantee.

(42) As there is trade in wood products between Slovenia and other Member States, the measure is liable to improve the position of the recipient in relation to its competitors in Slovenia and the EU. The aid therefore distorts competition and affects trade between Member States. Consequently, the Commission considers that the present measures in favour of Novoles Straža constitute state aid pursuant to Article 87(1) EC.

2. Existence of new state aid

(43) The Slovenian authorities first questioned whether the Commission was empowered to assess the aid under Articles 87 and 88 EC, arguing that it was granted before accession. In the decision opening the procedure the Commission clarified that, in order to determine whether aid has been put into effect before or after accession, the relevant criterion is the legally binding act by which the competent national authorities undertake to grant the aid [8]. In the absence of such a decision before accession, the measure constitutes new aid, even if the exposure of the State was known beforehand.

(44) The Commission maintains its initial conclusion that the binding act by which the competent national authorities undertook to grant aid did not come into effect before accession. The relevant Slovenian provisions state that the aid is to be awarded by a decision of the government on the basis of a proposal from the Ministry responsible. While prior decisions of the interdepartmental expert commission and the Ministry responsible are indeed necessary for the award, they are not sufficient to grant the aid. The final decision lies with the Government. In the present case, the Government's decision was issued on 27 May 2004 and Slovenia joined the European Union on 1 May 2004. Therefore, the measures constitute new aid and have to be notified on the basis of Article 88 EC and assessed under Article 87 EC.

3. Compatibility of the aid

(45) Given that the aid in question is restructuring aid, it is compatible with the common market if it complies with the criteria under the Community Guidelines on aid for rescuing and restructuring of firms in difficulty (hereinafter the Guidelines) [9].

(46) In view of Slovenia's comments and the information gathered in the course of its investigation, the Commission has reached the following conclusions on the points which caused it to open the formal procedure.

3.1. *Eligibility*

(47) In view of the information submitted by Slovenia, the Commission takes the view that the company's performance, as described in paragraphs (24) to (27) above, shows that it was indeed a company in difficulty at the time the state aid in issue was granted. The Commission notes in particular that the problems were part of a trend for the years 2000-04 and not simply an exceptional occurrence in 2003. Moreover, the Slovenian authorities provided sufficient evidence that in 2004 the company would not have been able to refinance its short-term debts on its own. This is not contradicted by the fact that the company succeeded in obtaining some refinancing without aid, as this was achieved using a high level of security which the company could not have provided for the entire amount to be refinanced.

(7) See points 2.1.2. and 4.2 of Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (OJ C 71, 11.3.2000, p. 14).

(8) See the Decision to open the procedure (cf. footnote 1), point 20 et seq.

(9) As the aid was granted in May 2004, the aid has to be assessed on the basis of the 1999 Guidelines, i.e. the Community Guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 288, 9.10.1999, p. 2).

(48) The Commission also notes Slovenia's explanations concerning the nature of Novoles Straža's ownership. In view of the passive nature and poor capital resources of Novoles Straža's institutional owners and the fragmentation of its remaining ownership, the Commission accepts that the company could not obtain the necessary funds from its shareholders. For the same reasons, and taking into account the fact that no single owner holds more than 22 % of Novoles Straža's share capital, the Commission also takes the view that Novoles Straža does not belong to a larger business group.

(49) The Commission accordingly accepts that Novoles Straža was eligible for restructuring aid.

3.2. *Return to viability*

(50) The Commission indicated in the decision opening the procedure that it was unclear how the restructuring plan would enable Novoles Straža to restore long-term viability. This related mainly to the five-year financial projections indicating how the company was likely to evolve as a result of the restructuring measures. The Commission remarked that Slovenia had not submitted the information required by the Commission to assess the assumptions on Novoles Straža's likely performance under the restructuring plan.

(51) In the course of the proceedings, Slovenia has submitted the complementary information mentioned in paragraphs (21) and (22) above. This information adequately explains the basis for the assumptions. The Commission notes that the sales forecasts for Novoles Straža might appear today rather optimistic given that in 2005 and 2006 the sector was facing fierce competition from Far East which resulted in excess supply and pressure to reduce prices. However, it is not clear that this information was already known at the beginning of 2004. Moreover, the Commission itself observed in 2006 that: 'plywood production and consumption have seen significant increase in the past few years, with a strong export market developing for certain grades' [10]. Since the Commission has been provided with no contradictory information which might call into question the company's or its own assumptions, it has no grounds to dispute them. The Commission therefore considers that the projections do not appear implausible, and its doubts on this point have been allayed.

(52) In the decision opening the procedure the Commission also found that the restructuring plan contained several internal measures which, if implemented, were likely to contribute to a turnaround of the company. In the course of the investigation the Commission obtained information that the company has not yet implemented all the planned restructuring measures. According to the Slovenian authorities, the reasons for this were among other things the delayed receipt of the state aid and worse-than-expected operating results. In this context the Commission observes that, under the restructuring plan, the technical restructuring was to be financed mainly from own resources. However, such a weakness was not apparent beforehand and can even be justified by the fact that the state aid did indeed have to be the minimum necessary, in particular for a Member State committing itself to such a plan [11] on the eve of accession. So in this special case the Commission will not view that weakness as sufficient to call into question the existence of a viable restructuring plan. However, the Commission would recall that approval of the aid is conditional upon full implementation of the restructuring plan (point 43) and will be monitored (point 46).

(53) The Commission therefore expects Slovenia, pursuant to point 46 of the Guidelines, to submit at least two monitoring reports, one concerning 2007 by the end of January 2008 and one concerning 2008 by the end of January 2009, containing detailed information on the company's financial performance and the investments made. The Commission would point out that, even if the company restores its viability without making all the investments, it might be liable to pay back some state aid if the planned investments are not fully implemented [12].

3.3. *Aid limited to the minimum*

(54) The aid is also limited to the minimum. In particular, the Commission's doubts as regards the provision of a significant own contribution have been allayed. According to point 40 of the Guidelines, the aid must be limited to the strict minimum needed for restoring viability, whereas aid beneficiaries are expected to make a significant contribution to the restructuring plan from their own resources.

(55) The explanations by the Slovenian authorities regarding the own contribution, as indicated in paragraph (27), are detailed enough to allow the Commission to verify that the company has made or will make a significant number of disinvestments between 2005 and 2008 amounting to 30,5 % of the restructuring costs. Moreover, the Commission noted that Novoles Straža has obtained external financing free of aid amounting to 8,5 %.

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(10) http://ec.europa.eu/enterprise/forest_based/tradeflows_en.html

(11) See point 32 of the Guidelines. The commitment to the plan was indeed before accession, only the aid was granted later.

(12) See Commission Decision of 13 September 2006, Case N 350a/2006 MSO (OJ C 280, 18.11.2006, p. 4).

(56) On the other hand, the Commission reiterates that it cannot accept depreciation as an own contribution because it does not provide resources available to the company and also depends on future operations which are the result of the state aid provided [13].

(57) Therefore, the Commission can in sum identify an own contribution of 39 %, which can be seen as significant under the 1999 Guidelines [14].

(58) Moreover, the aid is also limited to the strict minimum for restoring viability given that the aid essentially covers the imminent refinancing needs for mature short-term loans and thus does not equip the company with any surplus liquidity.

3.4. *Compensatory measures*

(59) According to points 35 and 36 of the Guidelines, measures must be taken to mitigate as far as possible any adverse impact of the state aid on competitors. However, according to point 36 of the Guidelines, such compensatory measures are not required where the beneficiary's share of the relevant market is negligible. In these cases, compensatory measures are thus not a condition for finding the aid compatible with the common market.

(60) The Commission does not dispute the claims of the Slovenian authorities that Novoles Straža is active in several product markets, which it defines as plywood, chairs and other furniture. As regards plywood the Commission notes that in a merger case a 'market investigation has largely confirmed that the different type of wood-based boards such as plywood, hardboard, raw particleboards and coated particleboards, decorative laminates (HPL/CPL) and wood-based panel components for the furniture and construction industry belong to separate product markets [15].'

(61) For the definition of the relevant market, Slovenia has provided the Commission with a market study which indicates the market shares for the relevant product market in the EU-25. In this respect, the Commission has little reason to depart from the presumption in footnote 20 of the Guidelines that the relevant market is the EEA. It recalls that it has previously conducted some market investigations in the European wood-based products industry (including in particular wood particleboard) in a merger case [16], and concluded that the relevant market was wider than the national market, and at least cross-border regional. This was borne out by large cross-border trade flows. That similar trade flows also exist in the case of plywood is confirmed by figures provided by the Commission's internal experts (also, Novoles Straža's intra-Community export sales account for the majority of its turnover – 60 %). Moreover, a cross-border regional market was found to relate to a distance of about 1 000 km, with the distance varying according to the value added of the products, i.e. the distance was even longer for coated products compared to non-coated products. As plywood is already a higher-quality product and exports concern mainly veneered plywood, transportation cost are lower than for plywood than for particleboard (and even lower for chairs and other furniture made out of plywood). In view of the above, the Commission takes the view that the relevant market for the products manufactured by Novoles Straža should be, if not the entire EEA or the EU-25, at least a good part of the EU-25.

(62) Given that Novoles Straža's market share in the EU-25 is in any event not above 0,13 %, and that it should in principle no more than double if the geographical market were reduced by half, the Commission considers that the market share is still well below 1 % which, in connection with the fact that the market comprises a large number of small and medium-sized producers, can be considered negligible [17]. Consequently, no compensatory measures are necessary to ensure that the state aid is compatible with the common market.

3.5. *Other aid*

(63) Finally, Slovenia has furnished the Commission with sufficient information on all other aid received by the company in order to allow a proper assessment of the 'one time, last time' principle. According to this principle, laid down in points 48 et seq. of the Guidelines, the Commission cannot approve restructuring aid to a company which has previously received restructuring aid. The Commission considers that this principle requires it to take into account any restructuring aid granted within the 10 years preceding the aid under consideration, irrespective of whether the first state aid was granted before the granting Member State's accession to the EU.

(13) This was confirmed in the Commission Decision of 22 February 2006 in Case N464/05 *AB Kauno*, point 17 and, as regards cash flow under the 1999 Guidelines, in the Commission Decisions in Case C-19/2000 *TGI*, OJ L 62, 5.3.2002, p. 30, point 106 and Case C-30/1998 *Wildauer Kurbelwelle*, OJ L 287, 14.11.2000, p. 51, point 52.

(14) See also the Commission Decisions in Case C 39/2000 *Doppstadt*, OJ L 108, 30.4.2003, p. 8, point 74 and Case C 33/1998 *Babcock Wilcox* (OJ L 67, 9.3.2002, p. 50).

(15) Commission Decision of 28.6.2006, Case No COMM/M.4165 — *Sonae Industria/Hornitex*, point 11.

(16) Commission Decision of 28.6.2006, Case No COMM/M.4165 — *Sonae Industria/Hornitex*, point 13.

(17) At least in the light of other examples under the 1999 guidelines, see Commission Decision in Case C-3/2005 *FSO*, OJ C 100, 26.4.2005, p. 2, point 38 et seq.

(64) The Commission notes first that the company has not received any restructuring aid in the past. In particular, as regards the aid amounting to SIT 18,1 million (EUR 75 000) granted in 1999 as an interest rate subsidy, the Commission's doubts that this might have constituted restructuring aid have been allayed, since at that time the company had an A/B rating and could not therefore be considered as being in difficulty and the aid cannot be considered as restructuring aid liable to trigger an infringement of the 'one time, last time' condition.

(65) Moreover, the Commission notes the correction of the clerical error by the Slovenian authorities in an earlier submission, which it had reproduced in the decision opening the procedure, which means that all aid measures mentioned in that decision are as such *de minimis* [18]. Moreover, the Slovenian authorities have clarified that all that aid was granted before accession for purposes other than restructuring aid. As the assessment of the aid thus falls outside Commission's competence and even the fact that the company was in difficulty does not make that aid restructuring aid under the 1999 Guidelines [19], the 'one time, last time' condition is not triggered by any of these previously granted aid measures.

VI. **CONCLUSION**

(66) In view of the above, the Commission finds that the aid in question is restructuring aid which complies with the conditions of the applicable guidelines, i.e. the 1999 restructuring guidelines. It therefore concludes that, although Slovenia has unlawfully implemented the restructuring aid to Novoles Straža in breach of Article 88(3) EC of the Treaty, the state aid is compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Slovenia has implemented for Novoles Straža is compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty and the Community Guidelines on state aid for rescuing and restructuring firms in difficulty adopted in 1999.

Article 2

1. The restructuring plan shall be implemented in full. All necessary measures shall be taken to ensure that the plan is implemented.

2. Implementation of the plan shall be monitored on the basis of annual reports communicated by Slovenia to the Commission. A report concerning the 2007 activities shall be submitted by the end of January 2008 and a report concerning the 2008 activities shall be submitted by the end of January 2009. The reports shall contain detailed information on the financial performance of the company and the investments made.

Article 3

This Decision is addressed to the Republic of Slovenia.

Done at Brussels, 10 July 2007.

For the Commission

Neelie KROES

Member of the Commission

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[18] See Commission Regulation No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid (OJ L 10, 13.1.2001, p. 30).

[19] This might be different under point 20 of the 2004 guidelines.

COMMISSION DECISION

of 10 July 2007

on State aid C 19/06 (ex NN 29/06) implemented by Slovenia for Javor Pivka Lesna Industrija d.d.

(notified under document number C(2007) 3227)

(Only the Slovenian version is authentic)

(Text with EEA relevance)

(2008/91/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),

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

Whereas:

I. PROCEDURE

(1) On 1 December 2004, the Commission received a complaint alleging aid to the Slovenian wood manufacturer Javor Pivka Lesna Industrija d.d. (hereinafter 'Javor Pivka').

(2) The complaint concerned financial measures allocated to Javor Pivka on 27 May 2004 by a resolution of the Slovenian Government pursuant to Article 21 of the Slovenian Act Governing Rescue and Restructuring Aid for Companies in Difficulty. It further emerged that this measure was not notified to the Commission on the grounds that it had been approved by the Slovenian state aid inter-ministerial expert Commission on 23 April 2004, i.e. prior to accession. However, given that the relevant criterion for deciding when an aid is granted is the legally binding act by which the competent national authority undertakes to grant state aid, the Commission considered the measure to constitute new aid, which should thus have been notified on the basis of Article 88 EC and assessed under Article 87 EC [2].

(3) By letter dated 16 May 2006 the Commission informed Slovenia that it had decided to initiate the procedure laid down in Article 88(2) EC in respect of the aid.

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

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

(6) Slovenia submitted observations by letter dated 17 July 2006. The Commission requested additional information by letter of 23 February 2007 (ref. D/50797), to which Slovenia replied by letter dated 23 April 2007. In addition, a meeting was held between Commission services and the Slovenian authorities on 28 June 2006.

II. DETAILED DESCRIPTION OF THE AID

1. The beneficiary

(7) Javor Pivka manufactures semi-finished wood products and furniture. It is located in the Pivka area in Slovenia, an assisted area pursuant to Article 87(3)(a) EC. In 2003 it had about 800 employees. It has four wholly-owned subsidiaries.

(8) The ownership of the company is spread over some 1 264 shareholders of which 9 investment companies or other legal persons hold 60 % and the remaining 40 % are split between 1 255 shareholders, none of which holds more than 1 % [4].

[1] OJ C 194, 18.8.2006, p. 26.

[2] Details of the procedure were described in the decision to open the procedure (see footnote 1) and remain relevant for the purpose of the present decision.

[3] Cf. footnote 1.

[4] Figures as at 30 January 2004.

(9) In the years leading up to the granting of aid, Javor Pivka experienced financial difficulties. The main financial and operating indicators are given in the table below:

Table 1

Financial indicators for Javor Pivka

Indicator (in SIT thousands) (*)	2000	2001	2002	2003
Net sales revenue	8 114 374	7 884 954	8 174 323	8 124 711
Inventories finished goods, work in progress	867 609	1 030 323	894 302	1 121 632
Net operating result	56 566	− 137 030	− 303 729	− 578 268
Cumulative profit/loss	56 566	− 80 464	− 384 193	− 962 461
Cash flow	480 468	333 324	104 522	− 162 879

(*) Any conversions of SIT amounts to EUR are purely indicative and based on the rate 1 EUR = SIT 240.

2. **Restructuring programme**

(10) To overcome its difficulties, Javor Pivka submitted a restructuring plan for the period 2004-2008 to the Ministry of Economy in April 2004.

(11) The company stated that its difficulties were due to a lack of competitiveness in the face of imports from low-cost producers in developing countries on its traditional export markets (in particular Germany and USA). In order to meet this competition and return to viability, Javor Pivka identified a need to increase productivity through technological modernisation and reduction of costs, and to reposition itself in more high-margin niches and on new geographical markets.

(12) To this end, the restructuring programme provided for the following measures:

(13) *Technological restructuring*: This entailed a full modernisation of outdated equipment and production programmes. The objective was not to increase capacity but to increase productivity and to meet the demands of customers by introducing new products and adapting to ecological manufacturing standards. New production facilities would also allow the company to move away from intermediate products to more highly processed goods with a higher added value (in particular in the plywood programme). The cost for this part of the restructuring plan were to be met to 50 % by bank credits backed up by a guarantee provided by the Slovenian state, and for the remaining 50 % by Javor Pivka's own funds.

(14) *Restructuring of the workforce*: This part of the plan provided for the reduction of the workforce by some 100 redundancies (entitled to severance pay) and for training of the remaining 700 to adapt their skills to the new demands of the restructuring programme.

(15) *Review of commercial strategy*: Another element of the restructuring plan was to adapt to changes in demand and competition on the company's old markets by repositioning itself on new, more lucrative niche markets and by entering new markets (Russia, particularly targeted for furniture, and South-East Europe). As regards the products, the company intended to shift its focus towards more finished plywood, special plywood for the building industry and, in the furniture sector, specialist chairs for hospitals, retirement homes and other such facilities.

(16) *Re-organisation of company structures*: The return to viability will also require some re-organisation of the company (e.g. merging subsidiaries and improving the supervision of costs by centralizing the business functions sales, purchasing and finance). Costs for these measures were to be covered entirely from Javor Pivka's own resources.

(17) *Financial restructuring*: Insufficient liquidity led to mounting liabilities and rising financial charges. The purpose of the financial restructuring was to adapt the company's sources of financing and its repayment schedules to secure its current and long-term payment capability. The activities were to focus on rescheduling debt, reducing interest rates, extending repayment deadlines and obtaining a moratorium on repayment of principal.

3. **Restructuring costs**

(18) The table below gives an overview of the costs of the restructuring and its financing ([5]):

Table 2

Restructuring costs and financing

Funds required (in thousand SIT)	Own funds	Subsidies	Guarantee	Total
Financial restructuring	400 000	0	0	400 000
Market restructuring	496 000	0	0	496 000
Technological restructuring	999 000	0	1 100 000	2 099 000
Restructuring of workforce	219 750	382 250	0	602 000
Organisational restructuring	4 900	0	0	4 900
Total	2 119 650	382 250	1 100 000	3 601 900

(19) The main element of support from state resources is public guarantees covering loans in the amount of SIT 1 100 000 000 intended to finance Javor Pivka's technological restructuring. As collateral for the guarantees, the Slovenian authorities received a mortgage on assets belonging to Javor Pivka to a value corresponding to the amount covered by the guarantees, i.e. SIT 1 100 000 000 (approx. EUR 4 584 000).

(20) In addition, aid was given in the form of a grant of SIT 382 250 000 (approx. EUR 1 592 000) for the costs of the restructuring of the workforce. This aid will contribute to both the severance pays for the redundant workers and for the training costs of those workers who are kept on.

(21) Slovenia submitted that Javor Pivka would contribute SIT 2 119 650 000 (approx. EUR 8 832 000) towards the restructuring, corresponding to 53,7 % of the total costs.

4. **Market situation**

(22) Javor Pivka is producing the following products, for which it has the indicated market shares at EU level (figures refer to 2003, and the CN numbers refer to the Combined Nomenclature):

(a) Shuttering panels (CN 4418 40): 3,91 %

(b) Plywood panels (CN 4412): 0,18 %

(c) Veneer (CN 4408): 0,22 %

(d) Wood chairs (CN 9401 61 + 9401 69 + 9401 90 30): 0,08 %

([5]) In the course of the procedure, Slovenia declared that the costs of the financial restructuring were 'outside the restructuring programme' and would be met by commercial loans obtained by Javor Pivka without any involvement of state aid. The corresponding amount, SIT 400 000 000, was not included by Slovenia in the costs of the restructuring programme. However the Commission takes the view that the financial restructuring is an integral and necessary part of the restructuring programme and that consequently its costs should be included in the restructuring cost. Its financing, to the extent that it is secured by loans obtained on market terms and free of aid, is to be considered as Javor Pivka's own contribution. In this table, as in the rest of the decision, the Commission has incorporated these amounts in the restructuring costs and in the 'own funds'.

(23) The aggregated Javor Pivka market share in its product range on the EU-25 market was 0,21 % in 2003.

III. REASONS FOR OPENING THE PROCEDURE UNDER ARTICLE 88(2) EC

(24) As indicated above, the Slovenian authorities did not notify the measures in favour of Javor Pivka. In its letter of 16 May 2006 opening the procedure under Article 88(2) EC, the Commission explained in detail why the measures in question would constitute new aid which should be notified on the basis of Article 88 EC and assessed under Article 87 EC.

(25) In addition, the Commission expressed doubts on the aid's compatibility with the common market, and in particular with the Community Guidelines on aid for rescue and restructuring of firms in difficulty of 1999 [6] (hereinafter 'the guidelines') on the following grounds:

(a) The Commission had doubts whether Javor Pivka was eligible for restructuring aid under the guidelines. In particular, the Commission, questioned whether it was 'in difficulty' within the meaning of the guidelines as its poor performance in 2003 could be an exceptional occurrence rather than part of a trend. In addition, the Commission questioned whether Javor Pivka belonged to a larger business group and whether it could not obtain the necessary funds from its owners.

(b) It was not clear how the company was to restore its long term viability since the Commission had not been provided with sufficient data to assess the assumptions of future performance under the restructuring plan.

(c) No market analysis was provided to justify the absence of compensatory measures.

(d) The Commission also had doubts whether the aid was limited to the minimum necessary because it was unclear whether Javor Pivka had provided a significant own contribution to its restructuring costs as it was unclear how the own funds were to be sourced.

(e) Finally, the Commission requested information on all other aids granted to Javor Pivka in 2004 in order to ensure that it had not received any previous rescue and restructuring aid, in which case the 'one time, last time' condition set out in point 48-51 of the guidelines might bar it from receiving such aid again.

IV. COMMENTS FROM SLOVENIA

(26) In the course of the formal proceedings, Slovenia has made in substance the following comments.

1. New aid, or aid granted before accession

(27) Slovenia insisted that the favourable opinion of the inter-ministerial expert commission amounted, for all practical purposes, to a decision to grant the aid which was binding on the Slovenian state. Since this decision was adopted on 6 April 2004, i.e. before Slovenia's accession to the European Union, and since the aid no longer applied after the accession, Slovenia considered that it was aid granted before accession to which the provisions of Articles 87 and 88(3) EC do not apply.

2. Eligibility

2.1. *The notion of company 'in difficulty'*

(28) Slovenia showed, submitting i.a. the performance indicators in table 1 above, that Javor Pivka featured several of the characteristics of a company in difficulty, and that this was not only an isolated occurrence in 2003 but a trend which could be distinguished over four years (2000-2003).

(29) In this respect, Slovenia pointed out that Javor Pivka failed to increase its net sales revenue over the period in question. The operating result was negative throughout the period, except for 2000, and the losses increased between 2001 and 2003. The current losses in 2003 were close to half the company's share capital. The return on sales, equity and assets was negative and deteriorated continuously 2001-2003. Free cash flow from operations fell over the period and was negative in 2003. This negative trend culminated in Javor Pivka being under a large threat of bankruptcy in 2003.

2.2. *Javor Pivka's ownership*

(30) Slovenia clarified the ownership structure of Javor Pivka with reference to the particularities of the privatisation model applied by Slovenia after the end of the Communist regime. Slovenia applied the peculiar notion that the capital of companies had no identifiable owners, neither private nor public, but was 'social capital' which belonged to the population at large. The privatisation process sought to transform this abstract concept into clearer ownership structures by means of ownership certificates which were distributed to the population. These certificates could be exchanged against shares in formerly 'social' companies.

[6] Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 288, 9.10.1999, p. 2).

(31) In this process, an important role was played by so-called authorised investment companies (known under the acronym 'PID') and administration companies ('DZU') which were set up to allow private investors to pool their certificates. These were then transformed by the PIDs into shares in various privatised companies, whereas the individual investors in return received shares in the PID, rather than in the privatised companies directly (the PID acting somewhat in the manner of an investment fund).

(32) However, the PIDs had no freely available funds (the currency of their investments being the certificates) and lacked the professional skills and experience to take an active part in corporate governance. As a result, they have been passive owners who take little or no part in the management of the companies they own.

(33) Such passive investors make up a large part of the ownership of Javor Pivka (some 44 % of share capital). They have no fresh capital to invest in the company. Indeed, when the restructuring programme was established, all institutional owners were invited to participate in the refinancing but none responded. Another 40 % of the share capital is split amongst 1 255 small shareholders making it at least 80 % of Javor Pivka's ownership which is not actively managed.

3. **Return to viability**

(34) On this point, Slovenia explained that the projections on Javor Pivka's performance under the restructuring plan and its consequent return to viability had been based on market analyses incorporated in the restructuring plan, sales forecasts in the company's various segments and market research.

(35) To show the reliability of these forecasts, Slovenia submitted complementary additional information. In particular, Slovenia accounted for the sources of the data on which the projections were based and submitted sales projections for the years 2004-2006 broken down by specific articles within the company's product range.

4. **Compensatory measures**

(36) On this point, Slovenia argued that no compensatory measures were necessary since, in view of Javor Pivka's negligible market share, there is no undue distortion of competition. In addition, Slovenia argued that the need for compensatory measures must be assessed with due account to the fact that Javor Pivka is located in an area eligible for regional aid pursuant to Article 87(3)(a) EC (see point 54 of the guidelines).

5. **Own contribution**

(37) Slovenia specified the sources of Javor Pivka's own contributions as set out in the table in paragraph 18 above. This funds were to be sourced as follows: Divestment of assets (financial and real estate) were to provide SIT 958 427 170. Another SIT 900 000 000 would come from bank loans obtained on market terms, without the support of aid. The remainder would be provided trough 'depreciation and amortisation' of assets (expected to amount to a total of SIT 1 111 786 000 in 2004-2006).

6. **Other aid**

(38) Finally, on this point, Slovenia advised the Commission that Javor Pivka had received state aid for energy saving measures. The aid was given under a scheme to promote renewable sources of energy, effective use of energy and co-generation of heat and electricity. The aid was granted on 1 September 2003 and paid out on 19 February 2004. This information was corroborated by documents.

V. **ASSESSMENT OF THE AID**

1. **Existence of State aid**

(39) According to Article 87 EC, 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, insofar as it affects trade between Member States, constitutes incompatible state aid unless it can be justified under Article 87(2) or (3) EC.

(40) The Commission notes that the aid is granted through State resources to an individual company. The criterion of favouring the individual company is also met. As regards the aid given in the form of a grant, the advantage for the beneficiary is obvious. In the case of the guarantee, the advantage may seem less obvious as Javor Pivka provided collateral in the form of a mortgage in return for the guarantee. However, the Slovenian authorities accepted to provide the guarantee against a mortgage with the ratio 1:1 (the value of the mortgage being equal to the amount covered by the guarantee). By contrast, commercial lenders would not have provided a loan against less than a 2,5:1 mortgage ratio. At the time, Javor Pivka would not have been able to provide sufficient mortgage to secure the same credit on commercial terms. In fact, the mortgage provided for the guarantee represented the full extent of the unencumbered property of Javor Pivka at the time. Consequently, the guarantee provided by the Slovenian authorities favoured Javor Pivka by allowing the company to secure a larger loan than it would otherwise have been able to obtain against the collateral it could provide.

(41) As there is trade in processed wood products and furniture between Slovenia and other Member States the measure is liable to improve the position of the recipient in relation to its competitors in Slovenia and the EU, so that it may consequently distort competition and affect trade between Member States.

(42) Consequently, the Commission considers that the guarantee and subsidy in issue constitute state aid within the meaning of Article 87(1) EC.

2. **Existence of new aid**

(43) The Slovenian authorities questioned whether the Commission was empowered to assess the aid under Articles 87 and 88 EC, arguing that it was granted before accession. As the Commission clarified in the opening decision, in order to determine whether an aid has been put into effect before or after accession, the relevant event is the legally binding act by which the competent national authorities undertake to grant the aid [7]. In the absence of such a decision before accession, the measure constitutes new aid, even if the exposure of the state was known before.

(44) In the present case the Commission concludes that the binding act by which the competent national authorities undertook to grant aid did not come into effect before accession. The relevant Slovenian provisions state that the aid shall be awarded by a decision of the government on the basis of a proposal from the competent ministry. While prior decisions of the interdepartmental expert committee and the Ministry responsible are indeed necessary for the award, they are not sufficient to grant the aid. The definitive decision lies with the government. In the present case, the Government's resolution was issued on 27 May 2004, and Slovenia joined the European Union on 1 May 2004. Therefore, the measures constitute new aid and would have had to be notified on the basis of Article 88 EC and assessed under Article 87 EC.

3. **Compatibility of the aid**

(45) Given that the aid in question is restructuring aid, it is compatible with the common market if it complies with the criteria under the guidelines.

(46) In view of Slovenia's comments and the information gathered in the course of its enquiry, the commission has reached the following conclusions on the points which caused it to open the formal procedure.

3.1. *Eligibility*

(47) In view of the information submitted by Slovenia, the Commission takes the view that Javor Pivka's performance as described in section 2.1 above shows that it was indeed a company in difficulty at the time the state aid in issue was granted. The Commission notes in particular that Javor Pivka experienced increasing losses, diminishing turnover and declining cash flow. The Commission further notes that these problems were part of a trend for the years 2000-2004, and not simply an exceptional occurrence in 2003.

(48) The Commission also notes Slovenia's explanations concerning the nature of Javor Pivka's ownership. In view of the passive nature and poor capital resources of Javor Pivka's institutional owners and the fragmentation of its remaining ownership, the Commission accepts that the company could not obtain the necessary funds from its shareholders. For the same reasons, and taking into account the fact that no single owner holds more than 15 % of Javor Pivka's share capital, the Commission also takes the view that Javor Pivka does not belong to a larger business group.

(49) The Commission accordingly accepts that Javor Pivka was eligible for restructuring aid.

3.2. *Return to viability*

(50) The Commission indicated in the opening decision that it was unclear how the restructuring plan would enable Javor Pivka to restore long term viability. This related mainly to the five year projections indicating how the company was likely to evolve as a result of the restructuring measures. The Commission's remarked that Slovenia had not submitted the information and data necessary to enable the Commission to assess the assumptions on Javor Pivkas's likely performance under the restructuring plan.

(51) In the course of the procedure, Slovenia has submitted the complementary information mentioned in section 4.3 above. This information adequately explains the basis for the assumptions. The Commission notes that the forecasts for Javor Pivka's sales performance might today appear rather optimistic given that in 2005 and 2006 the sector faced fierce competition from the Far East which resulted in excess supply and pressure to reduce prices. However it is not clear that this information was already known in the beginning of 2004. In addition the Commission itself observed in 2006 that: 'plywood production and consumption have seen significant increase in the past few years, with a strong export market developing for certain grades' [8]. Given that the Commission has not been provided with any contradictory information which put the companies and its own assumptions into question, the Commission has no grounds to dispute them. Therefore, the Commission considers that the projections made in 2004 do not appear implausible, so that the Commission's doubts on this point have been allayed.

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[7] See opening decision (mentioned in footnote 1), points 19 and 20, and also the Commission decision in case C-3/2005 *FSO*, OJ C 100, 26.4.2005, p. 2, point 38 *et seq*.

[8] http://ec.europa.eu/enterprise/forest_based/tradeflows_en.html

3.3. *Compensatory measures*

(52) According to points 35 and 36 of the guidelines, measures must be taken to mitigate as far as possible any adverse impact of the state aid on competitors. However, such compensatory measures are not required where the beneficiary's share of the relevant market is negligible. In these cases, compensatory measures are not a condition for finding the aid compatible with the common market.

(53) The Commission notes that according to the information provided by the Slovenian authorities, Javor Pivka is active in several product markets (plywood, shuttering panels, veneer and furniture, see point 22 above). As regards plywood the Commission first notes that in a merger case a 'market investigation has largely confirmed that the different type of wood-based boards such as plywood, hardboard, raw particleboards and coated particleboards, decorative laminates (HPL/CPL) and wood-based panel components for the furniture and construction industry belong to separate product markets' ([9]).

(54) As regards the definition of the relevant market, Slovenia has provided the Commission with a market study which indicates the market shares for the relevant product market in the EU-25. In this respect, the Commission has little reason to depart from the presumption in footnote 20 of the guidelines that the relevant market is the EEA. It recalls that it has previously made some market investigations in the European wood-based products industry (including in particular wood-based panels made out of particleboard) in a merger case ([10]), and concluded that the relevant market was wider than the national market, and at least cross-border regional. This was underpinned by the important cross boarder trade flows. That similar trade flows exist also in the case of plywood is shown by figures provided by Slovenia as confirmed by the Commission's internal experts (this is further confirmed by the fact that the intra-Community exports account for the majority of Javor Pivka's turnover, with 55 %). Moreover, 'cross-border regional' was found to relate to a distance of about 1 000 km, the distance varying according to the value added to the products, i.e. coated products would trade over even longer distances than none-coated products. As plywood is already a higher-quality product and exports concern mainly plywood, transportation costs are less important than for particleboard (and even less important for chairs and other furniture made out of plywood). In view of the above, the Commission takes the view that the relevant market for the products manufactured by Javor Pivka should be, if not the entire EEA or EU-25, at least a good part of the EU-25.

(55) Given that Javor Pivka's market share of the EU-25 as indicated in section 2.4 above is 0,21 % (in 2003) for its product range as a whole, and that this share should in principle not more than double even if the geographical market were reduced by half, the Commission considers that the market share is still well below 1 % which, in connection with the fact that the market comprises a large number of small and medium-sized producers, can be considered negligible ([11]). Consequently, and since this decision is based on the 1999 guidelines, compensatory measures are not necessary to ensure that the state aid is compatible with the common market.

3.4. *Aid limited to the minimum*

(56) According to point 40 of the guidelines, aid must be limited to the strict minimum needed to enable restructuring, and beneficiaries are expected to make a significant contribution to the restructuring plan from their own resources 'including through the sale of assets that are not essential to the firm's survival, or from external financing at market conditions'.

(57) Javor Pivka's own contribution to the restructuring is set out in section 4.5 above. It should be said at the outset that the Commission cannot accept that depreciation of assets provides a genuine own contribution ([12]) because it does not provide resources available to the company and is also depending on future operations which are the result of the State aid provided ([13]). Any funds from this source can therefore not be taken into consideration for the purpose of calculating Javor Pivka's own contribution.

(58) On the other hand, the assets divested by Javor Pivka do not appear essential to its survival and the proceeds from this sale therefore constitutes a valid own contribution. The same is true of the funds raised through loans taken on market terms from banks and free of aid. Together, the funds from these sources amount to SIT 2 119 650 000, which the Commission considers as Javor Pivka's own contribution towards the restructuring.

([9]) Case No COMM/M.4165 — *Sonae Industria/Hornitex*, Commission Decision of 28.6.2006, point 11.

([10]) Case No COMM/M.4165 — *Sonae Industria/Hornitex*, Decision of 28.6.2006.

([11]) At least in view of other examples under the 1999 guidelines, see the Commission Decision in case C-3/2005 *FSO*, OJ C 100, 26.4.2005, p. 2, point 38 *et seq*.

([12]) Commission Decision in case N 464/05 *AB Kauno* of 22.2.2006, point 17.

([13]) This was confirmed, as regards cash flow, in Commission Decisions in case C-19/2000 *TGI*, OJ L 62 of 5.3.2002, p. 30, point 106 and case C-30/1998 *Wildauer Kurbelwelle*, OJ L 287 of 14.11.2000, p. 51, point 52 and, for the 2004 guidelines, in the *AB Kauno* case (see footnote 12).

(59) The own contribution corresponds to 45,5 % of the total restructuring costs which can be considered significant under the guidelines ([14]). The aid also appears limited to the minimum necessary as it is limited to providing the additional funds needed for the technological restructuring and for the restructuring of the workforce and does not provide the company with any surplus cash.

3.5. *Other aid*

(60) Under the 'one time, last time' principle laid, down in points 48-51 of the guidelines, the Commission cannot approve restructuring aid to a company which has previously received restructuring aid. The Commission considers that this principle requires it to take into account any restructuring aid granted within 10 years preceding the aid under consideration, irrespective of whether the first state aid was granted before the granting Member State's accession to the EU. State aid other than restructuring aid is not relevant in this respect.

(61) Slovenia has argued that the purpose of this aid was to promote energy saving for environmental purposes. Nothing has emerged which would lead the Commission to question that information. The Commission therefore accepts that this aid was not given for restructuring purposes and that it should not be considered for the application of the 'one time, last time' principle.

4. **Additional observation**

(62) It emerged in the course of the proceedings that the implementation of the restructuring plan have been delayed and that some parts of the technological restructuring have not been implemented according to schedule. It does not appear that these problems in the restructuring plan were apparent at the time of the granting of the aid and they do accordingly not justify calling into question the plan's ability to return Javor Pivka to viability. However, the Commission recalls that the approval of the aid is conditional upon full implementation of the plan (point 43 of the guidelines) and will be monitored (point 45 of the guidelines).

(63) The Commission therefore expects Slovenia, pursuant to point 46 of the guidelines, to provide at least two monitoring reports, one concerning 2007 at the end of January 2008 and one concerning 2008 at the end of January 2009, containing detailed information on the financial performance of the company as well as of its investments made. The Commission underscores that if the company fails to make all the investments in the restructuring plan, it may be liable to pay back some state aid even if it managed to return to viability ([15]).

VI. **CONCLUSION**

(64) In view of the above, the Commission finds that the aid in question is restructuring aid which complies with the conditions of the applicable guidelines, i.e. the 1999 rescue and restructuring guidelines. The Commission therefore finds that although Slovenia has unlawfully implemented the restructuring aid to Javor Pivka in breach of Article 88(3) of the Treaty, the state aid is compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Slovenia has implemented for Javor Pivka is compatible with the common market pursuant to Article 87(3)(c) EC and the Community guidelines on state aid for rescuing and restructuring firms in difficulty of 1999.

Article 2

1. The restructuring plan shall be fully implemented. All necessary measures shall be taken to ensure that the plan is implemented.

2. Implementation of the plan shall be monitored on the basis of annual reports communicated by Slovenia to the Commission. In particular, a report concerning the 2007 activities shall be submitted by the end of January 2008 and a report concerning the 2008 activities shall be submitted by the end of January 2009. The reports shall contain detailed information on the financial performance of the company as well as of the investments it has made.

Article 3

This Decision is addressed to the Republic of Slovenia.

Done at Brussels, 10 July 2007.

For the Commission
Neelie KROES
Member of the Commission

([14]) See Commission Decision in case C-39/2000 *Doppstadt*, OJ L 108, 30.4.2003, p. 8, point 74 and Commission Decision in case C-33/1998 *Babcock Wilcox* (OJ L 67, 9.3.2002, p. 50).

([15]) See Commission Decision of 13 September 2006 in Case N 350/06 MSO (OJ C 280 of 18.11.2006).

COMMISSION DECISION

of 10 July 2007

concerning an Italian State aid scheme to the Sardinian shipping sector C 23/96 (NN 181/95) and C 71/97 (N 144/97)

(notified under document number C(2007) 3257)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2008/92/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, 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, pursuant to those provisions, called on the parties concerned to submit their comments,

Whereas:

1. PROCEDURE

(1) By letter of 24 June 1996 [1], the Commission informed the Italian authorities of its decision to initiate the procedure provided for in Article 88(2) of the EC Treaty (formerly Article 93(2)) with regard to an unlawful aid scheme established by the region of Sardinia in favour of shipping companies for the construction, acquisition, conversion, modification or repair of ships (hereinafter original aid scheme).

(2) After the procedure was opened, the Italian Government sent its observations to the Commission in a letter dated 31 October 1996 (DG7-Transport A/23443). The Sardinian regional authorities sent their observations in letters dated 11 October 1996 (DG7-Transport A/21870) and 22 January 1997. No other Member States or interested third parties sent their observations within the time limit of one month after publication of the decision to open the procedure. It should be noted, however, that some third parties submitted comments outside this deadline.

(3) On 21 October 1997, the Commission adopted Decision 98/95/EC, which establishes the incompatibility with the common market of the aid scheme in question [2]. On 12 November 1997 (SG (97) D/9375), the Italian authorities were informed of this decision.

(4) In a letter of 14 November 1997, the Commission informed the Italian authorities of its decision to initiate the procedure set out in Article 88(2), of the EC Treaty (formerly Article 93(2)) with regard to Sardinian Regional Law No 9 of 15 February 1996 which amends the original aid scheme implemented for the benefit of shipping companies [3]. The Italian authorities submitted their comments on 16 January 1998 (DG7-Transport A/1221) and 23 December 1997 (DG7-Transport A/144). No other Member States or interested third parties sent their observations within the time limit of one month after publication of the decision to initiate the procedure.

(5) In its judgment of 19 October 2000 (Joined Cases C-15/98 and C-105/99 *Italy and Sardegna Lines* v *Commission*) [4] the Court of Justice of the European Communities annulled Decision 98/95/EC on the grounds that it lacked an adequate statement of reasons with regard to the effect on Community trade.

(6) Following a letter from the Commission dated 23 November 2006 (D 2006 224962) requesting information from the Italian authorities, a response was sent by e-mail on 8 March 2007 (TRENA/26193).

2. DESCRIPTION OF THE MEASURE

2.1. The original scheme

(7) Following a complaint lodged in 1993, the Commission learned of an aid scheme set up by the region of Sardinia for shipping companies intending to build, purchase, convert or repair ships. It took the specific form of loans and leases granted on favourable terms that were agreed initially only with companies whose head office, domicile for taxation purposes and port of register were situated in the region of Sardinia.

[1] C 23/96 (NN 181/95), (OJ C 368, 6.12.1996, p. 2).

[2] OJ L 20, 27.1.1998, p. 30.

[3] C 71/97 (NN 144/97), (OJ C 386, 20.12.1997).

[4] European Court Reports, 2000, ECR I-8855.

Regional Law No 20 of 15 May 1951 amended by Law No 15 of 11 July 1954

(8) The scheme in question was set up by Sardinian Regional Law No 20 of 15 May 1951 (hereinafter Law No 20/1951), subsequently amended by Regional Laws No 15 of 11 July 1954 (hereinafter Law No 15/1954) and No 11 of 4 June 1988 (hereinafter Law No 11/1988). Law No 20/1951, amended by Law No 15/1954, provided for the setting up of a fund for loans to shipping companies intending to build, purchase, convert or repair ships. These loans were to be agreed only with companies with their head office, country of domicile for tax purposes and port of register within the region of Sardinia.

(9) Such loans could not exceed 20 % of the investment in cases of building, conversion or repair works for which the applicant had already received aid under national legislation in force at that time. Where no such aid under national legislation had been awarded, loans could not exceed 60 % of investment costs.

(10) Under Law No 20/1951, interest, commission and other charges related to the loan could not exceed 4,5 % per year of the loan where aid had already been received under national legislation, and 3,5 % in all other cases (an average interest rate subsidy of 10-12 percentage points). The capital was to be repaid in not more than 12 annual instalments commencing from the third year following entry into service of the ship for which the loan had been granted.

Regional Law No 11 of 4 June 1988

(11) Articles 99 and 100 of Law No 11/1988 introduced substantive amendments to the aid scheme, but said changes were not notified to the Commission. Since the aid scheme had been amended, it therefore constituted non-notified aid.

(12) The following conditions were added to those provided for by Law No 20/1951 for the granting of aid to beneficiary companies:

'(a) that the undertaking should have its head office, administrative headquarters and shipping business and, where applicable, its main stores, depots and accessory equipment permanently in one of the ports of the region;

(b) all the vessels owned by the undertaking should be in the registry of one of the ports of the region;

(c) the undertaking should use the ports of the region as the centre of its shipping activities, making them a normal port of call as part of those activities and, where regular services are operated, these should terminate or regularly call at one or more of those ports;

(d) the undertaking should commit itself to carrying out refitting work in the ports of the region, provided that shipyards have the operational capacity and that there are no grounds of force majeure, unavoidable chartering requirements or obvious economic or time constraints;

(e) as regards the crewing of vessels with a gross tonnage of more than 250 tonnes, the undertaking should establish a special complement, comprising all the seafarer categories needed to crew the vessel for which it was requesting aid, using solely crew members registered in the general duty roster of the port of registry, and to take from those rosters all the crew required, whether general or special, the only restrictions being those laid down by the national regulations on the employment of seafarers …'

(13) Law No 11/1988 also introduced the option whereby the Sardinian authorities could grant a contribution to the costs of a lease where a shipping company had opted for a lease instead of a loan. The contribution is equal to the difference between the interest actually owed on a loan, corresponding to the annual amortisation rate, calculated at the commercial reference interest rate for shipping in Italy and the interest payable on the same loan calculated at 5 % (an average interest rate subsidy of about 10 percentage points).

(14) At the end of the contract, the ship for which the contribution was paid may be purchased by the leasee by paying an amount equal to 1 % of the purchase price. According to the Italian authorities, (letter of 5.6.1988 and reply of 1.7.1998), no lease was signed under Law No 11/1988.

(15) According to information in the possession of the Commission, loans amounting to the sum of ITL 12 697 450 000 (approximately EUR 6,5 million) have been granted since the entry into force of the original aid scheme. The last financing decision was taken in December 1991.

(16) In their latest letter of 8.3.2007, the Italian authorities claimed that financing granted on the basis of the 1988 law concerned the acquisition of ships of gross tonnage between 24 and 138 tonnes. These ships were said to be mainly for the purpose of costal maritime transport within a market that had not yet been opened up for competition at the time.

2.2. **Doubts raised over the original aid scheme subject to procedure C 23/96**

(17) In the document initiating the procedure on 24 June 1996, the Commission expressed serious doubts over the compatibility of the aid with the common market on the basis of information available to it for the following reasons:

— the aid scheme contained provisions which involved discrimination on the grounds of nationality in that ship operators were obliged, inter alia, as an effective condition of aid, to employ Sardinian seafarers on board their vessels,

— the scheme conflicted with the principle of freedom of establishment inasmuch as the aid was conditional, inter alia, on operators having their head office in Sardinia,

— the scheme involved aid to encourage investment in ships in a way which is liable to infringe Community law.

2.3. **The scheme amended by Law No 9 of 15 February 1996**

(18) To make Law No 20/1951 compatible with Community law and the relevant Directives, the regional authorities amended the original aid scheme by means of Regional Law No 9 of 15 February 1996 (hereinafter Law No 9/1996) as follows:

(a) the provisions which involved discrimination on the grounds of nationality were removed;

(b) a new condition was introduced whereby a preference for innovative, high technology vessels was agreed;

(c) technical changes were introduced: the loan/lease duration could not exceed 12 years and had to be for 70 % less than the envisaged cost, with a ceiling of ITL 40 billion (approximately EUR 20 million) per ship. The aid was granted in the form of a contribution on the interest equal to the difference between the repayment instalment calculated at the reference rate for loans to the shipping sector in Italy and the instalment calculated at a rate equal to 36 % of the same reference rate.

(d) a system was introduced to check that the aid was not granted twice (by the national authorities and by the regional authorities) for the same loans/leases.

2.4. **Doubts expressed during proceeding C 71/97**

(19) In its Decision of 14 November 1997 the Commission, while noting that the notified aid scheme no longer contained discriminatory provisions based on breach of the right to establishment, expressed serious doubts over the compatibility of the amendments with the common market for the following reasons:

— risk of conflict with Community legislation on shipbuilding in force at that time [5],

— conflict between the aid scheme and the guidelines on State aid to maritime transport current at that time [6],

— existence of unlawful operating aid, granted in the form of leases on favourable terms for the acquisition of ships.

2.5. **Commission Decision of 98/95/EC**

(20) In Decision 98/95/EC, the Commission, without reference to the amendments added subsequently, found the original aid scheme constituted State aid for the purposes of Article 92(1) of the EC Treaty, inasmuch as: '(a) the beneficiary companies are relieved of a financial burden which they would normally bear (normal commercial interest rates and other charges on loans/leases); (b) the burden is borne by State resources (the Sardinian authorities); (c) the aid is selective (being reserved to the shipping sector); and (d) the aid affects trade between Member States.'

(5) Council Directive 90/684/EEC, of 21 December 1990, on aid to shipbuilding (OJ L 380, 31.12.1990) and Council Regulation (EC) No 3094/95 of 22 December 1995, on aid to shipbuilding (OJ L 332, 30.12.1995), amended by Regulation (EC) No 1904/96 (OJ L 251, 3.10.1996).

(6) Financial and fiscal measures concerning shipping operations with ships registered in the Community, SEC(89) 921 final of 3 August 1989 and Community guidelines on State aid to maritime transport (OJ C 205, 5.7.1997).

(21) With regard to letter (d), the Decision initiating the proceedings states that 'more than 90 % of the goods from Member States are transported towards Sardinia by sea and more than 90 % of goods from Sardinia are transported towards Member States by the same route. It was also noted that 65 % of tourist traffic (passengers and vehicles) between Member States and Sardinia are managed by shipping companies.' The Commission also noted that the observations made by the Italian authorities did not contest these data, or the categorisation of the aid scheme as State aid within the meaning of Article 92(1).

(22) In light of the above, the Commission concluded that:

(a) the financial aid granted under Law No 11/1988 constituted State aid under Article 92(1) of the Treaty (now Article 87(1)),

(b) the aid was granted in breach of Article 93(3) of the EC Treaty (Article 88(3)), and

(c) in the case in point, none of the derogations provided for in Article 92 could be applied.

The Commission therefore ordered that Italy should recover the unlawful aid granted on the basis of the 1988 aid scheme (Article 2).

2.6. **The judgment of 19 October 2000 and its legal consequences**

(23) In its judgment of 19 October 2000 (Joined Cases C-15/98 and C-105/99 *Italy and Sardegna Lines* v *Commission*) [7] the Court of Justice of the European Communities annulled Decision 98/95/EC on the ground that it lacked an adequate statement of reasons with regard to the effect on Community trade.

(24) The Court found that the Commission, in limiting itself to stating that the aid was selective and reserved to the shipping sector in Sardinia, that more than 90 % of goods transport between the mainland and Sardinia took place by sea and that 65 % of tourist transport (passengers with cars) was carried out by shipping companies, failed to provide any information on the competition between the Sardinian shipping companies and companies established in other Member States. According to the Court, the Commission failed to take into account, in that respect, the fact that, until 1 January 1999, island cabotage in the Mediterranean was excluded from the liberalisation of maritime transport service within Member States.

(25) The Court also noted that the Commission, despite pointing out that the aid scheme to the Sardinian shipping companies was in breach of the fundamental principles of freedom of establishment and the prohibition of discrimination on grounds of nationality, failed to use this breach as grounds for demonstrating the distortion of trade between Member States.

(26) In consequence of the judgment of 19 October 2000 the formal investigation procedure initiated by the decision of 24 June 1996 has been reopened. The Commission must therefore adopt a new final decision.

(27) In addition to adopting a new Decision following the Court's annulment of Decision 98/95/EC, the Commission must also decide as to the amendment to be made to the scheme introduced by Law No 9/1996, in respect of which the investigation procedure of 14 November 1997 was initiated. Although at the time it had decided to examine both schemes separately, the Commission must now examine these schemes jointly in the present Decision in order to determine their overall implications.

3. **COMMENTS BY ITALY**

3.1. **Observations on the original aid scheme submitted in the context of procedure C 23/96**

(28) In procedure C 23/96, the Italian authorities informed the Commission in a letter of 31 October 1996 of changes that they had made to the original aid scheme to make it, in their opinion, compatible with Community law. The main amendment was the adoption of Regional Law No 9/1996 that removed discriminatory provisions based on nationality and also provisions that were in breach of freedom of establishment. The authorities also notified the Commission that they had introduced a direct control mechanism to rule out the possibility of aid being granted twice (by the national authorities and by the regional authorities).

(29) In its letters of 11 October 1996 and 22 January 1997, the regional authorities justified the need for measures arising out of amendments to Law No 9/1996, inter alia, by the difficult economic conditions in Sardinia, which is an 'Objective I' region.

[7] European Court Reports, 2000, ECR I-8855.

3.2. **Observations on the modified aid scheme submitted in the context of procedure C 71/97**

(30) As to the observations submitted in the context of procedure C 71/97, the Italian authorities pointed out, first, that they had no way of knowing the Community law referred to by the Commission in its decision to initiate the investigation procedure, arguing that Council Regulation (EC) No 3094/95 [8], amended by Council Regulation No 1904/96, and the Community Guidelines on State aid to Maritime Transport of 1997 had been published after the adoption of Law No 9/1996.

(31) Secondly, Italy emphasised that the measures envisaged by Law No 9/1996 had not been implemented and that no financial commitments had been assumed with third parties. Italy also claimed that the specified measures were necessary to allow for the absence of economies of scale in the goods and passenger maritime transport sector in an island region such as Sardinia.

(32) In their conclusion, the Italian authorities declared themselves willing to amend the legislation and to respect all Community laws in force.

4. **ASSESSMENT OF THE AID**

4.1. **Assessment of the original scheme applicable during the period 1988-96**

Existence of an unlawful new State aid

(33) The Commission considers that, by failing to notify the aid scheme in question in favour of companies registered in Sardinia intending to build, acquire, convert, modify or repair ships, the Italian authorities failed to fulfil their obligations under Article 88(3) of the Treaty (formerly Article 93(3)). Even though the scheme had been set up before the entry into force of the Treaty, Law No 11/1988 substantially amended the aid scheme introduced by Laws No 20/1951 and No 15/1954. The amendments introduced in 1988 should have therefore been notified to the Commission and therefore constitute new non-notified aids. Since this characterisation was not contested by the Italian authorities in their comments following the initiation of the procedure on 24 June 1996 it is therefore confirmed in this Decision.

(34) The Commission finds that the measure in question constitutes State aid within the meaning of Article 87(1) of the Treaty. The Sardinian companies effectively benefited from interest rates more favourable than market rates and a reduction in costs relating to the loans and leases; they were therefore relieved of a financial burden that they would normally have had to bear. The financial burden was borne by public resources and the aid was selective because it was reserved to companies operating within the shipping sector and established in Sardinia.

(35) The Commission also observes that the measure affected trade between the Member States. The scheme implemented by the Italian authorities concerns Sardinian shipping companies in general, whether involved in cabotage activities or international transport. While it is true that regulation No 3577/92 [9], which liberalised the maritime cabotage service market within the Community, excluded the liberalisation of cabotage with Mediterranean islands until 1 January 1999, it is also true that this Regulation did not exclude from its scope changes in trade in the maritime service market between different Member States, in particular between France, Spain and mainland Italy. It should be noted in this regard that the aid in question was not limited to cabotage, i.e. to maritime services carried out within Italian territorial waters, liberalised from 1.1.1999, but also concerned Sardinian shipping companies that carried out international maritime transport services, which had already been liberalised in 1986 [10], so that such companies could therefore operate in competition with other Community operators.

(36) Information in the possession of the Commission [11] shows that between 1992 and 1997, maritime traffic existed in the form of merchant shipping (and cruise shipping) leaving and entering Sardinian ports, to and from other EU and non-EU destinations. In particular, a French company operated out of Toulon bound for Sardinia and two Italian companies operated from Corsica to Sardinia. These circumstances show that during that period (between 1988 and 1996) there was an effect on international maritime transport services trade between Italy and certain Member States.

(37) In their final letter of 8.3.2007, the Italian authorities claimed that the finance granted under Law No 11/1988 concerned 'the purchase of vessels with gross tonnage between 24 and 138 tonnes'; these ships were reportedly mainly used for the purpose of coastal maritime transport activities within a market that was not at the time open to competition. However, in at least two cases the scheme was applied for the purposes of acquiring ferries used for transporting passengers and vehicles between Sardinia and the mainland, which were able to compete with other national and Community operators. The Italian authorities stated that they were not in possession of any information on goods and passenger traffic between Sardinia and the rest of Italy and between Sardinia and other Community countries for the period in question.

(8) See footnote No 5.

(9) Council Regulation (EEC) No 3577/92 of 7 December 1992, applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ L 364, 12.12.1992).

(10) Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ L 378, 31.12.1986).

(11) Information recorded by the Olbia Harbour Master Office.

(38) It should also be noted that Regulation No 3577/92 on cabotage did not rule out the existence of competition between companies in the maritime transport market operating between Sardinia and the Italian mainland during the period prior to 1 January 1999 because foreign companies were entitled to carry out maritime cabotage services in Italy, subject to registering their ship there, but were not able to benefit from the aid schemes reserved for Sardinian shipping companies. This scheme therefore had the effect of discouraging shipping companies from other Member States from opening branches in Italy to carry out maritime cabotage services with Sardinia, in view of the fact that they would have been unable to benefit from the aid while having to compete with other operators who were able to obtain this aid.

Non-applicability of the derogations provided for in Article 87(2) and (3)

(39) For the following reasons, none of the derogations provided for in Article 87(2) and (3) (formerly Article 92(2) and (3)) may be applied.

(40) The Italian authorities stated that the aid was required to allow the development of a region beset by difficult economic circumstances.

(41) Although Sardinia is a region eligible for regional aid, the derogation provided for in Article 87(3)(a), of the Treaty cannot be applied because the aid in question was not granted for the purpose of promoting regional development but simply to benefit shipping companies. The Italian authorities failed to demonstrate sufficiently how the aid schemes benefiting Sardinia shipping companies enabled development of the region under the terms of Community laws applicable at that time, i.e. the Commission communication on the method of application of Article 92(3)(a) and (c) to regional aid [12]. Although the region of Sardinia was included in the list of proposed regions for the purpose of Article 92(3)(a), (see Annex I to the above mentioned Communication), it has not been shown that the measure was necessary as an aid to initial investment or to job creation, or that it could be considered a short-term operational aid to compensate for particular or permanent regional disadvantages, allowing sustainable and balanced development without giving rise to excess capacity in the sector in question.

(42) The communication also states that any regional aid should respect the Community guidelines laid down for given industrial sectors such as the shipbuilding sector, which is not the case in the aid scheme in question, as will be shown below.

(43) The aid could not therefore benefit from the derogation in Article 87(3)(a).

(44) Nor may the derogation in Article 87(3)(c) on aid for the purpose of promoting the development of certain economic activities be relied upon since the scheme in question does not respect Community guidelines in force during the period 1988-96. The relevant regulations in force at the time, i.e., Chapter II of Annex I to the 1989 guidelines on State aid to shipping companies [13], provided that such aid may be granted on the condition that it did not alter trade conditions to an extent contrary to common interest. The seventh paragraph of the above guidelines states '… The common interest would be served by measures aiming above all at maintaining ships under the Community flag, in other words by countering the tendency to use third country flags, in particular by improving technological equipment and, secondly, by recruiting as many Community seafarers as possible on board such ships'. In this case, the Italian authorities did not provide enough information to show that the original Sardinian regional scheme could be justified by improving safety on the ships or safeguarding the employment of Community seafarers.

(45) Chapter II(6) of Annex I to the 1989 guidelines on State aid to shipping companies provided that aid could be granted to shipping companies for the building, conversion or repair of ships only on condition that they were calculated within limits established by Community law and in particular by Council Directive 87/167/EEC of 26 January 1987 on aid for shipbuilding [14] and by Council Directive 90/684/EEC [15] and Council Regulation (EC) No 3094/95 [16]. Article 4 of Directive 87/167/EEC provided as follows: production aid in favour of shipbuilding and ship conversion may be considered compatible with the common market provided that the total amount of aid granted in support of any individual contract does not exceed, in grant equivalent, a common maximum ceiling expressed as a percentage of the contract value before aid, hereinafter referred to as the ceiling.

(46) The national authorities are responsible for ensuring compliance with Community law on aid to the shipyards to which the Commission may not grant derogations. Since this clearly constitutes a compatibility condition for the aid in question, the Member State must demonstrate compliance with Community law by providing 'all the information to enable the Commission to verify that the conditions for the derogation sought are fulfilled' (ECJ, Case C-364/90 *Italy* v *Commission* [1993] ECR I-2097, paragraph 20 et seq.).

(12) Commission communication on the method for the application of Article 92(3)(a) and (c), in particular Section I(6) (OJ C 212, 12.8.1988), amended in 1990 and 1994 (OJ C 163, 4.7.1990 and OJ C 364, 20.12.1994).

(13) SEC(89) 921 final of 3 August 1989.

(14) OJ L 69, 12.3.1987, p. 55.

(15) OJ L 380, 31.12.1990, p. 1.

(16) OJ L 332, 30.12.1995, p. 1. Regulation modified by Regulation (EC) No 1904/96 (OJ L 251, 3.10.1996, p. 5).

(47) Since the Italian authorities have not supplied any information as to whether the total amount of aid granted respects the ceiling laid down in Article 4 of Directive 87/167/EEC [17], and in the absence of any other information concerning compliance of the original measure with both the above Directives and Article 5 of Regulation (EC) No 3094/95 [18], the Commission is bound to conclude that the aid does not comply with shipbuilding guidelines [19] either.

(48) Furthermore, these derogations cannot be relied upon in order to authorise an aid scheme that is contrary to the general principles of the Treaty. The Commission considers that the aid scheme to Sardinian shipbuilders is incompatible with Community law due to the fact that several of the supplementary conditions introduced by Law No 11/1988 breached the fundamental principles of freedom of establishment (Article 52) and the prohibition of any discrimination based on nationality (Article 6 and Article 48(2)).

(49) Contrary to Article 52 of the Treaty, the aid scheme required not only that the beneficiary company should be established in Sardinia, but also that it should have its administrative headquarters and shipping business, as well as its main stores, depots and ancillary installations permanently in one of the ports of the region. It also laid down that all vessels owned by the beneficiary company (and not only those for which a loan was granted under the scheme) should be registered in Sardinia.

(50) Furthermore, as provided for in Article 99(e) of Law 11/1988 and as observed by the Court of Justice in its judgment in Joined Cases C 15/98 and C 105/99 (paragraph 19), in the case of ships with gross tonnage greater than 250 tonnes, the undertaking should recruit a minimum complement of crew members registered in the general duty roster of the port of registry. The beneficiary company was therefore obliged to recruit a certain percentage of local seafarers even if other seafarers were able to carry out the required work, thus breaching the principle that prohibits any discrimination on grounds of nationality. It therefore follows that the aid in question is contrary to the fundamental principles of Community law.

4.2. **Assessment of the original scheme amended by Law No 9 of 15 February 1996 in force from 1996**

Existence of State aid

(51) The Commission considers that the scheme amended by Law No 9/1996 constitutes State aid within the meaning of Article 87(1) for the following reasons: (a) the beneficiary companies are relieved of a financial burden that they would normally have to bear by means of favourable terms on normal commercial interest rates and other charges on loans/leases; (b) this burden continues to be borne by state resources; (c) the aid is selective (being reserved to companies operating in the shipping sector; and (d) the aid affects trade between Member States because the amended scheme concerns shipping companies aiming to buy, build and convert ships used for goods and passenger transport services with Sardinia and other Sardinian islands as their departure and destination points. As indicated above, companies that may effectively benefit from the aid do not operate only within the cabotage market, liberalised from 1.1.1999, but also in the international maritime transport market, liberalised from 1986 [20]. In any event, there is no doubt that this scheme continues to affect competition within a sector that has been fully liberalised since 1999 inasmuch as it remains in force.

(52) On the basis of information sent by the Italian authorities in October 1996 and January 1997, no beneficiary has received any aid under Law No 9/1996. Since such aid was not granted in the past, the Commission considers that it is not necessary to assess compatibility with Community laws in force at the time for the purposes of the present Decision. However, given that the aid could be granted in the future, it is necessary to determine its compatibility with Community laws in force, i.e. the 2004 Community guidelines on State aid to maritime transport [21] (hereinafter: the 2004 Community guidelines).

(17) Article 4 specifies the following: production aid in favour of shipbuilding and ship conversion may be considered compatible with the common market provided that the total amount of aid granted in support of any individual contract does not exceed, in grant equivalent, a common maximum ceiling expressed as a percentage of the contract value before aid, hereafter referred to as the ceiling.

(18) Paragraph 1: Aid for shipbuilding and ship conversion, excluding repair granted to ship-owners or third parties in the form of State loans and guarantees, may be considered compatible with the common market if it complies with the OECD Understanding on Export Credit for Ships (1) or with any agreement amending or replacing that Understanding […]. Paragraph 3: Aid granted by a Member State to ship-owners or to third parties in that State for the building or converting of those ships may not distort or threaten to distort competition between shipyards in that Member State and shipyards in other Member States in the placing of the orders.

(19) With regard to the application of provisions regarding shipbuilding, it should be observed, as the Advocate General stated in his Opinion (paragraphs 34-38), that although aid to shipbuilding may include an aid to shipbuilders, the Commission rightly considered the 1988 aid scheme as aid to shipbuilders that should be examined only in the light of the less demanding obligation imposed by the Treaty because the Italian authorities were in breach of the obligation to notify, provided for by Article 11 of the above Directive.

(20) Council Regulation (EEC) No 4055/86 of 22 December 1986, applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ L 378, 31.12.1986).

(21) Commission Communication C(2004)43 — Community guidelines on State aid to maritime transport (OJ C 13, 17.1.2004).

Incompatibility of the modified scheme

(53) The modified aid scheme no longer contains provisions that involve discrimination based on nationality or a breach of the principle of establishment. The Commission nevertheless considers that the amended scheme does not fulfil the conditions laid down by the 2004 Community guidelines and cannot benefit from the derogations provided for in Article 87(3)(a) and (c), for the reasons set out below.

(54) According to paragraph 5 of the 2004 Community guidelines, subsidies paid for fleet renewal tend as a general rule to distort competition. In this particular case, the Commission considers that the subsidies in question are not part of any structural reform aiming to reduce overall capacity nor are they aiming to improve equipment on board the ships or promote the use of safer ships. In this regard, the fact that, under the amended aid scheme, the subsidies are earmarked for 'innovative and high technology transport' methods does not make it possible, in the absence of a definition of the said technologies and associated expenses, to assess the effective scope of the new amendment.

(55) The Commission considers that the scheme cannot be described as regional aid within the meaning of paragraph 6 of the regional Community guidelines either. Although Sardinia is a disadvantaged region, the Italian authorities have not sufficiently demonstrated that the region derives an advantage from the scheme in question (Chapter 5(4) of the 2004 Community guidelines) or that the scheme complies with Community rules on regional aid in force [22].

(56) The Commission also considers that, for the reasons set out above, the aid scheme is prejudicial to the economies of other Member States and distorts competition between Member States contrary to the common interest (Chapter 2 of the 2004 Community guidelines).

(57) The Commission also observes that, according to the 2004 Community guidelines, any aid to investment must comply with the Community provisions applicable in the shipbuilding sector, i.e. Regulation (EC) No 1540/98 [23]. It may be observed that Article 3(1) of this Regulation states: 'Until 31 December 2000, production aid in support of contracts for shipbuilding and ship conversion, but not ship repair, may be considered compatible with the common market provided that the total amount of all forms of aid granted in support of any particular contract (including the grant equivalent of any aid granted to these shipowners or third parties) does not exceed, in grant equivalent, a common maximum aid ceiling expressed as a percentage of the contract value before aid […]'. In view of the fact that Italy has not provided any information as to whether the total amount of all forms of aid granted in support of a any particular contract does not exceed, in grant equivalent, a common ceiling expressed as a percentage of the contract value before aid, it must be found that the measure does not comply with Article 3(1).

(58) Furthermore, under Article 3(4) of Regulation (EC) No 1540/98: 'Aid in the form of state-supported credit facilities granted to national and non-national shipowners or third parties for the building or conversion of vessels may be deemed compatible with the common market and shall not be counted within the ceiling if it complies with the terms of OECD Council Resolution of 3 August 1981 (OECD Understanding on Export Credits for Ships) or with any agreement amending or replacing that Understanding'. The Commission is nevertheless in possession of information indicating that the aid provided for by the amended scheme respects the OECD Council resolution of 3 August 1981.

(59) Under Article 6 of Regulation (EC) No 1540/98, aid granted for innovation in existing shipbuilding, ship conversion and ship repair yards may be deemed compatible with the common market up to a maximum aid intensity of 10 % gross provided that it relates to the industrial application of innovative products and processes that are genuinely and substantially new, i.e. are not currently used commercially by other operators in the sector within the Community, and which carry a risk of technological or industrial failure. This aid must also be limited to supporting expenditure on investment and engineering activities directly and exclusively related to the innovative part of the project and their amount and intensity is limited to the minimum necessary taking into account the level of risk associated with the project. However, as indicated above, the fact that the amended aid scheme states that the aid is destined for 'innovative and high technology transport' methods does not make it possible to assess in the absence of any definition of the said technologies and associated expenses, the scope of the amendment introduced. The Commission must therefore conclude that aid scheme, even as amended, does not comply with the provisions on shipbuilding.

(60) Lastly, the derogations provided for in Article 92(3)(a) and (c) cannot be applied because it is the responsibility of the national authorities to show compliance with Community law on aid to shipbuilding, from which the Commission cannot derogate. Since this clearly constitutes a condition of compatibility of the aid in question, the Member State must demonstrate compliance with Community law by providing full information to enable the Commission to verify that the conditions for the derogation sought are fulfilled.

(22) Guidelines on national regional aid for 2007-2013 (OJ C 54, 4.3.2006, p. 13).

(23) Council Regulation No 1540/98 of 29.6.1998, on aid to shipbuilding (OJ L 202, 18.7.1998).

Conclusions

(61) In conclusion, the original aid scheme as it was applied during the period 1988-96 is unlawful and incompatible with the common market.

(62) It follows that the amount of aid arising out of the granting of loans (for a total of ITL 12 697 450 000) on favourable terms under Regional Law No 11/1988 must be repaid by the beneficiaries in accordance with the procedures and provisions of Italian law. Since no subsidy was paid for leases, it is not necessary to arrange for any recovery.

(63) The aid to be recovered includes interest from the date on which they were made available to the beneficiaries to the date of their recovery.

(64) Because the Commission has not been able to quantify directly the aid element or the total amount of the aid to be recovered from each beneficiary, the Italian authorities are responsible for obtaining the information and notifying the Commission of the sums to be recovered from each beneficiary.

(65) As regards the aid scheme amended by Law No 9/1996 and in force from 1996, the Commission notes that no aid was paid from that year, but concludes that the scheme constitutes State aid incompatible with the common market. It is not necessary to arrange for recovery in view of the fact that no subsidy was paid for this purpose,

HAS ADOPTED THIS DECISION:

Article 1

The State aid in the form of loans and leases granted to shipping companies under Law No 20 of 15 May 1951 of the region of Sardinia, as amended by Law No 11 of 4 June 1988, is incompatible with the common market.

Article 2

1. Italy shall take all necessary measures to recover from the beneficiaries the aid described in Article 1, made available to them unlawfully and corresponding to the difference between the total amount that the beneficiaries would have paid for interest and ancillary costs under normal market conditions applied at the date on which the loans were taken out and the total interest and ancillary costs actually paid by the beneficiaries.

2. The recovery shall be carried out without delay and in accordance with procedures of domestic law provided that these allow the immediate and effective execution of this Decision. The aid to be recovered includes interest from the date on which the aid was made available to the beneficiaries until the date of recovery.

3. For payment instalments on loans still outstanding at the date of notification of this Decision, Italy shall take steps to ensure that the borrower pays the balance of the instalments under normal market conditions.

Article 3

The State aid scheme in the form of loans and leases issued to shipping companies by Law No 20 of 15 May 1951 of the region of Sardinia, as amended by Regional Law No 9 of 1966, is incompatible with the common market.

Article 4

Italy shall abolish the aid scheme described in Articles 1 and 3.

Article 5

The Italian State shall inform the Commission within two months of the date of notification of this Decision of the measures taken to comply with it.

Article 6

This Decision is addressed to the Italian Republic.

Done at Brussels, 10 July 2007.

For the Commission

Jacques BARROT

Vice-President