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Legislation

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Contents

(Continued overleaf)

EN

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

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

Commission

Note to the reader (see page 3 of the cover)

EN

([1]) Text with EEA relevance

I

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

REGULATIONS

COMMISSION REGULATION (EC) No 1119/2008

of 12 November 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 Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [1],

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector [2], and in particular Article 138(1) thereof,

Whereas:

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 Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 13 November 2008.

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

Done at Brussels, 12 November 2008.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 350, 31.12.2007, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	AL	34,6
	MA	55,8
	MK	46,2
	TR	75,9
	ZZ	53,1
0707 00 05	JO	175,9
	MA	38,9
	TR	90,4
	ZZ	101,7
0709 90 70	MA	62,9
	TR	112,6
	ZZ	87,8
0805 20 10	MA	76,7
	ZZ	76,7
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	HR	26,6
	MA	75,0
	TR	73,6
	ZZ	58,4
0805 50 10	MA	60,4
	TR	97,0
	ZA	87,0
	ZZ	81,5
0806 10 10	BR	221,0
	TR	117,5
	US	272,9
	ZA	197,4
	ZZ	202,2
0808 10 80	AL	32,1
	CA	96,0
	CL	64,2
	MK	37,6
	US	116,4
	ZA	85,7
	ZZ	72,0
0808 20 50	CN	85,3
	ZZ	85,3

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

COMMISSION REGULATION (EC) No 1120/2008

of 12 November 2008

setting the allocation coefficient for the issuing of import licences applied for from 3 to 7 November 2008 for sugar products under tariff quotas and preferential agreements

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Commission Regulation (EC) No 950/2006 of 28 June 2006 laying down detailed rules of application for the 2006/07, 2007/08 and 2008/09 marketing years for the import and refining of sugar products under certain tariff quotas and preferential agreements [2], and in particular Article 5(3) thereof,

Whereas:

(1) Applications for import licences were submitted to the competent authorities in the period from 3 to 7 November 2008 in accordance with Commission Regulation (EC) No 950/2006 and/or Council Regulation (EC) No 508/2007 of 7 May 2007 opening tariff quotas for imports into Bulgaria and Romania of raw cane sugar for supply to refineries in the marketing years 2006/07, 2007/08 and 2008/09 [3], for a total quantity equal to or exceeding the quantity available for order number 09.4434.

(2) In these circumstances, the Commission should establish an allocation coefficient for licences to be issued in proportion to the quantity available and/or inform the Member States that the limit established has been reached,

HAS ADOPTED THIS REGULATION:

Article 1

Licences shall be issued within the quantitative limits set in the Annex to this Regulation in respect of import licence applications submitted from 3 to 7 November 2008, in accordance with Article 4(2) of Regulation (EC) No 950/2006 and/or Article 3 of Regulation (EC) No 508/2007.

Article 2

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

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

Done at Brussels, 12 November 2008.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 178, 1.7.2006, p. 1.
[3] OJ L 122, 11.5.2007, p. 1.

ANNEX

ACP/India Preferential Sugar

Chapter IV of Regulation (EC) No 950/2006

2008/09 marketing year

Order No	Country	Week of 3.11.2008-7.11.2008: percentage of requested quantity to be granted	Limit
09.4331	Barbados	100	
09.4332	Belize	100	
09.4333	Côte d'Ivoire	100	
09.4334	Republic of the Congo	100	
09.4335	Fiji	100	
09.4336	Guyana	100	
09.4337	India	0	Reached
09.4338	Jamaica	100	
09.4339	Kenya	100	
09.4340	Madagascar	100	
09.4341	Malawi	100	
09.4342	Mauritius	100	
09.4343	Mozambique	100	
09.4344	Saint Kitts and Nevis	—	
09.4345	Suriname	—	
09.4346	Swaziland	100	
09.4347	Tanzania	100	
09.4348	Trinidad and Tobago	100	
09.4349	Uganda	—	
09.4350	Zambia	100	
09.4351	Zimbabwe	100	

Complementary sugar

Chapter V of Regulation (EC) No 950/2006

2008/09 marketing year

Order No	Country	Week of 3.11.2008-7.11.2008: percentage of requested quantity to be granted	Limit
09.4315	India	—	
09.4316	ACP Protocol signatory countries	—	

CXL Concessions Sugar

Chapter VI of Regulation (EC) No 950/2006

2008/09 marketing year

Order No	Country	Week of 3.11.2008-7.11.2008: percentage of requested quantity to be granted	Limit
09.4317	Australia	0	Reached
09.4318	Brazil	0	Reached
09.4319	Cuba	0	Reached
09.4320	Other third countries	0	Reached

Balkans sugar

Chapter VII of Regulation (EC) No 950/2006

2008/09 marketing year

Order No	Country	Week of 3.11.2008-7.11.2008: percentage of requested quantity to be granted	Limit
09.4324	Albania	100	
09.4325	Bosnia and Herzegovina	0	Reached
09.4326	Serbia and Kosovo	100	
09.4327	Former Yugoslav Republic of Macedonia	100	
09.4328	Croatia	100	

Exceptional import sugar and industrial import sugar

Chapter VIII of Regulation (EC) No 950/2006

2008/09 marketing year

Order No	Type	Week of 3.11.2008-7.11.2008: percentage of requested quantity to be granted	Limit
09.4380	Exceptional	—	
09.4390	Industrial	100	

Additional EPA sugar

Chapter VIIIa of Regulation (EC) No 950/2006

2008/09 marketing year

Order No	Country	Week of 3.11.2008-7.11.2008: percentage of requested quantity to be granted	Limit
09.4431	Comoros, Madagascar, Mauritius, Seychelles, Zimbabwe	100	
09.4432	Burundi, Kenya, Rwanda, Tanzania, Uganda	100	
09.4433	Swaziland	100	
09.4434	Mozambique	100	Reached
09.4435	Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago	100	
09.4436	Dominican Republic	0	Reached
09.4437	Fiji, Papua New Guinea	100	

Import of sugar under the transitional tariff quotas opened for Bulgaria and Romania

Article 1 of Regulation (EC) No 508/2007

2008/09 marketing year

Order No	Type	Week of 3.11.2008-7.11.2008: percentage of requested quantity to be granted	Limit
09.4365	Bulgaria	0	Reached
09.4366	Romania	100	

II

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

DECISIONS

COUNCIL

COUNCIL DECISION

of 20 October 2008

on the granting of an emergency State aid by the authorities of Cyprus to mitigate the consequences of drought in 2007/2008 in the agricultural sector

(2008/853/EC)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the request made by the Government of Cyprus on 19 September 2008,

Whereas:

(1) On 19 September 2008, Cyprus presented to the Council a request for a decision in accordance with the third subparagraph of Article 88(2) of the Treaty, declaring that the plan of Cyprus to grant national aid to Cypriot farmers hit by extreme drought in order to allow them to begin the next season's production cycle is compatible with the common market.

(2) Cyprus has faced the second most severe and longest drought since 1900, due to rainfall deficit in 2007 and 2008, August 2008 having proven the hottest month of the last decade and precipitation from January to August 2008 having been only 50 % of normal levels.

(3) According to preliminary data concerning the 2008 harvest, 95 % of cereal-producing areas have not yielded any crop at all, whereas fodder production has fallen so drastically that it has failed to cover even the minimum feed requirements of ruminant animals.

(4) From a quantity of about 150 million m^3 or 54,7 % of capacity at the end of 2005, Cyprus' network of dams currently holds only 11 million m^3 or 4 % of total capacity, obliging the authorities to strictly ration the water supply for irrigation purposes at the beginning of 2007 and to cut it down to zero in 2008.

(5) These damages must be considered all the more serious and exceptional, given that Cyprus put in place effective tools for risk and crisis management. In particular, Cyprus applies improved irrigation techniques in almost 95 % of the area under irrigation and has introduced water pricing policies and punitive measures to discourage excessive water consumption and losses, as well as promoted and provided incentives for the installation of water recycling systems in houses. Furthermore, Cyprus' National Rural Development Programme 2007-2013 already includes a number of measures to improve the use of water.

(6) Since the income of Cypriot farmers affected by the drought has been drastically reduced, they face the serious risk of not having the financial means to meet the immediate needs of their families and to start a new season, leading to an imminent danger of land abandonment, soil erosion and desertification.

(7) The State aid to be granted amounts to EUR 67,5 million and will benefit 34 000 eligible farmers and 3 000 livestock keepers.

(8) In order to be effective, the State aid must be granted and accessed by farmers as soon as possible.

(9) The Commission has not at this stage given an opinion on the nature and compatibility of the aid.

(10) Exceptional circumstances therefore exist, making it possible to consider such aid, by way of derogation and to the extent strictly necessary to remedy the emergency situation which has risen, to be compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

Exceptional additional aid by the Cypriot authorities to the agricultural sector, amounting to a maximum of EUR 67,5 million, shall be considered to be compatible with the common market.

Article 2

This Decision is addressed to the Republic of Cyprus.

Done at Luxembourg, 20 October 2008.

For the Council
The President
J.-L. BORLOO

COMMISSION

COMMISSION DECISION

of 2 July 2008

on a State aid scheme (C 1/04 (ex NN 158/03 and CP 15/2003)): Misuse of aid measure N 272/98, Regional Act No 9 of 1998

(notified under document number C(2008) 2997)

(Only the Italian version is authentic)

(Text with EEA relevance)

(2008/854/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas:

1. PROCEDURE

(1) On 21 February 2003 the Commission received a complaint, which it registered under the number CP 15/03, alleging misuse of a regional scheme of assistance to the hotel industry in the Region of Sardinia that the Commission had approved in 1998, in case N 272/98.

(2) By letter dated 26 February 2003 (ref. D/51355) the Commission asked the Italian authorities for clarification. By letter dated 28 March 2003 the Commission agreed to a request from the Italian authorities asking it to extend the deadline for providing the information; the information was subsequently submitted by letter dated 22 April 2003 (ref. A/33012).

(3) On 3 February 2004, the Commission decided under Article 88(2) of the EC Treaty to open a formal investigation into the possible misuse of aid measure No N 272/98. The decision to initiate the procedure was published in the *Official Journal of the European Union* [2]. The Commission there called on interested parties to submit their comments.

(4) By letter dated 10 March 2004 (ref. D/5172), the Commission agreed to a request from the Italian authorities asking it to extend the deadline for submitting comments; the Italian authorities submitted their comments by letter dated 19 April 2004, registered at the Commission on 26 April 2004 (ref. A/32956).

(5) By letter dated 30 April 2004, registered at the Commission on the same day, the Commission received comments from one interested party, a recipient of aid under the scheme. The Commission did not receive any further comment from the complainant.

(6) By letter ref. D/53359 dated 13 May 2004, the Commission forwarded these observations to the Italian authorities to allow them to reply.

(7) The Italian authorities did not react to the comments submitted.

(8) On 7 December 2004, a meeting with the Italian authorities took place in Brussels.

(9) By letter of 28 June 2005, registered at the Commission on 30 June 2005 (ref. A/35257), the Italian authorities submitted further information.

(10) On 22 November 2006 the Commission decided to correct and extend the scope of the investigation; the decision was published in the *Official Journal of the European Union* [3]. The Commission there called on interested parties to submit their comments.

[1] OJ C 79, 30.3.2004, p. 4, and OJ C 32, 14.2.2007, p. 2.

[2] OJ C 79, 30.3.2004, p. 4.

[3] OJ C 32, 14.2.2007, p. 2.

(11) Neither the Italian authorities nor any other interested party reacted to the correction and extension of the scope of the investigation.

2. DESCRIPTION OF THE MEASURE

(12) Aid scheme No N 272/98 provides for grants towards initial investment in the hotel industry in Sardinia. The scheme is a regional one, which was approved in 1998, when the Commission considered it compatible with the common market under the exemption in Article 87(3)(a) of the EC Treaty ([1]).

(13) The aid contemplated in the scheme is of two kinds:

(a) there is provision for aid towards initial investment in the form of grants and subsidised loans;

(b) Article 9 of Regional Act No 9 of 11 March 1998 provides for operating aid, in the form of interest relief, falling under the *de minimis* rule.

This Decision is not concerned with the second part of the scheme, which is mentioned here only in order to explain the context.

(14) When they notified the scheme the Italian authorities supplied the text of Regional Act No 9 of 1998, but did not at that time send any implementing legislation.

(15) In its decision to approve the scheme, the Commission described the measures as follows:

(a) the purpose of the scheme was to grant aid for initial investment in the tourism sector;

(b) the aid was in the form of grants with an aid intensity up to 40 % of the eligible costs, plus a subsidised loan covering up to 35 % of the eligible costs (the interest relief could reduce the reference rate of interest by up to 60 %);

(c) the decision expressly noted a commitment given by the Italian authorities that they would adjust the aid intensity once the Italian regional aid map for the period 2000-2006 had been approved;

(d) the duration of the scheme was unlimited; the budget was to be EUR 2,6 million for the first year of implementation;

(e) applications for aid had to be submitted before work started on the project;

(f) aid in the form of interest relief could in certain circumstances be granted for investment carried out before the implementation of the earlier Regional Act No 40 of 1993. According to a commitment given by the Italian authorities, aid of this kind would be *de minimis* only.

(16) After the Commission approved the scheme the Regional Government adopted an order (*decreto*) and a number of resolutions (*deliberazioni*) to implement the scheme. Order No 285 was adopted in April 1999 ([2]), and was followed by several administrative measures, most notably Resolutions Nos 33/4 and 33/6 of 27 July 2000. Resolution No 33/6 co-exists with Resolution No 33/4, and states that in certain exceptional cases aid may be granted even though work started before the application was submitted.

(17) Following the adoption of the Italian regional aid map for the period 2000-2006 ([3]), the aid intensities provided for in the scheme were adjusted. By letter dated 2 November 2000 (ref. A/39177), the Italian authorities informed the Commission of the implementing measures that had been adopted as part of the appropriate measures exercise; they confirmed:

(a) that the aid intensities had been adjusted in conformity with the ceilings applicable under the Italian regional aid map for 2000-2006 (see in particular Resolution No 34/73 of 8 August 2000); and

(b) that the principle of the necessity of the aid had been respected (see in particular Article 6 of Resolution No 33/4 of 27 July 2000, which expressly states that costs are eligible if sustained after the application for financing) ([4]).

(18) On the basis of the information submitted by the Italian authorities, the Commission, in a letter dated 17 May 2001, took note that Italy had accepted the proposal for appropriate measures, and confirmed that the scheme had now been brought into line with the guidelines on national regional aid of 1998 (the 1998 Guidelines) ([5]).

([1]) Commission letter dated 12.11.1998, ref. SG(98) D/9547.

([2]) Decreto dell'assessore del turismo, artigianato e commercio del 29.4.1999, No 285 'Esecutività della Deliberazione della Giunta Regionale No 58/60 del 22.12.1998 come modificata dalla Deliberazione No 16/20 del 16.3.1999 che approva la direttiva di Attuazione prevista dall'Art. 2 della L.R. 11 marzo 1998 No 9 disciplinante: incentivi per la riqualificazione delle strutture alberghiere e norme modificative della L.R. 14.9.1993 No 40'. Published in BURAS, No 14, 8.5.1999.

([3]) OJ C 175, 24.6.2000, p. 11.

([4]) Annex to Resolution No 33/4 of 27 July 2000, Guidelines for the application of Regional Act No 9 of 11 March 1998, Article 6, Eligible expenditure: 'The expenditure indicated above shall be eligible provided it is incurred after the application for the benefits sought'.

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

(19) The scheme operated in practice on the basis of published calls for applications asking interested parties to submit applications for aid in line with the resolutions just described.

(20) The Italian authorities state that the first call asking interested parties to submit a formal application for financing under the scheme (known as the 2000 call) was published in 2001.

(21) According to the information available, the first call for applications was followed by the adoption of the following resolutions:

— on 31 January 2002 the Regional Government adopted Resolution No 3/24, proposing an initial list of recipients of aid in certain sectors. The selection criteria applied were those listed in Resolution No 33/4, further detailed in a circular dated 21 November 2000,

— on 16 April 2002 the Regional Government adopted Resolution No 12/17, amending the abovementioned list of recipients and proposing a further list,

— on 18 July 2002 the Regional Government adopted Resolution No 23/40 approving the list of projects eligible under the first call for applications,

— on 7 February 2003 the Regional Government adopted Resolution No 5/38, rectifying errors concerning some aid recipients referred to in Resolution No 23/40.

(22) In the information they submitted on 22 April 2003 (ref. A/33012, registered at the Commission on 28 April 2003), on p. 13, the Italian authorities stated that 'in the interests of the Region' they had decided 'to include in the ranking certain so-called "critical" projects (i.e. projects on which work had begun before the date of the application for aid but after the entry into force of the Act on 5 April 1998)'. As a result, they said, aid had been given in 2002 to at least 28 investment projects that had been started before the date of the application for aid, the total amount of aid involved being around EUR 24 million.

3. GROUNDS FOR INITIATING THE PROCEDURE

(23) When it initiated the formal investigation procedure the Commission drew attention to the fact that point 4.2 of the 1998 Guidelines stated that an application for aid must be submitted before work is started on the project.

(24) The Commission also pointed out that that obligation was repeated in the decision of 1998 in which the Commission had decided to raise no objection to the regional scheme of assistance to the hotel industry in the Region of Sardinia (aid measure No N 272/1998).

(25) Despite the fact that the Commission Decision had indicated that recipients must have filed an application for the aid before work started on the project, and despite the fact that in the course of the appropriate measures exercise that followed the entry into force of the 1998 Guidelines the Italian authorities had expressly confirmed that that obligation had been complied with [1], the Italian authorities nevertheless adopted several implementing measures, never submitted to the Commission (in particular the Resolution of 22 December 1998 and Resolution No 33/6 of 27 July 2000), which did allow aid to be granted to projects started before the date of submission of the application, though by way of exception and only in the first year of operation of the scheme on the basis of the first call for applications. The Commission therefore took the view that the Italian authorities had not complied with the obligations imposed by the Commission decision authorising the scheme or with the requirements of the guidelines on national regional aid.

(26) As a consequence, the Commission considered that the incentive effect of the aid might be undermined if there was no application for aid before work on the project actually started. This might constitute a case of misuse of aid measure No N 272/98 that would be caught by Article 16 of Regulation (EC) No 659/99 (the 'Procedural Regulation') [2], and the Commission doubted whether aid granted to investments started before the date of the application for the aid would be compatible with the common market.

4. GROUNDS FOR CORRECTING AND EXTENDING THE SCOPE OF THE PROCEDURE

(27) In its first decision to open the investigation procedure, the Commission concentrated its analysis on the fact that measures implementing the scheme had never been brought to its attention. The decision did not mention Resolution No 33/6.

(28) But the aid referred to in recital 22 arose out of Resolution No 33/6, rather than Resolution No 33/4, which was erroneously cited in the initiating decision of 3 February 2004.

[1] By letter dated 25.4.2001, ref. 5368 (registered at the Commission as A/33473). See recital 17.

[2] Council Regulation No 659/99 laying down detailed rules for the application of Article 93 of the EC Treaty [now Article 88], OJ L 83, 27.3.1999, p. 1.

(29) The decision originally opening the formal investigation procedure also spoke of misuse of an approved aid scheme within the terms of Article 16. Article 16 is generally understood to refer to situations where the recipient of approved aid applies the aid contrary to the conditions of the individual granting decision or aid contract, and not to situations where a Member State amends an existing aid scheme so as to introduce new unlawful aid (Articles 1(c) and (f) of the Procedural Regulation).

(30) For these reasons, and in order to avoid any possible misunderstanding, the Commission considered it necessary to correct and extend the scope of the investigation, and to invite further comments from Italy and interested parties.

5. COMMENTS FROM INTERESTED PARTIES

(31) In response to the publication in the *Official Journal* of the 2004 decision to open the formal investigation procedure, the Commission received observations from the following interested party:

— Grand Hotel Abi d'Oru SpA.

The interested party argued that there was indeed an incentive effect, and that the principle of the necessity of aid had been complied with.

(32) The interested party contended that the incentive effect and the principle of necessity had been fully respected, for the following reasons:

— first of all, before work started the interested party had applied for aid under another regional aid scheme, No N 715/99 (Act No 488 of 1992) [1]. That application had been accepted twice, but no aid was granted, owing to budgetary constraints,

— having failed to receive aid under that scheme, and in view of the fact that the measures implementing Regional Act No 9 of 1998 were published at the same time (May 1999), the interested party had decided to apply for aid under the scheme under investigation here. It had relied on the acceptance of its application, despite the fact that the projects had already started, on the basis of the provisions of the first implementing measure, Order No 285/99, which allowed aid to be granted for projects already started provided they were started after Regional Act No 9 of 1998 entered into force on 5 April 1998,

— the application for aid submitted on the basis of the aid scheme now under investigation concerned only a part of a wider investment project (the eligible costs of the original investment project amounted to EUR 10 500 000; the eligible costs considered in the application made under the scheme being investigated amounted to EUR 9 039 028),

— it was irrelevant that the application for aid on the basis of the aid scheme under investigation had been submitted after work had begun, as that application was merely a re-submission of the same application that had been submitted previously under a different regional aid scheme and related to the same investment project.

(33) The interested party also submitted that the aid was necessary, arguing that it would not have undertaken such an investment project in the absence of public financing. In order to launch the investment, pending the granting of the aid, it had had recourse to short-term bank funding.

(34) The Commission did not receive any further comments following the publication of the decision correcting and extending the scope of the procedure [2].

6. COMMENTS FROM ITALY

(35) In response to the assessments made by the Commission in the letter initiating the investigation, the Italian authorities put forward three main arguments, regarding the existence of legitimate expectations, the incentive effect of the aid, and the determination of the *de minimis* threshold.

Legitimate expectations and incentive effect

(36) In their observations the Italian authorities claimed legitimate expectations, and also invoked the principle of legal certainty. First, they explained that Regional Act No 9 of 1998 was in some sense considered by recipients to be a continuation of a previous scheme, Regional Act No 40 of 1993, which was still in force at the relevant time, and which operated on a continuous basis (scheme No N 611/93 as amended by N 250/01). This earlier system had helped to give recipients a legitimate expectation that they would be able to obtain subsidies when they submitted their application, irrespective of whether or not work had begun.

[1] Letter to the Member State dated 2.8.2000, ref. SG(2000) D/105754.

[2] OJ C 32, 14.2.2007, p. 2.

(37) The Italian authorities pointed out, furthermore, that the measures implementing the scheme were taken after the scheme had been approved by the Commission. The first such measure, Order No 285 of 1999, was adopted on 29 April 1999. Article 17 of that Order (transitional provisions) stated that expenditure incurred after the Act entered into force on 5 April 1998 was eligible. The Order was published in the official gazette of the Region of Sardinia on 8 May 1999 ([1]).

(38) The Italian authorities added that Order No 285 of 1999 had been annulled by Resolution No 33/3 on 27 July 2000 on the ground that it was defective. At the same time, the Regional Government adopted new implementing measures, which were notified to the Commission on 20 September 2000.

(39) The Italian authorities emphasised that when adopting these resolutions on 27 July 2000, the Region of Sardinia had had to bear in mind that the publication of Order No 285/99 in the official gazette generated legitimate expectations among the recipients. This was why for the first call for applications it was decided that applications in respect of investment projects already started would be accepted under Article 9 of Regional Act No 9 of 1998. Resolution No 33/6, 'Transitional provision for the first call for applications', accordingly stated that by way of exception, in the case of applications submitted in response to the first call, costs would be eligible for aid if they were incurred after 5 April 1998, the date on which Regional Act No 9 of 1998 entered into force.

(40) The Italian authorities pointed out that in its letter of 17 May 2001 (ref. D/52027), as part of the appropriate measures exercise, the Commission had concluded that the scheme was compatible with the common market, after asking the Italian authorities to implement Article 9 of Act No 9 of 1998 in accordance with the *de minimis* rules in Regulation (EC) No 69/2001.

(41) They also explained that after the Resolution of 27 July 2000 had entered into force the practical implementation of the scheme required that applications for aid submitted before the publication of the first call for applications be submitted afresh using the new forms.

(42) The Italian authorities repeated that there was indeed an incentive effect, since the grants were needed to clear bank loans covering the period between the point when the costs were incurred and the payment of the aid.

(43) Finally, the Italian authorities stated that recipients were required to choose the regional aid scheme of reference, because they were not allowed to submit applications under different aid schemes for the same project. They stressed that the Sardinian regional aid scheme established by Regional Act No 9 of 1998 (N 272/98) and the countrywide regional aid scheme established by the national Act No 488 of 1992 (N 715/99) were exclusive of each other.

Determination of the de minimis *threshold*

(44) The Italian authorities contended that the principle of incentive effect was complied with even where the work had begun before the application was submitted under Article 9 of Regional Act No 9 of 1998. They argued that the part of the aid granted before the applications were submitted was covered by the *de minimis* rules. The part of the aid below the threshold of EUR 100 000 that was granted before the application had to be considered separately, taking account only of the costs incurred before that date and not of the entire cost of the project. These considerations applied to 12 projects out of 28.

(45) No further comments were received following the notice correcting and extending the scope of the procedure.

7. **ASSESSMENT OF THE MEASURE**

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

(46) The assessment of scheme No N 272/98 concluded that the measure constituted State aid within the meaning of Article 87(1) of the EC Treaty because it met all the criteria set out there.

(47) The measure provides an economic advantage to a specific category of recipients, reducing their normal costs. The advantage is granted through state resources, and it threatens to distort competition, because it strengthens the financial position of some undertakings by comparison with their competitors. Since hoteliers in different Member States compete to attract tourists, support given to the tourism sector is likely to affect intra-Community trade ([2]).

([1]) Bollettino Ufficiale della Regione Sardegna (Suppl. Straordinario No 3 al Bollettino Ufficiale No 14 dell'8 maggio 1999).

([2]) For example, the Commission has ascertained from web searches that Grand Hotel Abi d'Oru is a five-star hotel with 177 rooms catering to a mixed Italian and international clientele.

Legality of the measure

(48) The aid scheme notified to the Commission and approved by it under Article 4(3) of the Procedural Regulation constitutes State aid within the meaning of Article 87(1) of the EC Treaty.

(49) In the context of the appropriate measures exercise, Resolution No 34/73 adjusted the aid intensity to the new regional aid map ceilings, thus ensuring compatibility with the 1998 Guidelines, while Resolution No 33/4 ensured compliance with the principle of incentive effect; the Commission concluded, therefore, that these resolutions did not add any new element to the aid scheme previously approved, scheme No N 272/98.

(50) The Commission takes the view that the transitional provisions introduced by Order No 285 of 1999 might have changed the scheme the Commission had originally approved. The Commission never took any position on that implementing measure, but accepts that it never entered into force, as it was annulled by Resolution No 33/3.

(51) Scheme No N 272/98 was changed again on 27 July 2000, with the adoption of Resolutions Nos 33/4 and 33/6. As explained above (recitals 16-21), Resolution No 33/6 made amendments to the notified measure which were not compatible with the terms of the Commission's Decision to approve the aid.

(52) As explained in recital 38, the Italian authorities contend that they did notify the Commission of these implementing measures as part of the appropriate measures exercise.

(53) The Commission takes the view that the Italian authorities did not notify the resolutions referred to above, and that as part of the appropriate measures exercise they informed the Commission that Resolution No 33/4 ensured compliance with the principle of incentive effect. In the course of that exercise they never informed the Commission of Resolution No 33/6, and thus breached Article 88(3) of the EC Treaty and their duty of cooperation under Article 10 of the Treaty [1].

(54) The aid scheme thereafter applied by the abovementioned implementing provisions is consequently in contravention of the Commission's original authorising decision.

(55) The aid projects on which work started before any application for aid was made must be therefore be considered unlawful.

Compatibility

(56) The doubts as to compatibility that the Commission expressed in its letters of 3 February 2004 and 22 November 2006, which opened the formal investigation procedure, have not been challenged either by the Italian authorities or by the interested party. The Commission therefore confirms its assessment, which can be summarised as follows.

(57) As has been explained, at least 28 investment projects were started at a time when they could not qualify for aid under the scheme.

(58) The 1998 Guidelines require that an application for aid be submitted before work starts on the project.

(59) This requirement was repeated in the Commission Decision of 1998 raising no objection to the regional scheme to assist the hotel industry in Sardinia (N 272/1998); that decision expressly states that the recipients must have applied for aid before work on the project begins.

(60) Moreover, in the context of the appropriate measures exercise that followed the entry into force of the 1998 Guidelines, the Italian authorities supplied Resolution No 33/4 of 27 July 2000, Article 6 of which expressly states that costs are eligible if incurred after the submission of the application for aid.

(61) The principle of the necessity of aid is a general principle recognised by the Court in its judgment in the *Philip Morris* case [2], and is clearly an essential consideration when it has to be determined whether investments carried out by undertakings are eligible for aid under the 1998 Guidelines. The abovementioned Commission Decision and the Guidelines themselves both state that the application for aid must be submitted before work starts on the projects.

[1] 'Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks. They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty'.

[2] Case 730/79 *Philip Morris Holland BV* v *Commission* [1980] ECR 2671, paragraph 17: 'it would result in Member States' being permitted to make payments which would improve the financial situation of the recipient undertaking although they were not necessary for the attainment of the objectives specified in Article 92(3)'.

(62) The Italian authorities argue that the system operating in Italy has created a legitimate expectation that a grant will be available merely on the basis of the submission of the application, no matter whether the projects have already started or not.

(63) The Commission cannot accept this argument, as the decision approving the regional aid scheme under investigation explicitly requires that an application for aid be submitted before work on the project begins.

(64) Resolution No 33/6 was not sent to the Commission until after the complaint had been lodged. It was transmitted to the Commission only with memo No 5245 dated 22 April 2003, in the course of the procedure following the complaint (CP 15/2003). The argument of legitimate expectations invoked by the Italian authorities cannot be accepted, because the Commission did not give any specific assurances to the Italian authorities or to any other interested party, and they could not therefore harbour any legitimate expectation that this condition would not apply. 'It is settled case-law that the right to protection of legitimate expectations may be claimed by any individual who finds himself in a position in which it is shown that the Community administration gave rise to justified hopes on his part … However, no one may plead infringement of the principle of the protection of legitimate expectations in the absence of specific assurances given to him by the administration' ([1]).

(65) Nor can the Commission accept the arguments proposed by the Italian authorities according to which there was an incentive effect where the recipient applied for aid before the work started on the basis of a different regional aid scheme.

(66) The Commission takes the view that the incentive effect cannot be transferred from one scheme to another, and that the fact that an undertaking has chosen to apply under one scheme or another cannot be accepted as showing that the principle of the incentive effect has been complied with. The Italian authorities have themselves emphasised (see recital 43) that the recipient may not submit more than one application under different aid schemes in respect of the same project, and that the Sardinian regional aid scheme established by Regional Act No 9 of 1998 (N 272/98) and the countrywide regional aid scheme established by the national Act No 488 of 1992 (N 715/99) are exclusive of each other.

(67) Nor can the Commission accept the arguments advanced by the Italian authorities according to which there is indeed an incentive effect because the grants are necessary to clear bank loans covering the period between the time when the costs were incurred and the payment of the aid. The fact that an economic operator is prepared to start work, and to borrow money to finance the costs, does not in any way show that aid is needed for the project to go ahead, or that the aid provides an incentive to undertake a project which would not take place otherwise. Quite the reverse, the fact that an economic operator is prepared to start work, and to incur the financial risks inherent in the project, even without submitting an application for aid under the relevant scheme, suggests that the aid is not needed in order to provide an incentive.

(68) Lastly, the Commission cannot accept the Italian authorities' arguments with regard to the *de minimis* rule, because the *de minimis* rule cannot be invoked to circumvent the obligation contained in the Guidelines that in order to comply with the principle of incentive effect the application must be submitted before work is started on the project. The sum to be considered must relate to the project in its entirety, and not just the section granted before the application for aid. The Commission cannot accept the suggestion that it ought to consider the initial work eligible under the *de minimis* rule, thus taking it outside the scope of the Guidelines. Furthermore, not only have the Italian authorities failed to consider the projects in their entirety when calculating the *de minimis* threshold, but the same recipient may have received *de minimis* aid from other sources, and the Commission understands that the Italian authorities did not take this aspect into account.

(69) In conclusion, the Commission takes the view that the Italian authorities have failed to demonstrate that the aid was granted in accordance with the terms of the Commission's approval decision. Even if this aid were to be considered operating aid, it could not be considered compatible. Under the 1998 Guidelines operating aid may be granted on an exceptional basis in regions eligible under the exemption in Article 87(3)(a) of the Treaty. Sardinia was eligible for aid under Article 87(3)(a) during the period 1998-2006. With the exception of *de minimis* aid, however, no operating aid was approved under the scheme in question. Furthermore, the Italian authorities have not produced any evidence in the context of this investigation that might demonstrate that the aid was justified by its contribution to regional development, or its nature, nor have they shown that it is proportionate to the handicaps it seeks to alleviate.

([1]) Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen and Others* v *Commission* [1999] ECR II-3663, paragraph 300.

(70) The Italian authorities have not put forward any arguments to suggest the aid concerned might be compatible with other Treaty provisions, state aid rules, frameworks or guidelines.

(71) Nor has the Commission been able to identify any other basis for the approval of the aid. As explained above, the measure does not qualify for exemption under Article 87(3)(c), which provides for authorisation to be granted for aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent that is contrary to the common interest. The exemptions in Article 87(2), which concern aid that has a social character and is granted to individual consumers, aid to make good the damage caused by natural disasters or exceptional occurrences, and aid granted to certain areas of the Federal Republic of Germany, do not apply in this case. The measure cannot be considered to be an important project of common European interest, or to remedy a serious disturbance in the Italian economy as provided for in Article 87(3)(b). The measure does not have as its objective the promotion of culture and heritage conservation provided for in Article 87(3)(d).

(72) Accordingly, the Commission considers incompatible with the common market the aid presumably granted to projects on which work had started before the submission of an application for aid under the regional scheme of assistance to the hotel industry in the Region of Sardinia, approved by the Commission in 1998 (N 272/98), as implemented by Resolution No 33/6 in connection with the first call for applications.

(73) This finding of incompatibility applies to the entirety of aid granted towards projects whose eligible costs were incurred before the submission of an application for aid, on the basis of the implementing measures in force at the time the application was submitted, which exceeds the amount of *de minimis* aid for which the recipient may have been eligible at the relevant time, calculated in accordance with Article 2 of Regulation (EC) No 69/2001.

8. **CONCLUSIONS**

(74) The Commission finds that Italy has unlawfully implemented the aid in question in breach of Article 88(3) of the Treaty.

(75) From its assessment the Commission concludes that the aid granted towards the projects referred to above under the scheme designated 'Regional Act No 9 of 1998 — Misuse of aid N 272/98', on the basis of the first call for applications and of Resolution No 33/6, does not satisfy the tests of the 1998 Guidelines. It finds that the aid was granted unlawfully and was incompatible with the common market under Article 87(3)(a) and (c) of the EC Treaty.

(76) It is the Commission's long established practice, in accordance with Article 87 of the EC Treaty, to require recovery from the recipient of incompatible aid which has been granted unlawfully in breach of Article 88 of the EC Treaty. This practice has been confirmed by Article 14 of the Procedural Regulation.

(77) Italy must therefore take all necessary measures to recover the aid from the recipients. To that end, Italy must require the recipients to repay the aid within four months from the date of notification of this Decision.

(78) Article 14(2) of the Procedural Regulation states that the aid to be recovered pursuant to a recovery decision shall include interest at an appropriate rate fixed by the Commission. Interest shall be payable from the date on which the unlawful aid was at the disposal of the recipient until the date of its recovery.

(79) The interest is to be calculated in conformity with Chapter V of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty [1]. The Commission asks Italy to require potential recipients of aid under the scheme to repay the aid including interest within four months of this Decision as specified below.

(80) The Commission asks Italy to provide the information requested using the questionnaire attached in Annex to this Decision, compiling a list of the recipients concerned and indicating clearly the measures planned and the measures already taken to obtain immediate and effective recovery of the illegal State aid. Within two months of the Decision the Commission asks Italy to submit all documents giving evidence that recovery proceedings have been initiated against the recipients of the illegal aid, circulars, recovery orders, etc.,

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

HAS ADOPTED THIS DECISION:

Article 1

The State aid granted in accordance with Regional Act No 9 of 1998, unlawfully put into effect by Italy in Resolution (*deliberazione*) No 33/6 and in the first call for applications, is incompatible with the common market unless the recipient of the aid submitted an application for aid under the scheme before starting work on an initial investment project.

Article 2

1. The Italian Republic shall recover the incompatible aid granted under the scheme referred to in Article 1 from the recipients.

2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the recipients until their actual recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 and Regulation (EC) No 271/2008 amending Regulation (EC) No 794/2004.

4. The Italian Republic shall cancel all outstanding payments of aid under the scheme referred to in Article 1 with effect from the date of adoption of this Decision.

Article 3

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

2. The Italian Republic shall ensure that this Decision is implemented within four months following the date of notification of this Decision.

Article 4

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

(a) a list of recipients of aid under the scheme referred to in Article 1 showing the total amount of aid received by each of them under the scheme. The information required shall be provided using the questionnaire attached in Annex to this Decision;

(b) the total amount to be recovered from each recipient (principal and interest);

(c) a detailed description of the measures already taken or planned to comply with this Decision;

(d) documents demonstrating that the recipients have been ordered to repay the aid.

2. The Italian Republic shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid granted under the scheme referred to in Article 1 has been completed. It shall immediately submit, upon request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and interest already recovered from the recipients.

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels on 2 July 2008.

For the Commission

Neelie KROES

Member of the Commission

ANNEX

Information regarding the implementation of the Commission Decision in case C 1/2004

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

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

— the principal,

— the interest.

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

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

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

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

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

3. **Information regarding individual recipients**

Please provide details of each recipient from whom unlawful aid granted under the scheme is to be recovered in the table below.

Identity of the recipient	Total amount of aid received under the scheme (*)	Total amount of aid to be recovered (*) (principal)	Total amount already reimbursed (*)	
			Principal	Interest

(*) In million units of national currency.

COMMISSION DECISION

of 3 November 2008

concerning animal health control measures relating to classical swine fever in certain Member States

(notified under document number C(2008) 6349)

(Text with EEA relevance)

(2008/855/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Bulgaria and Romania, and in particular Article 42 thereof,

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

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

Whereas:

(1) Council Directive 2001/89/EC of 23 October 2001 on Community measures for the control of classical swine fever [3] introduces minimum Community measures for the control of that disease. It lays down the measures to be taken in the event of an outbreak of classical swine fever. Those measures include plans by Member States for the eradication of classical swine fever from a feral pig population and emergency vaccination of feral pigs under certain conditions.

(2) Commission Decision 2006/805/EC of 24 November 2006 concerning animal health control measures relating to classical swine fever in certain Member States [4] was adopted in response to outbreaks of classical swine fever in those Member States. That Decision establishes disease control measures concerning classical swine fever in areas of those Member States where that disease is present in feral pigs in order to prevent the spread of the disease to other areas of the Community.

(3) Those Member States are required to take appropriate measures to prevent the spread of classical swine fever. Therefore, they submitted to the Commission eradication plans and emergency vaccination plans against that disease setting out the measures necessary to eradicate the disease in the areas defined in their plans as infected and setting out the necessary measures to be applied on the pig holdings in those areas.

(4) Different epidemiological situations regarding classical swine fever are registered in Member States or areas thereof. In the interest of clarity of Community legislation, it is therefore appropriate to provide for three distinct lists of areas, according to the epidemiological situation of each.

(5) As a general rule, since movement of live pigs from infected areas poses higher risks than movement of meat, meat preparations and meat products, movement of live pigs from the Member States concerned should be prohibited.

(6) Semen, ova and embryos originating from infected animals may contribute to the spread of classical swine fever virus. It is appropriate, in order to prevent the spread of classical swine fever to other areas of the Community to prohibit the dispatch of semen, ova and embryos from areas listed in the Annex to this Decision.

(7) It is appropriate that one list sets out the Member States and areas where the epidemiological situation of classical swine fever is the most favourable and therefore by way of derogation from the general ban live pigs may be dispatched to other restricted areas, subject to certain safeguard measures. Additionally, fresh pigmeat from holdings located in those areas, and meat preparations and meat products consisting of, or containing meat of those pigs may be dispatched to other Member States.

[1] OJ L 395, 30.12.1989, p. 13.
[2] OJ L 224, 18.8.1990, p. 29.
[3] OJ L 316, 1.12.2001, p. 5.
[4] OJ L 329, 25.11.2006, p. 67.

(8) Certain areas affected by classical swine fever in feral pigs are divided by national borders and comprise neighbouring territories of two Member States. The disease control measures concerning restrictions on the dispatch of live pigs, within affected neighbouring areas situated in two different Member States should also be laid down.

(9) Given the epidemiological situation in certain areas of Hungary and Slovakia it is appropriate that they are included on that first list of areas.

(10) A second list should set out the areas where the epidemiological situation in the wild boar population or in pig holdings is less favourable due to sporadic outbreaks. From these areas no live pigs but fresh pigmeat from holdings considered to be safe, and meat preparations and meat products consisting of, or containing meat of those pigs may be dispatched to other Member States subject to certain additional safeguard measures which should be laid down in the present Decision.

(11) A third list should include the areas from which neither live pigs nor fresh pigmeat and meat products may in general be dispatched to other Member States. However, it is appropriate that such pigmeat preparations and meat products consisting of, or containing pigmeat may be dispatched to other Member States if they are treated in such a way that any classical swine fever virus present is destroyed.

(12) In addition, it is appropriate, in order to prevent the spread of classical swine fever to other areas of the Community, to provide that the dispatch of fresh pigmeat, and meat preparations and meat products consisting of, or containing meat of pigs from Member States with areas included on that third list is subject to certain conditions. In particular such pigmeat and pigmeat products and preparations should be marked with special marks which cannot be confused with the health marks for pigmeat provided for in Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption [1] and the identification mark provided for in Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin [2].

(13) In order to prevent the spread of classical swine fever to other areas of the Community, where a Member State is subject to a prohibition on the dispatch of fresh pigmeat, and meat preparations and meat products consisting of, or containing pigmeat from certain parts of its territory, certain requirements should be laid down, in particular as regards certification, for the dispatch of such meat, preparations and products from other areas of the territory of that Member State not subject to that prohibition.

(14) Decision 2006/805/EC has been amended several times. Therefore it is appropriate to repeal that Decision and replace it by the present Decision.

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

HAS ADOPTED THIS DECISION:

Article 1

Subject matter and scope

This Decision lays down certain control measures in relation to classical swine fever in the Member States or regions thereof as set out in the Annex (the Member States concerned).

It shall apply without prejudice to the plans for the eradication of classical swine fever and the emergency vaccination plans against that disease approved by the Commission.

Article 2

Prohibition on the dispatch of live pigs from the areas listed in the Annex to other Member States

The Member States concerned shall ensure that live pigs are dispatched from their territories to other Member States only if the pigs come from:

(a) areas outside those listed in the Annex; and

(b) a holding where no live pigs originating from the areas listed in the Annex have been introduced during the 30-day period immediately prior to the date of dispatch.

[1] OJ L 139, 30.4.2004, p. 206. Corrected by OJ L 226, 25.6.2004, p. 83.

[2] OJ L 139, 30.4.2004, p. 55. Corrected by OJ L 226, 25.6.2004, p. 22.

Article 3

Derogations concerning the dispatch of live pigs between Member States from areas listed in Part I of the Annex

1. By way of derogation from Article 2, the dispatch of live pigs originating from holdings located within an area listed in Part I of the Annex to holdings or slaughterhouses located in an area listed in that Part of the Annex and belonging to another Member State may be authorised by the Member State of dispatch, provided that such pigs come from a holding where:

(a) no live pigs have been introduced during the 30-day period immediately prior to the date of dispatch;

(b) a clinical examination for classical swine fever has been carried out by an official veterinarian in accordance with the checking and sampling procedures laid down in Part A and in points 1, 2 and 3 of Part D of Chapter IV of the Annex to Commission Decision 2002/106/EC [1]; and

(c) polymerase chain reaction tests for classical swine fever according to Part C of Chapter VI of the Annex to Decision 2002/106/EC have been carried out with negative results on blood samples collected from the consignment of pigs to be dispatched, during the seven-day period immediately prior to the date of dispatch; the minimum number of pigs to be sampled must be sufficient to allow for the detection of 5 % prevalence with 95 % confidence in the consignment of pigs to be dispatched.

However, point (c) shall not apply:

(i) to pigs dispatched directly to slaughterhouses for the purpose of immediate slaughter;

(ii) to pigs dispatched to a neighbouring area of a Member State listed in Part I of the Annex;

(iii) when the Member State of destination gives its prior approval.

2. When dispatching the pigs referred to in paragraph 1 of this Article, the Member States concerned shall ensure that the health certificate referred to in Article 9(a) includes additional information concerning the dates of the clinical examination, and, if appropriate, the number of animal sampled and the results of the polymerase chain reaction test as provided for in paragraph 1 of this Article.

[1] OJ L 39, 9.2.2002, p. 71.

Article 4

Movement and transit of live pigs in the Member States concerned

1. The Member States concerned shall ensure that no live pigs are dispatched from holdings located within the areas listed in the Annex to other areas in the territory of the same Member State, except:

(a) pigs to be moved directly to slaughterhouses for the purpose of immediate slaughter;

(b) from holdings where:

(i) a clinical examination and polymerase chain reaction tests for classical swine fever have been carried out with negative results in accordance with Article 3(1)(b) and (c); or

(ii) a clinical examination has been carried out with negative results and provided that the competent veterinary authority of the place of destination gives its prior approval.

2. The Member States concerned dispatching pigs from areas listed in Part I of the Annex to other areas listed in that Part of the Annex shall ensure that the transport of pigs takes place only via major roads or railways, without any stops by the vehicle transporting the pigs, without prejudice to Council Regulation (EC) No 1/2005 [2].

Article 5

Prohibition on the dispatch of consignments of porcine semen and ova and embryos of swine from the areas listed in the Annex

The Member State concerned shall ensure that no consignments of the following are dispatched from its territory to other Member States:

(a) porcine semen, unless the semen originates from boars kept at an approved collection centre as referred to in Article 3(a) of Council Directive 90/429/EEC [3] and situated outside the areas listed in the Annex to this Decision;

(b) ova and embryos of swine, unless the ova and embryos originate from swine kept in holdings situated outside the areas listed in the Annex.

[2] OJ L 3, 5.1.2005, p. 1.
[3] OJ L 224, 18.8.1990, p. 62.

Article 6

Dispatch of fresh pigmeat and of certain meat preparations and meat products from areas listed in Part II of the Annex

1. The Member States concerned with areas listed in Part II of the Annex shall ensure that consignments of fresh pigmeat from holdings located in those areas, and meat preparations and meat products consisting of, or containing meat of those pigs are dispatched to other Member States only if:

(a) no evidence of classical swine fever has been recorded in the previous 12 months in the holding in question and the holding is located outside a protection or surveillance zone;

(b) the pigs have been resident for at least 90 days on the holding and no live pigs have been introduced into the holding during the 30-day period immediately prior to the date of dispatch to the slaughterhouse;

(c) the holding has been subjected at least twice a year to inspections by the competent veterinary authority, which must:

(i) follow the guidelines laid down in Chapter III of the Annex to Decision 2002/106/EC;

(ii) include a clinical examination in accordance with the checking and sampling procedures laid down in Part A of Chapter IV of the Annex to Decision 2002/106/EC;

(iii) check the effective application of the provisions laid down in the second indent and in the fourth to seventh indents of Article 15(2)(b) of Directive 2001/89/EC;

(d) before authorisation was given to dispatch the pigs to a slaughterhouse, a clinical examination for classical swine fever had been carried out by an official veterinarian in accordance with the checking and sampling procedures laid down in points 1, 2 and 3 of Part D of Chapter IV of the Annex to Decision 2002/106/EC.

2. However, in the case that a holding consist of two or more separate production units where the structure, size and distance between these production units and the operation carried out there are such that the production units provide completely separate facilities for housing, keeping and feeding, the competent veterinary authority may decide to authorise the dispatch of fresh pigmeat, meat preparations and meat products only from certain production units which fulfil the conditions of Article 6(1).

Article 7

Prohibition on the dispatch of fresh pigmeat and of certain meat preparations and meat products from areas listed in Part III of the Annex

1. The Member States concerned with areas listed in Part III of the Annex shall ensure that no consignments of fresh pigmeat from holdings located in the areas listed in Part III of the Annex, and meat preparations and meat products consisting of, or containing such meat are dispatched from those areas to other Member States.

2. By way of derogation from paragraph 1, the Member States concerned with areas listed in Part III of the Annex may authorise the dispatch of fresh pigmeat referred to in paragraph 1 and meat products and preparations consisting of, or containing such meat, to other Member States if the products:

(a) have been produced and processed in compliance with Article 4(1) of Council Directive 2002/99/EC [1];

(b) are subjected to the veterinary certification in accordance with Article 5 of Directive 2002/99/EC; and

(c) are accompanied by the appropriate intra-Community trade health certificate as laid down by Commission Regulation (EC) No 599/2004 [2] of which Part II shall be completed by the following:

'Product in accordance with Commission Decision 2008/855/EC of 3 November 2008 concerning animal health control measures relating to classical swine fever in certain Member States (*).

(*) OJ L 302, 13.11.2008, p. 19.'

Article 8

Special health marks and certification requirements for fresh meat, meat preparations and meat products subject to prohibition referred to in Article 7(1)

The Member States concerned with areas listed in Part III of the Annex shall ensure that the fresh meat and meat preparations and meat products subject to prohibition referred to in Article 7(1) shall be marked with a special health mark that cannot be oval and cannot be confused with:

[1] OJ L 18, 23.1.2003, p. 11.
[2] OJ L 94, 31.3.2004, p. 44.

— the identification mark for meat preparations and meat products consisting of, or containing pigmeat, provided for in Section I of Annex II to Regulation (EC) No 853/2004, and

— the health mark for fresh pigmeat provided for in Chapter III of Section I of Annex I to Regulation (EC) No 854/2004.

Article 9

Health certification requirements for the Member States concerned

The Member State concerned shall ensure that the health certificate provided for in:

(a) Article 5(1) of Council Directive 64/432/EEC [1] accompanying pigs dispatched from its territory, shall be completed by the following:

'Animals in accordance with Commission Decision 2008/855/EC of 3 November 2008 concerning animal health control measures relating to classical swine fever in certain Member States (*).

(*) OJ L 302, 13.11.2008, p. 19.'

(b) Article 6(1) of Directive 90/429/EEC accompanying boar semen dispatched from its territory, shall be completed by the following:

'Semen in accordance with Commission Decision 2008/855/EC of 3 November 2008 concerning animal health control measures relating to classical swine fever in certain Member States (*).

(*) OJ L 302, 13.11.2008, p. 19.'

(c) Article 1 of Commission Decision 95/483/EC [2] accompanying embryos and ova of swine dispatched from its territory, shall be completed by the following:

'Embryos/ova (*) in accordance with Commission Decision 2008/855/EC of 3 November 2008 concerning animal health control measures relating to classical swine fever in certain Member States (**).

(*) Delete as appropriate.
(**) OJ L 302, 13.11.2008, p. 19.'

[1] OJ 121, 29.7.1964, p. 1977/64.
[2] OJ L 275, 18.11.1995, p. 30.

Article 10

Certification requirements concerning Member States with areas listed in Part III of the Annex

The Member States concerned with areas listed in Part III of the Annex to this Decision shall ensure that fresh pigmeat, from holdings located outside the areas listed in Part III of the Annex, and meat preparations and meat products consisting of, or containing such meat, to which the prohibition provided for in Article 7(1) does not apply and that are dispatched to other Member States:

(a) are subjected to the veterinary certification in accordance with Article 5(1) of Directive 2002/99/EC; and

(b) are accompanied by the appropriate intra-Community trade health certificate laid down by Article 1 of Regulation (EC) No 599/2004 of which Part II shall be completed by the following:

'Fresh pigmeat, and meat preparations and meat products consisting of, or containing pigmeat, in accordance with Commission Decision 2008/855/EC of 3 November 2008 concerning animal health control measures relating to classical swine fever in certain Member States (*).

(*) OJ L 302, 13.11.2008, p. 19.'

Article 11

Requirements concerning holdings and transport vehicles in the areas listed in the Annex

The Member States concerned shall ensure that:

(a) the provisions laid down in the second and the fourth to seventh indents of Article 15(2)(b) of Directive 2001/89/EC are applied in the pig holdings located within the areas listed in the Annex to this Decision;

(b) vehicles which have been used for the transport of pigs originating from holdings located within the areas listed in the Annex to this Decision are cleansed and disinfected immediately following each operation and the transporter provides proof of such cleansing and disinfection.

Article 12

Information requirements of the Member States concerned

The Member States concerned shall inform the Commission and the Member States, in the framework of the Standing Committee on the Food Chain and Animal Health, of the results of the surveillance for classical swine fever carried out in the areas listed in the Annex, as provided for in the plans for the eradication of classical swine fever or in emergency vaccination plans against that disease approved by the Commission and referred to in the second paragraph of Article 1.

Article 13

Compliance

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

Article 14

Repeal

Decision 2006/805/EC is repealed.

Article 15

Applicability

This Decision shall apply until 31 December 2009.

Article 16

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 3 November 2008.

For the Commission
Androulla VASSILIOU
Member of the Commission

ANNEX

PART I

1. **Germany**

A. Rhineland-Palatinate

(a) in the Kreis Ahrweiler: the municipalities Adenau and Altenahr;

(b) in the Landkreis Vulkaneifel: the municipalities Obere Kyll and Hillesheim, in the municipality Daun the localities Betteldorf, Dockweiler, Dreis-Brück, Hinterweiler and Kirchweiler, in the municipality Kelberg the localities Beinhausen, Bereborn, Bodenbach, Bongard, Borler, Boxberg, Brücktal, Drees, Gelenberg, Kelberg, Kirsbach, Mannebach, Neichen, Nitz, Reimerath and Welcherath, in the municipality Gerolstein the localities Berlingen, Duppach, Hohenfels-Essingen, Kalenborn-Scheuern, Neroth, Pelm and Rockeskyll and the City of Gerolstein;

(c) in the Eifelkreis Bitburg-Prüm: in the municipality Prüm the localities Büdesheim, Kleinlangenfeld, Neuendorf, Olzheim, Roth bei Prüm, Schwirzheim and Weinsheim.

B. North Rhine-Westfalia

(a) in the Kreis Euskirchen: the cities Bad Münstereifel, Mechernich, Schleiden, in the city of Euskirchen the localities of Billig, Euenheim, Euskirchen (centre), Flamersheim, Kirchheim, Kuchenheim, Kreuzweingarten, Niederkastenholz, Palmersheim, Rheder, Roitzheim, Schweinheim, Stotzheim, Wißkirchen, and the municipalities Blankenheim, Dahlem, Hellenthal, Kall and Nettersheim;

(b) in the Rhein-Sieg-Kreis: in the city of Meckenheim the localities Ersdorf and Altendorf, in the city of Rheinbach the localities Oberdrees, Niederdrees, Wormersdorf, Todenfeld, Hilberath, Merzbach, Irlenbusch, Queckenberg, Kleinschlehbach, Großschlehbach, Loch, Berscheidt, Eichen and Kurtenberg, in the municipality of Swisttal the localities Miel and Odendorf.

2. **France**

The territory of the Departments of Bas-Rhin and Moselle located west of the Rhine and the channel Rhine Marne, north of the motorway A 4, east of the river Sarre and south of the border with Germany and the municipalities Holtzheim, Lingolsheim and Eckbolsheim.

3. **Hungary**

The territory of the county of Nógrád and the territory of the county of Pest located north and east of the Danube, south of the border with Slovakia, west of the border with the county of Nógrád and north of the motorway E71, the territory of the county of Heves located east of the border of the county of Nógrád, south and west of the border with the county of Borsod-Abaúj-Zemplén and north of the motorway E71, and the territory of the county of Borsod-Abaúj-Zemplén located south of the border with Slovakia, east of the border with the county of Heves, north and west of the motorway E71, south of the main road No 37 (the part between the motorway E71 and the main road No 26) and west of the main road No 26.

4. **Slovakia**

The territory of the District Veterinary and Food Administrations (DVFA) of Žiar nad Hronom (comprising the Žiar nad Hronom, Žarnovica and Banská Štiavnica districts), Zvolen (comprising the Zvolen, Krupina and Detva districts), Lučenec (comprising the Lučenec and Poltár districts), Veľký Krtíš (comprising the Veľký Krtíš district), Komárno (comprising the Komárno district), Nové Zámky (comprising the Nové Zámky district), Levice (comprising the Levice district) and Rimavská Sobota (comprising the Rimavská Sobota district).

PART II

Bulgaria

The whole territory of Bulgaria.

PART III

…

COMMISSION DECISION

of 6 November 2008

amending Decision 2002/613/EC as regards the approved porcine semen collection centres of Canada and the United States

(notified under document number C(2008) 6473)

(Text with EEA relevance)

(2008/856/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 90/429/EEC of 26 June 1990 laying down the animal health requirements applicable to intra-Community trade in and imports of semen of domestic animals of the porcine species [1] and in particular Article 8(1) thereof,

Whereas:

(1) Commission Decision 2002/613/EC of 19 July 2002 laying down the importation conditions of semen of domestic animals of the porcine species [2] establishes a list of third countries from which Member States are to authorise the importation of semen of domestic animals of the porcine species and a list of semen collection centres in those third countries approved for export of such semen to the Community.

(2) Canada and the United States have requested that certain amendments be made to the list of semen collection centres approved under Decision 2002/613/EC as regards the entries for those countries.

(3) Decision 2002/613/EC should therefore be amended accordingly.

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

HAS ADOPTED THIS DECISION:

Article 1

Annex V to Decision 2002/613/EC is amended in accordance with the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 6 November 2008.

For the Commission
Androulla VASSILIOU
Member of the Commission

[1] OJ L 224, 18.8.1990, p. 62.
[2] OJ L 196, 25.7.2002, p. 45.

ANNEX

Annex V to Decision 2002/613/EC is amended as follows:

(1) the following entries concerning Canada are deleted:

CA	4-AI-05	Centre d'insémination génétiporc 77 rang des Bois-Francs sud Sainte-Christine-de-Port-neuf Québec
CA	4-AI-29	CIA des Castors 317 Rang Ile aux Castors Ile Dupas Québec J0K 2P0
CA	5-AI-01	Ontario Swine Improvement Inc. P.O. Box 400 Innerkip, Ontario
CA	6-AI-70	Costwold Western Kanada Ltd 17 Speers Road Winnipeg, Manitoba Location SW 27-18-2 EPM

(2) the following entries concerning the United States are deleted:

US	94OK001	Pig Improvement Company — Oklahoma Boar Stud Rt. 1, 121 N Main St Hennessey, OK
US	95IL001	United Swine Genetics RR # 2 Roanoke, IL
US	96AI002	International Boar Semen 30355 260th St Eldora IA 50627
US	96WI001	Pig Improvement Company — Wisconsin Aid Stud Route # 2 Spring Green, WI

COMMISSION DECISION

of 10 November 2008

amending Decision 2004/4/EC authorising Member States temporarily to take emergency measures against the dissemination of *Pseudomonas solanacearum* (Smith) Smith as regards Egypt

(notified under document number C(2008) 6583)

(2008/857/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community [1], and in particular Article 16(3) thereof,

Whereas:

(1) Under Commission Decision 2004/4/EC [2], tubers of *Solanum tuberosum* L., originating in Egypt, must not in principle be introduced into the Community. However, in previous years including the 2007/2008 import season the entry into the Community of such tubers was permitted from 'pest-free areas' and subject to specific conditions.

(2) During the 2007/2008 import season, no interception of *Pseudomonas solanacearum* (Smith) Smith was recorded.

(3) In the light of the request and technical information provided by Egypt, the Commission has established that there is no risk of spreading *Pseudomonas solanacearum* (Smith) Smith with the entry into the Community of tubers of *Solanum tuberosum* L. from 'pest-free areas' of Egypt, provided that certain conditions are satisfied.

(4) The entry into the Community of tubers of *Solanum tuberosum* L., originating in 'pest-free areas' of Egypt, should therefore be permitted for the 2008/2009 import season.

(5) Decision 2004/4/EC should therefore be amended accordingly.

(6) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plant Health,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2004/4/EC is amended as follows:

1. in Article 2 paragraph 1 '2007/2008' is replaced by '2008/2009';

2. in Article 4, '31 August 2008' is replaced by '31 August 2009';

3. in Article 7, '30 September 2008' is replaced by '30 September 2009';

4. the Annex is amended as follows:

   (a) in point 1(b)(iii), '2007/2008' is replaced by '2008/2009';

   (b) in the second indent of point 1(b)(iii), '1 January 2008' is replaced by '1 January 2009';

   (c) in point 1(b)(xii), '1 January 2008' is replaced by '1 January 2009'.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 10 November 2008.

For the Commission
Androulla VASSILIOU
Member of the Commission

[1] OJ L 169, 10.7.2000, p. 1.
[2] OJ L 2, 6.1.2004, p. 50.

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL JOINT ACTION 2008/858/CFSP

of 10 November 2008

in support of the Biological and Toxin Weapons Convention (BTWC), in the framework of the implementation of the EU Strategy against the Proliferation of Weapons of Mass Destruction

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 14 thereof,

Whereas:

(1) On 12 December 2003, the European Council adopted the EU Strategy against the Proliferation of Weapons of Mass Destruction (hereinafter referred to as the EU Strategy), Chapter III of which contains a list of measures to combat such proliferation.

(2) The European Union (EU) is actively implementing the EU Strategy and is giving effect to the measures listed in Chapter III thereof, in particular those relating to the reinforcement, implementation and universalisation of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (hereinafter referred to as the BTWC).

(3) In this regard, Council Joint Action 2006/184/CFSP of 27 February 2006 in support of the BTWC, in the framework of the EU Strategy against the Proliferation of Weapons of Mass Destruction [1], has achieved substantial results in terms of universality and national implementation, since seven more States have subsequently become States Parties to the BTWC and two States have benefited from the legal assistance provided by EU experts.

(4) Equally, the priorities and measures set out in Council Common Position 2006/242/CFSP of 20 March 2006 relating to the 2006 Review Conference of the Biological and Toxin Weapons Convention (BTWC) [2], in particular support for the Inter-Sessional Process, national implementation, Confidence-Building Measures (CBMs) and universality, continue to guide EU actions, including assistance and outreach projects. Those aspects of that Common Position which gained a consensus among the States Parties to the BTWC (hereinafter referred to as the States Parties) and which are reflected in the Final Document of the Sixth Review Conference of the BTWC (hereinafter referred to as the Sixth Review Conference), are of particular relevance for the EU's initiatives in support of the BTWC.

(5) The EU should also help States Parties to benefit from the expertise that the Member States have acquired with regard to the confidence-building process and transparency in the framework of the BTWC, in particular through the Action Plan on biological and toxin weapons adopted by the Council on 20 March 2006, which provides for regular submission of CBM declarations by the Member States and for an update of the lists of nominated experts and laboratories available to assist in the United Nations Secretary-General's Mechanism for Investigating Alleged Use of Chemical and Biological Weapons,

HAS ADOPTED THIS JOINT ACTION:

Article 1

1. For the purpose of the immediate and practical implementation of certain elements of the EU Strategy, and to consolidate the progress achieved in the universalisation and national implementation of the BTWC through Joint Action 2006/184/CFSP, the EU shall further support the BTWC, with the following general objectives:

— promoting the universalisation of the BTWC,

[1] OJ L 65, 7.3.2006, p. 51.

[2] OJ L 88, 25.3.2006, p. 65.

— providing support for the implementation of the BTWC by the States Parties,

— promoting the submission of CBM declarations by the States Parties,

— providing support for the BTWC Inter-Sessional Process.

2. The projects to be supported by the EU shall have the following specific objectives:

(a) providing States not yet parties to the BTWC with means to carry out such initiatives at the national or sub-regional level as will raise awareness of the BTWC, by providing legal advice concerning the ratification of and accession to the BTWC, and by offering training or other forms of assistance in order for the national authorities to be able to comply with their obligations under the BTWC;

(b) assisting the States Parties in the implementation of the BTWC at national level, in order to ensure that the States Parties implement their obligations under the BTWC by means of national legislation and administrative measures and establish functioning relationships between all national stakeholders, including the national legislature and the private sector;

(c) facilitating the regular submission of CBM declarations by the States Parties, by preparing explanatory materials relating to the CBM process and by improving the technical aspects of the electronic submission of existing CBM declarations as well as by improving the security and maintenance of a restricted website, by facilitating the establishment of national points of contact and the submission of the first CBM declarations and by organising a conference of CBM points of contact in connection with BTWC meetings in 2008 and 2009;

(d) promoting a focused discussion at the regional level among representatives of the government, universities, research institutes and industry on BTWC inter-sessional topics, in particular the oversight of science and education.

A detailed description of the projects referred to above is set out in the Annex.

Article 2

1. The Presidency, assisted by the Secretary General of the Council/High Representative for the Common Foreign and Security Policy (hereinafter referred to as the SG/HR), shall be responsible for the implementation of this Joint Action. The Commission shall be fully associated.

2. The technical implementation of the activities referred to in Article 1 shall be carried out by the United Nations Office for Disarmament Affairs (hereinafter referred to as the UNODA) in Geneva. It shall perform its task under the control of the SG/HR, assisting the Presidency. For this purpose, the SG/HR shall enter into the necessary arrangements with the UNODA.

3. The Presidency, the SG/HR and the Commission shall keep each other regularly informed concerning the implementation of this Joint Action, in accordance with their respective competences.

Article 3

1. The financial reference amount for the implementation of the measures referred to in Article 1(2) shall be EUR 1 400 000 to be funded from the general budget of the European Communities.

2. The expenditure financed by the amount set out in paragraph 1 shall be managed in accordance with the procedures and rules applicable to the general budget of the European Communities.

3. The Commission shall supervise the proper management of the expenditure referred to in paragraph 2, which shall take the form of a grant. For this purpose, the Commission shall conclude a financing agreement with the UNODA. The financing agreement shall provide that the UNODA is to ensure the visibility of the EU contribution, appropriate to its size.

4. The Commission shall endeavour to conclude the financing agreement referred to in paragraph 3 within three months after the entry into force of this Joint Action. It shall inform the Council of any difficulties in that process and of the date of conclusion of the financing agreement.

Article 4

The Presidency, assisted by the SG/HR, shall report to the Council on the implementation of this Joint Action on the basis of regular reports prepared by the UNODA. These reports shall form the basis for the evaluation carried out by the Council. The Commission shall be fully associated. It shall report on the financial aspects of the implementation of this Joint Action.

Article 5

This Joint Action shall enter into force on the day of its adoption.

It shall expire 24 months after the date of conclusion of the financing agreement referred to in Article 3(3), or six months after the date of its adoption if no financing agreement has been concluded within that period.

Article 6

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

Done at Brussels, 10 November 2008.

For the Council
The President
B. KOUCHNER

ANNEX

1. **General Framework**

Building on the successful implementation of Joint Action 2006/184/CFSP, this Joint Action serves as an operational policy tool for carrying forward the objectives of Common Position 2006/242/CFSP and focuses in particular on those aspects on which a general consensus was reached at the Sixth Review Conference, as reflected in its Final Document.

This Joint Action will be guided by the following principles:

(a) making best use of the experience gained through Joint Action 2006/184/CFSP;

(b) reflecting on specific needs expressed by the States Parties as well as States not parties to the BTWC with respect to better implementation and universalisation of the BTWC;

(c) encouraging local and regional ownership of the projects in order to ensure their long-term sustainability and to build a partnership between the EU and third parties in the framework of the BTWC;

(d) focusing on those activities that bring concrete results and/or contribute to an early framing of common understanding relevant for the 2011 BTWC review process;

(e) supporting the Chair of the States Parties' meetings and making best use of the mandate of the Implementing Support Unit (hereinafter referred to as the ISU) as agreed at the Sixth Review Conference.

2. **Objective**

The overall objective of this Joint Action is to support the universalisation of the BTWC, to enhance the implementation of the BTWC, including the submission of CBM declarations, and to support the best use of the Inter-Sessional Process 2007-2010 for the preparation of the next Review Conference.

The EU will, in its assistance to the BTWC, take fully into account the decisions and the recommendations adopted by the States Parties at the Sixth Review Conference held in Geneva on 20 November-8 December 2006.

3. **Projects**

3.1. *Project 1: Promotion of the universalisation of the BTWC*

Project purpose

To increase adherence to the BTWC and awareness of the States Parties' obligations under the BTWC either through country-focused assistance activities or through structured sub-regional initiatives, building on the experience and contacts resulting from Joint Action 2006/184/CFSP.

This project will animate the decisions made by the States Parties at the Sixth Review Conference concerning the types of universalisation activities, the exchange of information and the reporting on universalisation efforts, and the support for the Chair of States Parties' meetings in his role of coordinator for universalisation activities.

Project results

(a) Increased adherence to the BTWC in all geographical regions;

(b) Enhanced understanding of the BTWC among the relevant national authorities and/or strengthened sub-regional networking concerning the BTWC in order to promote accession to the BTWC;

(c) Promotion of voluntary implementation of the BTWC by States prior to their accession thereto.

Project description

In 2006 and 2007 the EU carried out regional outreach to almost all those States which are not parties to the BTWC with the intention of encouraging the ratification of or accession to the BTWC. Seven States have subsequently adhered to the BTWC. As a next step, this project provides for an outreach to up to seven States not parties to the BTWC, either in the form of targeted country assistance or sub-regional workshops, in order to achieve the objectives and results of this project.

Project implementation

The Chair of the States Parties' meetings, assisted by the ISU, will be asked to inform those States which are not parties to the BTWC of the EU assistance available for the promotion of universalisation, which can take the following forms:

(a) Country-specific or sub-regional (maximum of five countries) legal assistance related to the ratification of or accession to the BTWC. If, in a country applying for assistance, the accession to or ratification of the BTWC requires the adoption of legislative or administrative measures relating to its implementation, the legal assistance may also cover those measures;

(b) Country-specific or sub-regional (maximum of five countries) assistance to raise awareness of and support for the BTWC among political and opinion leaders and to encourage those States which are not parties to the BTWC to take the measures necessary for the implementation of the BTWC, such as setting up of points of contact, networking among key national stakeholders, and provision of training;

(c) Country-specific financial assistance allowing the participation of relevant national stakeholders, in particular the authorities responsible for the ratification of the BTWC, in the BTWC process (e.g. participation as observers at the experts' and/or States Parties' meetings). This type of assistance shall be provided for on a case-by-case basis and only when it can make a realistic difference for the prospects of a State acceding to the BTWC;

(d) Financial grants for training and awareness-raising visits of relevant national stakeholders to the authorities of EU Member States responsible for the implementation of the BTWC.

This project will enable partnerships between the EU Member States and beneficiary countries to ensure continuity of the EU's universalisation efforts and to offer a permanent point of reference for the beneficiary countries throughout the process of ratification of or accession to the BTWC. The participating EU Member States may volunteer to accompany, either individually or in groups, the selected beneficiaries throughout the ratification or accession process.

3.2. *Project 2: Assistance to States Parties for the national implementation of the BTWC*

Project purpose

To ensure that the States Parties implement their obligations under the BTWC by means of national legislation and administrative measures and enforce them effectively, taking into account the final document of the Sixth Review Conference, the common understanding reached at the relevant meetings of the States Parties and the synthesis drawn from the discussions at the experts' and States Parties' meeting.

Project results

(a) Adoption of appropriate legislative or administrative measures, including criminal law provisions, which encompass the full scope of the prohibitions and preventive measures provided for in the BTWC;

(b) Effective implementation and enforcement to prevent violations of the BTWC and to impose sanctions in cases of breaches;

(c) Better coordination and networking among all stakeholders involved in the BTWC process, including the private sector, in order to promote effective implementation.

Project description

Based on positive experience of cooperation in the area of legislative assistance relating to the implementation of the BTWC in Peru and Nigeria, the EU will continue to provide legal advice to a maximum of seven interested States Parties.

The ISU will be asked to inform the States Parties of the EU assistance available for the implementation of the BTWC, which can take the following forms:

(a) legal advice and assistance relating to the drafting of legislative and administrative measures relevant for the implementation of any prohibitions and preventive measures provided for in the BTWC or agreed on by virtue of a common understanding;

(b) awareness-raising workshops relating to the national implementation of the BTWC and the enforcement of national measures, which may target:

— the decision-making authorities and national legislatures in order to facilitate political consensus on this issue,

— the government stakeholders involved in the implementation of the BTWC in order to create networks and designate points of contact/competent national authorities,

— the industry, universities and research institutes and non-governmental organisations to create public-private partnerships.

A strong preference will be given to bilateral projects focused on legal drafting.

3.3. *Project 3: Promotion of the submission of CBM declarations on a regular basis by States Parties to the BTWC*

Project purpose

To promote and increase the submission of CBM declarations by the States Parties on a regular basis, by encouraging and facilitating the preparation, compilation and transmission of the required data on an annual basis, including by contributing to the improvement of the electronic submission of the CBM declarations and enhancing the security of the website relating to the CBMs, and by providing assistance particularly for the points of contact.

Project results

(a) Appointment of national points of contact for the submission of CBM declarations;

(b) Creation or enhancement of national mechanisms for the preparation and compilation of information requested in the CBM declarations;

(c) Regular submission of the CBM declarations to the ISU by national points of contact;

(d) Improvement of the technical aspects of the electronic submission of CBM declarations and of the security and maintenance of the website for the CBMs.

Project description

The Sixth Review Conference recognised an urgent need for increasing the number of States Parties participating in the CBMs. In that regard, it also recognised the technical difficulties experienced by some States Parties in submitting complete and timely declarations. In order to increase participation of States Parties in the CBM process, the EU will offer assistance to States Parties through three types of activities:

(a) Preparation of comprehensive documentation covering the methodology of national preparation and compilation of CBM data, including a brochure and a schedule for the submission of CBM declarations, to provide examples of good practices while recognising differences in the national procedures. The documentation will also provide descriptions of tools and information made available on this subject by the ISU and will take into account similar initiatives of other institutions and States Parties. The brochure will be reproduced in all the official languages of the UN.

Overall coordination of the preparation of the brochure will be carried out by the UNODA. A meeting of EU experts involved in the drafting of the brochure may be convened to discuss and finalise it. The brochure will be distributed to the States Parties.

(b) Provision of support for the creation and functioning of national points of contact in charge of preparing the submission of CBM declarations, including in-country assistance to a maximum of seven States Parties in the preparation of the first CBM declarations. Those States with a significant level of bio-research or with high incidents of endemic diseases will be considered a priority.

The ISU will be asked to inform the States Parties of the assistance made available by the EU in the area of CBMs.

(c) Organisation of two workshops involving existing and newly designated CBM points of contact in connection with the experts' or States Parties' meetings, in order to share experience gained from the CBM process and from the collection of data, and to encourage all States Parties to designate a point of contact.

The invitations to the workshops will specify that the workshops are part of an EU initiative. The ISU will inform the States Parties that for each conference, if necessary, the EU can cover the expenses of a maximum of ten participants from the non-EU States Parties which have recently made the decision to appoint a point of contact. Those States with a significant level of bio-research or with high incidents of endemic diseases will be considered a priority for possible funding on a case-by-case basis.

(d) Financial contribution to the UNODA to facilitate the further improvement and maintenance of the existing secure CBM website and to improve the technical aspects of the electronic submission of existing CBM declarations, in accordance with the decision of the States Parties at the Sixth Review Conference.

3.4. *Project 4: Support for the BTWC Inter-Sessional Process*

Project purpose

To support the BTWC Inter-Sessional Process, and in particular the discussion on the 2008 and 2009 inter-sessional topics, within and outside the EU, with a view to promoting the adoption of concrete measures.

Project results

(a) Launching the discussion between the private and public sectors in the EU on the security challenges associated with the progress in bio-sciences and bio-technology research and on the appropriate measures to be adopted at the national, regional or global level to address those challenges, and in particular concerning the oversight of science, education, awareness-raising and the development of codes of conduct for the bio-sciences and bio-technology industry, as well as encouraging a discussion on the enhancement of international cooperation and assistance in the area of disease surveillance, detection, diagnostics with a view to identifying concrete assistance needs;

(b) Submitting a report to the inter-sessional meetings on the findings and recommendations generated by the discussions in the EU context;

(c) Facilitating the discussion on the inter-sessional topics in different regions of the world, especially in those not represented adequately at the inter-sessional meetings.

Project description

This project provides for two workshops at the EU level, bringing together representatives of the government, industry, universities and research institutes and non-governmental organisations, to allow an exchange of experience and a reflection on the 2008 and 2009 inter-sessional topics. The workshops will ideally take place before the experts' or States Parties' meetings. A report on the workshops will be submitted to the States Parties.

In order to promote reflection on these issues globally, funds will be made available for two types of activities:

(a) Participation of a maximum of seven non-EU representatives in each EU regional workshop, in particular from the Non-Aligned Movement (NAM);

(b) Organisation of a maximum of four national workshops to discuss the 2008 and 2009 inter-sessional topics in different regions of the world. It is expected that non-EU States Parties which participated in the EU regional workshops may wish to organise similar national workshops in their respective countries and ask for EU assistance for that purpose.

4. **Procedural aspects, coordination and the Steering Committee**

In principle, applications by third states for any assistance and cooperation under this Joint Action must be addressed to the SG/HR, assisting the Presidency, and to the UNODA. The UNODA will review and assess those applications, as appropriate, and submit recommendations to the Steering Committee. The Steering Committee will examine the applications for assistance as well as the action plans and their implementation. The Steering Committee will present a final list of beneficiary countries, which will thereafter be endorsed by the Presidency, assisted by the SG/HR, in consultation with the competent working party of the Council.

The Steering Committee will be composed of a representative of the Presidency, assisted by the SG/HR, as well as of the incoming Presidency, and of the UNODA. The Commission will be fully associated. The Steering Committee will review the implementation of the Joint Action regularly, at least once every 6 months, including by the use of electronic means of communication.

To ensure strong ownership and sustainability of EU-initiated activities by the beneficiary countries, it is envisaged that whenever possible and appropriate, the selected beneficiaries will be asked to prepare action plans which will specify, among others, a schedule for carrying out funded activities (including through national resources), details on the scope and duration of the project, main stakeholders. The UNODA or the Member States, as appropriate, shall be associated with the preparation of the action plans. The implementation of the projects shall be carried out in accordance with the action plans.

5. **Reporting and assessment**

The UNODA will submit to the Presidency, assisted by the SG/HR, regular bi-monthly progress reports on the implementation of the projects. The report will be transmitted to the relevant working party of the Council for an assessment of progress and for an overall evaluation of the projects as well as for a possible follow-up.

Whenever possible, the States Parties will be informed of the implementation of this Joint Action.

6. **Information and Collaboration Management System (ICMS)**

The ICMS, which was developed under Joint Action 2006/184/CFSP, will be maintained and used for the purpose of exchange of information, drafting and other communication among EU experts, the UNODA and third countries, as appropriate, as well as for the preparation of relevant assistance visits.

7. **Participation of EU experts**

Active involvement of EU experts is necessary for the successful implementation of this Joint Action. Their costs relating to the implementation of the projects will be covered by this Joint Action. The UNODA will be encouraged to make use of the existing list of EU legal experts and to develop similar tools for the CBMs and other aspects of implementation as appropriate.

It is expected that in connection with envisaged assistance visits (e.g. legal assistance, CBM assistance), the involvement of a group of a maximum of three experts for a maximum duration of five days will be considered a standard practice.

8. **Duration**

The total estimated duration of the implementation of this Joint Action is 24 months.

9. **Beneficiaries**

The beneficiaries of universalisation activities are States which are not parties to the BTWC (both signatory States and non-signatory States).

The beneficiaries of implementation and CBM-related activities are the States Parties.

The beneficiaries of the activities relating to the Inter-Sessional Process are the government representatives of Member States and other States Parties as well as representatives of the private sector, universities and research institutes and non-governmental organisations.

10. **Third-party representatives**

In order to promote regional ownership and sustainability of the projects, the participation of non-EU experts, including those from regional and other relevant international organisations, may be funded by this Joint Action. The participation of the Chairperson of States Parties' meetings as well as of the ISU staff may be funded on a case-by-case basis.

11. **Implementing entity**

Technical implementation of this Joint Action will be entrusted to the UNODA in Geneva which will perform its task under the control of the SG/HR assisting the Presidency.

In carrying out its activities, the UNODA will cooperate with the Presidency, assisted by the SG/HR, and the Member States and other States Parties and international organisations as appropriate.

12. **Implementing entity — Staff issues**

Given the extra-budgetary character of the activities envisaged to be assigned to the UNODA in this Joint Action, additional staff will be needed to implement the planned projects.

NOTE TO THE READER

The institutions have decided no longer to quote in their texts the last amendment to cited acts.

Unless otherwise indicated, references to acts in the texts published here are to the version of those acts currently in force.