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Contents



(Continued overleaf)

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EN

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

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

II *Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory*



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

EN

[1] Text with EEA relevance

**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.

I

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

# REGULATIONS

## COMMISSION REGULATION (EC) No 157/2009

## of 25 February 2009

## 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 26 February 2009.

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

Done at Brussels, 25 February 2009.

*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 | MA | 50,9 |
| | SN | 127,1 |
| | TN | 101,1 |
| | TR | 82,8 |
| | ZZ | 90,5 |
| 0707 00 05 | MA | 102,4 |
| | MK | 143,3 |
| | TR | 171,9 |
| | ZZ | 139,2 |
| 0709 90 70 | MA | 59,9 |
| | TR | 131,6 |
| | ZZ | 95,8 |
| 0709 90 80 | EG | 88,5 |
| | ZZ | 88,5 |
| 0805 10 20 | EG | 45,1 |
| | IL | 49,0 |
| | MA | 49,7 |
| | TN | 52,8 |
| | TR | 65,6 |
| | ZZ | 52,4 |
| 0805 20 10 | IL | 141,5 |
| | MA | 94,9 |
| | TR | 71,0 |
| | ZZ | 102,5 |
| 0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90 | IL | 101,5 |
| | JM | 95,1 |
| | MA | 72,9 |
| | PK | 48,7 |
| | TR | 65,3 |
| | ZZ | 76,7 |
| 0805 50 10 | MA | 53,4 |
| | TR | 59,1 |
| | ZZ | 56,3 |
| 0808 10 80 | CA | 89,6 |
| | CL | 67,7 |
| | CN | 72,7 |
| | MK | 25,7 |
| | US | 113,4 |
| | ZZ | 73,8 |
| 0808 20 50 | AR | 85,3 |
| | CL | 73,7 |
| | CN | 46,2 |
| | US | 96,7 |
| | ZA | 96,8 |
| | ZZ | 79,7 |

(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 158/2009

## of 25 February 2009

## setting the allocation coefficient for the issuing of import licences applied for from 16 to 20 February 2009 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 16 to 20 February 2009 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 09.4351 (2008-2009).

(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 16 to 20 February 2009, 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, 25 February 2009.

*For the Commission*

Jean-Luc DEMARTY

*Director-General for Agriculture and Rural Development*

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[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 16.2.2009-20.2.2009: percentage of requested quantity to be granted | Limit |
|---|---|---|---|
| 09.4331 | Barbados | 100 | |
| 09.4332 | Belize | 0 | Reached |
| 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 | 0 | Reached |
| 09.4344 | Saint Kitts and Nevis | — | |
| 09.4345 | Suriname | — | |
| 09.4346 | Swaziland | 0 | Reached |
| 09.4347 | Tanzania | 100 | |
| 09.4348 | Trinidad and Tobago | 100 | |
| 09.4349 | Uganda | — | |
| 09.4350 | Zambia | 100 | |
| 09.4351 | Zimbabwe | 100 | Reached |

**ACP/India Preferential Sugar**

**Chapter IV of Regulation (EC) No 950/2006**

**July-September 2009 marketing year**

| Order No | Country | Week of 16.2.2009-20.2.2009: percentage of requested quantity to be granted | Limit |
|---|---|---|---|
| 09.4331 | Barbados | — | |
| 09.4332 | Belize | 100 | |
| 09.4333 | Côte d'Ivoire | — | |
| 09.4334 | Republic of the Congo | — | |
| 09.4335 | Fiji | — | |
| 09.4336 | Guyana | — | |
| 09.4337 | India | 0 | Reached |
| 09.4338 | Jamaica | — | |
| 09.4339 | Kenya | — | |
| 09.4340 | Madagascar | — | |
| 09.4341 | Malawi | — | |
| 09.4342 | Mauritius | — | |
| 09.4343 | Mozambique | 100 | |
| 09.4344 | Saint Kitts and Nevis | — | |
| 09.4345 | Suriname | — | |
| 09.4346 | Swaziland | 100 | |
| 09.4347 | Tanzania | — | |
| 09.4348 | Trinidad and Tobago | — | |
| 09.4349 | Uganda | — | |
| 09.4350 | Zambia | — | |
| 09.4351 | Zimbabwe | — | |

**Complementary sugar**

**Chapter V of Regulation (EC) No 950/2006**

**2008/09 marketing year**

| Order No | Country | Week of 16.2.2009-20.2.2009: 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 16.2.2009-20.2.2009: 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 16.2.2009-20.2.2009: 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 | |

(*) As defined by United Nations Security Council Resolution 1244 of 10 June 1999.

**Exceptional import sugar and industrial import sugar**

**Chapter VIII of Regulation (EC) No 950/2006**

**2008/09 marketing year**

| Order No | Type | Week of 16.2.2009-20.2.2009: 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 16.2.2009-20.2.2009: percentage of requested quantity to be granted | Limit |
|---|---|---|---|
| 09.4431 | Comoros, Madagascar, Mauritius, Seychelles, Zambia, Zimbabwe | 100 | |
| 09.4432 | Burundi, Kenya, Rwanda, Tanzania, Uganda | 100 | |
| 09.4433 | Swaziland | 100 | |
| 09.4434 | Mozambique | 0 | 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 | 0 | Reached |
| 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 16.2.2009-20.2.2009: percentage of requested quantity to be granted | Limit |
|---|---|---|---|
| 09.4365 | Bulgaria | 0 | Reached |
| 09.4366 | Romania | 100 | |

# COMMISSION REGULATION (EC) No 159/2009

## of 25 February 2009

## approving minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications (Chabichou du Poitou (PDO))

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [1], and in particular the second sentence of Article 9(2) thereof,

Whereas:

(1) By virtue of the first subparagraph of Article 9(1) and in accordance with Article 17(2) of Regulation (EC) No 510/2006, the Commission has examined France's application for the approval of an amendment to the specification for the protected designation of origin 'Chabichou de Poitou', registered under Commission Regulation (EC) No 1107/96 [2].

(2) The purpose of the application is to amend the specification by stipulating the conditions for using treatments and additives to the milk and for the manufacture of 'Chabichou du Poitou'. These practices ensure that the key characteristics of the PDO product are maintained.

(3) The Commission has examined the amendment in question and decided that it is justified. Since the amendment is minor within the meaning of Article 9 of Regulation (EC) No 510/2006, the Commission may approve it without following the procedure set out in Articles 5, 6 and 7 of that Regulation.

(4) In accordance with Article 18(2) of Commission Regulation (EC) No 1898/2006 [3] and pursuant to Article 17(2) of Regulation (EC) No 510/2006, a summary of the specification should be published,

HAS ADOPTED THIS REGULATION:

*Article 1*

The specification for the protected designation of origin 'Chabichou du Poitou' is hereby amended in accordance with Annex I to this Regulation.

*Article 2*

A summary of the main points of the specification is given in Annex II to this Regulation.

*Article 3*

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

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

Done at Brussels, 25 February 2009.

*For the Commission*
Mariann FISCHER BOEL
*Member of the Commission*

[1] OJ L 93, 31.3.2006, p. 12.
[2] OJ L 148, 21.6.1996, p. 1.
[3] OJ L 369, 23.12.2006, p. 1.

*ANNEX I*

The specification for the protected designation of origin 'Chabichou du Poitou' is amended as follows:

'**Method of production**'

The following provisions are added to point 5 of the specification regarding the production method:

'(…) Coagulation must be carried out using rennet only.

The milk must not be concentrated by partially removing the watery part before coagulation.

In addition to the raw dairy materials, the only ingredients or production aids or additives authorised in the milk and during production are rennet, innocuous bacterial cultures, yeasts, moulds, calcium chloride and salt.

(…) The dairy raw materials, partly finished products, curd and fresh cheese must not be conserved at a temperature below 0 °C.

(…) Fresh cheese and cheese undergoing the maturing process must not be conserved under a modified atmosphere.'

*ANNEX II*

**SUMMARY**

Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs

**'CHABICHOU DU POITOU'**

EC No: FR-PDO-0117-0115/29.03.2006

**PDO (X) PGI ( )**

This summary sets out the main elements of the product specification for information purposes.

1. **Responsible department in the Member State**

Name: Institut national de l'origine et de la qualité (INAO)

Address: 51 rue d'Anjou – 75008 Paris — FRANCE

Tel.: +33 153898000

Fax: +33 153898060

e-mail: info@inao.gouv.fr

2. **Group**

Name: Syndicat de défense du Chabichou du Poitou

Address: Agropole — Route de Chauvigny — BP 50002 — 86550 Mignaloux Beauvoir — FRANCE

Tel.: +33 549447480

Fax: +33 549467905

e-mail: filieres-lait@poitou-charentes.chambagri.fr

Composition: Producers/processors (X) Other ( )

3. **Type of product**

Class 1.3. Cheeses

4. **Specification**

(summary of requirements under Article 4(2) of Regulation (EC) No 510/2006)

4.1. *Name*

'Chabichou du Poitou'

4.2. *Description*

Unpressed soft cheese made from goat's milk, white inside with a thin skin; in the shape of a truncated cone, known as a '*bonde*'. The cheeses are approximately 6 cm high and the average weight is 120 grams. Fat content: 45 %.

4.3. *Geographical area*

Department of Vienne

The cantons of Châtellerault, Charroux, Civray, Couhé, Gençay, Lencloître, Lusignan, Mirebeau, Moncontour, Neuville, Poitiers, Saint-Georges-lès-Baillargeaux, Saint-Julien-l'Ars, La Villedieu-du-Clain, Vivonne and Vouillé: all the communes.

The communes of Arçay, Availles-en-Châtellerault, Beaumont, Berthegon, Bonneuil-Matours, Bouresse, Cenon, Chalais, Chauvigny, Chouppes, Coussay, Curzay-sur-Dive, Dercé, Glenouzé, Guesnes, Lhommaizé, Loudun, Maulay, Mauprévoir, Messemé, Monthoiron, Monts-sur-Guesnes, Moussac, Mouterre-Silly, Prinçay, Queaux, Ranton, La Roche-Rigault, Saint-Laon, Saint-Laurent-de-Jourdes, Saint-Martin-l'Ars, Saires, Sammarçolles, Sérigny, Ternay, Verrières, Verrue, Le Vigeant and Vouneuil-sur-Vienne.

Department of Deux-Sèvres

The cantons of Airvault, Celles-sur-Belle, Chef-Boutonne, Lezay, Mazières-en-Gâtine, Melle, Ménigoute, La Mothe-Saint-Héray, Saint-Loup-Lamairé, Saint-Maixent-l'Ecole-2, Saint-Maixent-l'Ecole-Ville, Sauzé-Vaussais, Thénezay, Thouars-1 and Thouars-Ville: all the communes.

The communes of Augé, Asnières-en-Poitou, Azay-le-Brûlé, Brieuil-sur-Chizé, Brioux-sur-Boutonne, Brûlain, La Crèche, Chérigné, Ensigné, Geay, Glénay, Juillé, Luché-sur-Brioux, Lusseray, Luzay, Paizay-le-Chapt, Périgné, Pierrefitte, Prahecq, Saint-Martin-de-Bernegoue, Sainte-Gemme, Saint-Varent, Saivres, Secondigné-sur-Belle, Séligné, Vernoux-sur-Boutonne, Villefollet, Villiers-sur-Chizé and Vouillé.

Department of Charente

The communes of Adjots, Benest, Bernac, Bioussac, Le Bouchage, Brettes, Champagne-Mouton, La Chèvrerie, Condac, Courcôme, Empuré, La Faye, La Forêt-de-Tessé, Londigny, Longré, La Magdeleine, Montjean, Nanteuil-en-Vallée, Paizay-Naudoin-Embourie, Raix, Ruffec, Saint-Gourson, Saint-Martin-du-Clocher, Souvigné, Taizé-Aizié, Theil-Rabier, Vieux-Ruffec, Villefagnan and Villiers-le-Roux.

4.4. *Proof of origin*

Every milk producer, processing plant and maturing plant fills in a 'declaration of aptitude' registered with the INAO which enables the INAO to identify all operators involved. All operators must keep at the INAO's disposal their registers and any documents required for checking the origin, quality and production conditions of the milk and cheese.

As part of the checks carried out on the specified features of the designation of origin, an analytical and organoleptic test is conducted to ensure that the products submitted for examination are of high quality and possess the requisite typical characteristics.

4.5. *Method of production*

The milk must be produced, and the cheese must be manufactured and matured within the geographical area.

Whole goat's milk, with a small amount of rennet added, curdled by lactic acid. The fresh curd, pre-drained or not, is placed in a perforated mould in the shape of a truncated cone. It is left to drain for 18 to 24 hours, salted on the surface. It is then left to dry for a further 24 to 48 hours. Matured for at least 10 days at a temperature of 10 to 12 °C and 80 to 90 % humidity.

4.6. *Link*

The name comes from the Arabic word 'chebli' meaning goat. The cheese was made by the Saracens who were defeated at Poitiers in 732 but remained in the area, confined to a hill nearby. The name 'Chabichou' appears in Charles de Cherge's 1782 'Guide du voyageur à Poitiers'. It is associated with the Poitou region and its praises were sung in a sonnet by Emile Bergerat in 1910 and in a 1914 song. The designation was applied for in 1989 and the designation of origin obtained in 1990.

Chabichou du Poitou is produced in the Seuil du Poitou geological area: homogeneous limestone terrain, where goats have been reared for centuries and there is a long tradition of producing and processing this particular cheese.

4.7. *Inspection body*

Name: Institut national de l'origine et de la qualité (INAO)

Address: 51 rue d'Anjou — 75008 Paris — FRANCE

Tel.: +33 153898000

Fax: +33 153898060

e-mail: info@inao.gouv.fr

The Institut national de l'origine et de la qualité is a public administrative body with legal personality and reports to the Ministry of Agriculture.

Name: Direction générale de la concurrence, de la consommation et de la répression des fraudes (DGCCRF)

Address: 59 boulevard Vincent-Auriol — 75703 Paris Cedex 13 — FRANCE

Tel.: +33 144871717

Fax: + 33 144973037

The DGCCRF is a department of the Ministry of the Economy, Industry and Employment.

4.8. *Labelling*

The product must bear the wording 'Appellation d'Origine Contrôlée' and the name of the designation of origin.

The words 'Appellation d'Origine' must appear on the label.

The words 'Fabrication fermière' or 'Fromage fermier' should also appear.

II

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

# DECISIONS

# COMMISSION

## COMMISSION DECISION

**of 16 July 2008**

**on the aid measure implemented by France for the IFP Group (C 51/05 (ex NN 84/05))**

*(notified under document number C(2008) 1330)*

**(Only the French text is authentic)**

**(Text with EEA relevance)**

(2009/157/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas:

### 1. PROCEDURE

(1) By letter dated 25 November 2004, registered as received on 29 November 2004 under number CP221/2004, the Commission received a complaint concerning allegedly unlawful State aid for the Institut Français du Pétrole (IFP) and one of its subsidiaries, Axens. The complainant asked that its identity not be disclosed for fear of negative repercussions in the market.

(2) By letter dated 21 December 2005, the Commission informed France of its decision to initiate the procedure provided for in Article 88(2) of the Treaty in respect of the measure.

(3) The Commission's decision to initiate the procedure was published in the *Official Journal of the European Union* [2]. The Commission invited interested third parties to submit their comments on the measure.

(4) By letter dated 16 January 2006, registered as received on the same day, France asked for a further period of one month in which to send its comments. The Commission acceded to this request by letter dated 19 January 2006. France submitted its comments by letter dated 23 February 2006, registered as received on the same day.

(5) By letter dated 15 March 2006, registered as received on the same day, UOP asked for a further period of one month in which to send its comments. The Commission acceded to this request by letter dated 22 March 2006.

(6) By letter dated 17 March 2006, registered as received on the same day, Haldor Topsoe A/S asked for a further period of one month in which to send its comments. The Commission acceded to this request by letter dated 22 March 2006.

[1] OJ C 42, 18.2.2006, p. 5.

[2] See footnote 1.

(7) By letter dated 20 March 2006, registered as received on 22 March 2006, Axens submitted its comments on the measure to the Commission.

(8) By letter dated 12 April 2006, registered as received on the same day, Haldor Topsoe A/S asked for an extension until 24 April 2006 in which to submit its comments. The Commission acceded to this request by letter dated 19 April 2006.

(9) By letter dated 18 April 2006, registered as received on 19 April 2006, UOP submitted its comments on the measure to the Commission.

(10) By letter dated 19 April 2006, the Commission asked the complainant to furnish a non-confidential version of its complaint. This was sent to the Commission by letter dated 26 April 2006, registered as received on 27 April 2006.

(11) By letter dated 3 May 2006, registered as received on the same day, Haldor Topsoe A/S asked for a further extension, which the Commission refused by letter dated 4 May 2006.

(12) By letter dated 22 June 2006, the Commission forwarded to France a copy of the comments submitted by UOP and Axens and of the complaint. It also sent a request for additional information. By letter dated 4 July 2006, registered as received on 5 July 2006, France asked for an extension of the time limit, which the Commission granted by letter dated 7 July 2006. By letter dated 8 September 2006, registered as received by the Commission on 12 September 2006, France submitted to the Commission its comments on the comments from interested third parties and answers to the additional questions put by the Commission.

(13) By letter dated 18 July 2006, registered as received on 19 July 2006, France informed the Commission of the transformation of IFP into a State-owned industrial and commercial establishment (*établissement public à caractère industriel et commercial* – EPIC).

(14) By letter dated 13 October 2006, the Commission asked France to provide additional information. This was sent to the Commission by France by letter dated 24 October 2006, registered as received on 26 October 2006.

(15) A working meeting took place between France and the Commission on 15 June 2007.

(16) By letter dated 19 June 2007, the Commission asked France for additional information. By letter dated 10 July 2007, France asked for a further extension until 31 August 2007. By letter dated 11 July 2007, the Commission granted a further extension until 13 August 2007. The additional information was sent to the Commission by France by letters dated 9 and 22 August 2007, registered as received on 9 and 22 August 2007 respectively.

## 2. **DESCRIPTION**

### 2.1. **The IFP Group**

(17) Up until 2006, IFP was a trade body set up under private law (*établissement professionnel de droit privé* [3]), without any capital or shareholders, placed under the economic and financial control of the French Government [4]. Ever since Decree No 2006-797 of 6 July 2006 implementing Law No 2005-781 of 13 July 2005, IFP has been an EPIC. The question of the existence of State aid within the meaning of Article 87(1) of the Treaty resulting from this change of status is the subject of a Commission investigation in another proceeding (NN 11/08).

(18) Under its statutes, IFP performs three tasks: research and development in the fields of oil and gas prospecting and refining and petrochemicals technologies; the training of engineers and technicians; and the provision of sector information and documentation. A contract of objectives with the State lays down the broad lines of its work for five years at a time.

(19) In return, IFP receives an annual budgetary allowance. This public financing amounted to EUR 144 million in 2005 and EUR 167,5 million in 2006 [5].

[3] Within the meaning of Law No 43-612 of 17 November 1943 on the management of trade interests (Loi sur la gestion des intérêts professionnels).

[4] Decrees Nos 2003-204 of 5 March 2003 and 55-733 of 26 May 1955.

[5] Source: IFP's 2006 financial report.

(20) Axens is the result of the merger, on 29 May 2001 (with retroactive effect from 1 January 2001), between Procatalyse SA (a wholly owned subsidiary of ISIS, which was in turn 52,8 %-owned at the time by IFP) and IFP's industrial division, which was split off at the same time. On 22 October 2001, IFP purchased from ISIS its stake in Axens. Currently, IFP therefore holds 100 % of the capital stock of Axens. Axens is active in the market for catalysts and technologies for the refining and petrochemicals industries. Its consolidated turnover amounted to EUR 304,9 million in 2005 and EUR 308,45 million in 2006, about one third of which was accounted for by process licensing ([6]). It employed 636 people in 2006 ([7]). Its share of the world market for existing licensed refining units is estimated at 7 % ([8]).

(21) IFP holds directly and indirectly (through the financial holding company IFP Investissements) all the shares in several enterprises, including Beicip-Franlab and Prosernat. Beicip-Franlab is a commercial enterprise set up by IFP in 1967. It specialises in the publication and distribution of deposits exploration software and in consultancy and advisory services. In 2006, its turnover was EUR 42 million and it employs 166 people ([9]). Prosernat is a commercial enterprise acquired in 2001 as part of the transfer by ISIS of ownership of IFP Investissements to IFP. It provides consultancy and other services and supplies gas treatment and sulphur recovery plants. In 2006, its turnover was EUR 49,9 million and it employs 71 people ([10]).

### 2.2. **Earlier Commission decisions**

(22) From 1944, when it was established, to the end of 2002, IFP collected the proceeds of a parafiscal charge on certain petroleum products. The repayment of this charge was the subject of Commission Decision 96/615/EC of 29 May 1996 on the renewal, for the period 1993 to 1997, of the charge levied on certain oil products for the benefit of the Institut Français du Pétrole ([11]), which concluded that, pursuant to point 2.4 of the 1996 Community framework for State aid for research and development (the 1996 R & D framework) ([12]), the payment of the proceeds from a parafiscal charge for the benefit of IFP for the period 1993 to 1997 was not caught by Article 87(1) of the Treaty.

(23) On 3 October 1997, France notified to the Commission a new, substantially unchanged decree on the parafiscal charge levied on certain petroleum products for the benefit of IFP for the period 1998-2002. In its decision of 4 February 1998 ([13]), the Commission raised no objection to its implementation for the period 1998-2002.

### 2.3. **Exclusive agreements between IFP and Axens**

(24) By letters dated 1 March and 18 May 2001 (hereinafter called 'the 2001 letters'), France informed the Commission of a plan to reorganise the research activities of IFP in the fields of refining, petrochemicals and gas and asked the Commission to confirm that the plan would not lead to the analysis adopted by the Commission in its earlier decisions being called into question.

(25) The plan involved entrusting the management of marketing the results in the above fields to a commercial entity formed by merging IFP's industrial division with Procatalyse, which was indirectly controlled by IFP and specialised in the industrial development, manufacture and sale of all chemical products.

(26) In addition to the transfer of the greater part of IFP's industrial division, including its existing customers and contracts, effected in exchange for a majority stake in the new subsidiary, the plan involved the signature by IFP and its subsidiary of the following agreements:

(a) a 10-year exclusive framework licensing agreement under which the subsidiary may use IFP's present and future intellectual property rights essentially in processes in its field of activity to provide engineering services to customers in connection with those processes and to transmit to them the right to use the related technologies in the form of patent licence sub-grants;

(b) a 10-year exclusive product licensing agreement under which the subsidiary may use IFP's present and future technology in its field of activity to manufacture and sell to its customers catalysts, adsorbents, captation masses, equipment, and other products and software developed by IFP;

([6]) Source: Axens's 2006 consolidated accounts.
([7]) Source: Axens's 2006 consolidated accounts.
([8]) Source: data communicated by the French authorities.
([9]) Source: Beicip-Franlab's 2006 consolidated accounts.
([10]) Source: Prosernat's 2006 accounts.
([11]) OJ L 272, 25.10.1996, p. 53.
([12]) OJ C 45, 17.2.1996, p. 5.
([13]) OJ C 192, 19.6.1998, p. 4.

(c) a 10-year industrial research agreement under which [IFP proposes to its subsidiary the results of its research in the field of refining and petrochemicals in order that it may, if it so wishes, pursue the research in a joint project with IFP and then exploit the said results. Should the subsidiary not avail itself of this possibility, IFP can propose its results to other enterprises. Each partner bears the costs of its participation in the research project, and at project end IFP holds the ownership rights to the products and processes while its subsidiary holds the ownership rights to the industrialisation stages of the products and processes] (*).

(27) In return, the subsidiary pays IFP royalties under the licensing agreements and remuneration […] (**) for access to IFP's research capacity. […] (**).

(28) The Commission took the view that the IFP reorganisation plan presented was in keeping with the conditions laid down in its decision of 4 February 1998 on the renewal, for the period 1998-2002, of the parafiscal charge levied on certain petroleum products and it informed France accordingly by letter D/52473 dated 19 June 2001.

(29) In conformity with the plan presented, Axens was set up as an IFP subsidiary on 29 May 2001. The agreements between IFP and Axens took effect on 1 January 2001 for a period of 10 years.

(30) By letter dated 27 November 2002, France informed the Commission of the replacement, as from 1 January 2003, of the proceeds from the parafiscal levy by a budgetary allowance for IFP.

### 2.4. **Exclusive agreements between IFP and Beicip-Franlab**

(31) An exclusive development, marketing and use agreement, signed on 28 May 2003, with retroactive effect from 1 January 2003, for a period of 10 years provides that [IFP will propose to Beicip-Franlab the results of its research into the algorithms, models and methodologies developed by IFP in the field of 'Exploration–Deposits' and that Beicip-Franlab may request permission from IFP to produce products on that basis. IFP will hold all the ownership rights to the software products developed. Beicip-Franlab will cover all of the product development costs borne by IFP and make various additional payments to cover maintenance and rights of use] (*).

(32) An amendment was signed on 16 December 2005, with retroactive effect from 1 January 2005. It modifies the payment arrangements while at the same time retaining the principle of total coverage of development costs by Beicip-Franlab.

### 2.5. **Exclusive agreements between IFP and Prosernat**

(33) A framework licensing agreement and an industrial research agreement between IFP and Prosernat were signed on 18 August 2003, with retroactive effect from 1 January 2002, for a period of 10 years. Under these agreements [IFP is to offer up the results of its research in the field of gas treatment and sulphur recovery technologies. IFP will hold the property rights to the correlations, processes and specific equipment associated with the processes. If Prosernat is interested in marketing them, then it must itself perform, while at the same time preserving the associated property rights, the task of industrialising these processes, for which it may then be granted an exclusive licence] (*).

(34) In consideration for the licence for the processes, Prosernat must pay a fee of […] (**) out of the annual turnover from sub-licensing royalties for the first four years. This fee rate is to rise to […] (**) after the first four years. The fee rate for equipment is set on a case-by-case basis. IFP's remuneration for Prosernat's access to the results of the research work amounts to […] (**) of Prosernat's global annual turnover.

## 3. **REASONS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE**

(35) In initiating the formal investigation procedure, the Commission expressed the following doubts about the French State's support for the IFP group and about the justifications put forward at that time by France.

(36) First, the Commission considered that the conditions laid down in its earlier decisions were no longer met. As a reminder, its earlier decisions were based on:

(a) the fact that no direct aid was granted to IFP insofar as IFP was a non-profit-making research centre not engaged in a commercial activity. In accordance with the first paragraph of point 2.4 of the 1996 R & D framework, public financing of R & D activities by public non-profit-making higher education or research establishments is not normally covered by Article 87(1) of the Treaty;

(*) Paraphrase of information covered by professional secrecy.
(**) Information covered by professional secrecy.

(b) the fact that no indirect aid was granted to firms acquiring the findings of IFP studies insofar as the potential advantage resulting from the transfer of the findings was available without discrimination to all firms. In this connection the Commission had noted that IFP transferred its research findings to firms in four different ways: dissemination in the public domain, services invoiced at cost price, collaborative research and sale of licences. In the latter two cases, the Commission considered that, while firms did not bear the total costs of research, this advantage was available without discrimination to all firms, irrespective of nationality;

(c) the fact that no indirect aid was granted to firms in which IFP held shares insofar as IFP collaborated with those firms on the same terms and conditions as with other firms in which it did not hold shares. Because of the involvement of other shareholders, IFP's minority shareholdings in firms active in its research field and its collaboration with those firms on the same terms and conditions as with other firms in which it did not hold shares, the Commission concluded that the firms in question did not receive more favourable treatment.

(37) The Commission found that, since 2001 on the other hand, IFP had been taking an increasingly structured and up-front commercial approach thanks to the creation, in the market for refining and petrochemicals technologies, of Axens and the conclusion with it of exclusive research and licensing agreements. Thus, this commercial subsidiary, majority held by IFP, has preferential access to the R & D work conducted by IFP in its field of activity. Consequently, in its decision to initiate the procedure the Commission took the view that the reasons justifying the 1996 and 1998 decisions were no longer valid and that the first paragraph of point 2.4 of the 1996 R & D framework was no longer applicable to Axens's field of activity. Hence it concluded as to the existence of State aid within the meaning of Article 87(1) of the Treaty in favour of IFP and its subsidiary Axens.

(38) Moreover, insofar as IFP had majority shareholdings in two other commercial subsidiaries, Beicip-Franlab and Prosernat, and insofar as IFP had signed exclusive agreements with those subsidiaries, the Commission could not rule out the existence of State aid within the meaning of Article 87(1) of the Treaty in the fields of activity of the subsidiaries Beicip-Franlab and Prosernat.

(39) Secondly, the Commission analysed the compatibility of the aid in the light of the various Treaty provisions. It concluded that, in view of its objectives, the potential aid could be analysed only in the light of the provisions of Article 87(3)(c) of the Treaty, and more particularly in the light of the 1996 R & D framework. In the absence of justification by France in that respect, the Commission expressed doubts as to whether the necessary conditions for authorising the aid under those provisions were fulfilled.

(40) The Commission accordingly invited France to submit its comments and:

(a) furnish evidence of the extent to which IFP and its subsidiaries can be considered separate entities the relationship between which is market driven;

(b) draw a clear distinction, in conformity with Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings [14], between the economic and the non-economic activities of IFP and its subsidiaries so as to make clear what proportion of the public subsidy supports the group's commercial activities;

(c) provide precise proof that any aid is compatible with the Community rules on R & D aid.

## 4. COMMENTS FROM FRANCE ON THE INITIATION OF THE FORMAL INVESTIGATION PROCEDURE

### 4.1. On the background to the current procedure

(41) First, France states that the IFP financing arrangements have formed the subject matter of two Commission decisions finding that no State aid is involved within the meaning of Article 87(1) of the Treaty.

[14] OJ L 195, 29.7.1980, p. 35. Directive repealed by Directive 2006/111/EC (OJ L 318, 17.11.2006, p. 17).

(42) Secondly, it recalls that the 2001 reorganisation resulted in the conversion into a subsidiary of IFP's commercial activities in the field of refining and petrochemicals, these having been previously carried on in part internally by IFP's industrial division and for the rest by Procatalyse, an enterprise indirectly controlled by IFP. The aim of the reorganisation was to refocus IFP's activities on the general interest mission entrusted to it by the State of supporting research and development in the field of hydrocarbons and new energy and environment technologies.

(43) Against this background, France considers that the 2001 letters constitute notifications for the purposes of Article 88(3) of the Treaty. The letter sent on 5 March 2001 contained an information memo, a completed notification form ([15]) and five technical annexes, including the industrial research agreement and the licensing agreements. France refers also to the subsequent meeting ([16]) and information exchange ([17]) and says it received an acknowledgement of receipt from the Commission dated 7 May 2001 ([18]). It recalls having asked the Commission to confirm that the reorganisation plan did not imply any calling into question of the Commission's analysis in its earlier decisions.

(44) Consequently, France considers that letter D/52473 dated 19 June 2001, in which the Commission indicated that IFP's reorganisation plan as submitted was in keeping with the conditions laid down in its decision of 4 February 1998 on the renewal for the period 1998-2002 of the parafiscal charge levied on certain petroleum products, created a situation of legitimate expectation. It recalls that, in that letter, the Commission took the view that the reorganisation plan modified neither the nature of IFP's activities nor the position of French enterprises vis-à-vis other Community enterprises as regards process marketing activities and raised no objection to the draft agreements, and in particular to the right of first refusal of which it had nevertheless had cognisance during the exchanges with France since 5 March 2001. In France's opinion, it could legitimately consider that the creation of Axens and the signature of the agreements between IFP and Axens would not lead to the existence of State aid. France maintains that the creation of Axens and the signature of the agreements between IFP and Axens took place in accordance with the draft submitted to the Commission in March 2001.

(45) Regarding the changes introduced subsequently of which the Commission was not informed, France provides the following information. First, according to France, the 100 % takeover of Prosernat and Axens by IFP at the end of 2001 could not be attributed to a choice on the part of IFP insofar as it was the deed of independent players. France points out, moreover, that, in its letter D/52473 of 19 June 2001, the Commission considered as a guarantee of non-discrimination the fact that IFP holds at least the majority of the shares in the new entity. Secondly, France maintains that, the agreements between IFP and Prosernat being similar to the agreements between IFP and Axens, it did not deem it necessary to forward them to the Commission. Lastly, France felt it was unnecessary to transmit to the Commission the agreement between IFP and Beicip-Franlab insofar as it provided for total coverage of IFP's costs.

(46) France states that it informed the Commission of the change in the method of financing IFP by letter dated 27 November 2002.

4.2. **On IFP's compliance with Directive 80/723/EEC**

(47) France considers that the principle of the separation of accounts by activity, embodied in Article 1 of Directive 80/723/EEC, is respected. It points out in this connection that IFP's budget is organised along the lines of a breakdown between five results centres, an 'Information' task and an 'Exploratory Research' item which makes it possible to distinguish between IFP's various activities.

(48) France describes the method of classifying projects within the results centres as follows:

(a) competency acquisition projects, often carried out in collaboration with other research institutes, are designed to seek out new ideas;

(b) industrial research projects are carried out by IFP with or without the collaboration of third parties. In the case of the 'Exploration-Production' results centre, they involve the search for solutions which may lead to methodologies, software, chemical additives, equipment, processes and expertise. In the case of the 'Refining-Petrochemicals' results centre, they concern the development of processes and products for the production of fuels and petrochemical intermediates from all accessible carbon sources;

([15]) On p. 8 of the notification form, it is stated that 'the French State informs you by the present notification that IFP is considering reorganising its activities within its group in the field of refining/petrochemicals' (l'Etat français vous informe par la présente notification que l'IFP envisage de réorganiser ses activités au sein de son groupe dans le domaine du raffinage/pétrochimie).

([16]) A meeting between the Commission and France was held on 4 May 2001.

([17]) The letter from France, dated 18 May 2001, contained further information on the right of first refusal and on the liability of imports to the charge introduced for the benefit of IFP.

([18]) The acknowledgement of receipt states that 'annexed hereto is, moreover, an outline of the measures envisaged in accordance with the form prescribed for the notifications provided for in Article 88(3) of the Treaty' (en annexe, figure en outre une présentation des mesures envisagées selon la forme prescrite pour les notifications prévues à l'article 88-3 du traité).

(c) 'trade equipment' projects concern the development of test benches, testing equipment, experimental testing facilities and test loops, together with the implementation of specific software and the management of databases;

(d) 'support activities' projects comprise quality measures, post-programme follow-up and management of intellectual property rights.

(49) Lastly, France provides information on IFP's analytical accounting system, which allows an allocation of (non-State-budgetary-allowance) income and expenditure by project within each results centre.

### 4.3. **On the distinction between IFP and its subsidiaries**

(50) France disputes the Commission's analysis that IFP and Axens constitute a single economic entity. It considers that IFP and its subsidiaries are separate entities whose tasks are different in nature.

(51) First, France considers that IFP's research activity is a general interest mission forming part of an approach — recognised at national, Community and world level — aimed at ensuring long-term security of supply in hydrocarbons.

(52) Secondly, it considers that the reference to the concept of linked enterprises, as set out in Annex I to the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (the 'SME Recommendation') ([19]), is not relevant to this case. France recalls, moreover, the Community case law according to which the fact that 100 % of the shares in a subsidiary are held by its parent company does not suffice to demonstrate the existence of control by the latter. France points out, furthermore, that the existence of an exclusive agreement is not a feature of an absence of autonomy, as otherwise Article 81 of the Treaty, which refers to such agreements between independent enterprises, would be otiose. Lastly, France considers that the common image of IFP and Axens in the market necessarily stems from the fact that Axens distributes products resulting from the research conducted by IFP, and that this common image must be distinguished from an absence of autonomous behaviour.

(53) Thirdly, France tenders evidence to demonstrate the autonomy of IFP's subsidiaries. Each subsidiary devises its own strategy and has it validated by its management board, which is not composed solely of IFP representatives. Contracts between IFP and its subsidiaries respect the ordinary-law rules on regulated agreements, hence the IFP representative does not take part in the voting on matters pertaining to the said contracts. Each subsidiary has its own committees and enjoys complete managerial autonomy subject to shareholder control, which is exercised through standard reporting mechanisms. In addition, IFP and its subsidiaries have hierarchically and geographically independent financial and accounting departments with different information and management systems. Lastly, IFP's subsidiaries decide freely on the products and services they market. In this respect, Axens is free to accept or refuse the work presented by IFP, and France gives several examples of processes where Axens supplements its research requirements with other contractual relationships.

### 4.4. **On the existence of State aid**

(54) France considers that, pursuant to the first subparagraph of point 2.4 of the 1966 R & D framework, the financing of IFP, a non-profit-making body, does not constitute State aid.

(55) First, France points out that, according to the second subparagraph of point 2.4 of the 1996 R & D framework, 'where the results of publicly financed R & D projects are made available to Community industry on a non-discriminatory basis, the Commission will assume that State aid within the meaning of Article 92 (now 87) of the EC Treaty is not normally involved'.

(56) France indicates in this connection that IFP conducts a great deal of research work the results of which are made available to Community enterprises without discrimination. Among the means used to ensure the accessibility of the results of its activities are a scientific journal and the drafting of articles, the presentation of work at conferences, the publication and posting online of works, membership of scientific associations and the establishment of partnerships with other research centres and doctoral training schemes.

(57) France states that three quarters of the research budget of the 'Exploration-Production' results centre is devoted to fundamental research the results of which are disseminated widely without discrimination. In the case of the 'Refining-Petrochemicals' results centre, the results of much research are also disseminated without discrimination.

([19]) OJ L 124, 20.5.2003, p. 36.

(58) Secondly, France considers that the Commission's reasoning in its 1996 and 1998 decisions, according to which 'it has to be noted that, even though the IFP does not always charge the real cost of research to customers, it makes no distinction between the companies to which it transfers the findings of research carried out on its own behalf or on a collaborative basis', is still valid.

(59) It stresses in this connection that, in the 'Exploration-Production' field, IFP conducts industrial research on behalf of numerous industrial partners, either in the form of straightforward cooperation or in that of multi-client joint industrial projects in which participation is unrestricted.

(60) In the case of the refining and petrochemicals market, France considers that the payments made by Axens for the work placed at its disposal by IFP are equivalent to market terms and conditions. To this financial compensation, France adds the expenditure incurred by Axens in carrying out supplementary tasks needed for the exploitation of the research work and the additional costs borne by Axens for using technologies and products other than those of IFP. In France's view, the high share of its turnover devoted to research activities is a strong indicator of the absence of any competitive advantage derived by Axens from the research work carried out on its behalf by IFP. France provides evidence to show that the amounts spent by Axens on its research activities are much higher than the average for the sector.

(61) France states that, despite the right of first refusal enjoyed by Axens, several research works carried out by the 'Refining-Petrochemicals' results centre benefit various industrial partners from different countries.

(62) France concludes, therefore, that the State intervention in favour of IFP does not constitute State aid within the meaning of Article 87(1) of the Treaty and that IFP's subsidiaries derive no advantage from their access to the results of the research conducted by IFP on their behalf.

### 4.5. **On the compatibility of any State aid with the Treaty**

(63) France indicates that, if the State intervention in favour of IFP were to be interpreted as State aid within the meaning of Article 87(1) of the Treaty in favour of Axens, such aid would in any case be compatible with the common market. France provides evidence to show that the aid can be considered compatible with the Treaty under the exemption provided for in Article 87(3)(c).

(64) First, France considers that the financing by the State of Axens's industrial research work does not exceed the ceilings laid down by the 1996 R & D framework. It furnishes in this connection the amounts of expenditure by IFP allocated to industrial research conducted with Axens and of the financial returns paid by Axens. […] (**)

(65) Secondly, France indicates that any aid to Axens would have an incentive effect. It furnishes in this connection statistics which show a progression both in the amount of expenditure devoted by Axens to R & D by its R & D staff and in the ratio of internal expenditure to turnover. It furnishes, moreover, examples of Axens projects which would not have seen the light of day without help from IFP. It argues that all of Axens's competitors, and in particular those in the USA, receive substantial State support.

(66) Lastly, France points to the strategic importance of State aid to innovation and R & D, as recognised by the Commission in the context of the relaunch of the Lisbon Strategy and as reflected in the State Aid Action Plan.

## 5. **COMMENTS FROM THIRD PARTIES**

### 5.1. **Content of the complaint behind the initiation of the procedure**

(67) The complainant, fearing negative commercial repercussions, does not want its identity to be divulged. It believes its interests are directly threatened by the subsidising by France of IFP and/or its subsidiary Axens. Since it was created in 2001, Axens, a competitor of the complainant, is alleged to have pursued an aggressive commercial policy in relation to the process licences developed entirely thanks to the R & D activities of its parent, IFP.

(68) The complaint is centred on specific fields of activity of IFP, namely refining technologies and catalysts, gas treatment and petrochemicals production, and on Axens's licensing activities in these fields. The complainant considers that, in these fields, Axens is in direct competition with other market operators despite not having to cover its R & D costs insofar as it is the exclusive distributor of the technologies developed by IFP with the financial support of the State. Moreover, according to the complainant, the IFP/Axens entity is in a position to carry on R & D activities which would be unprofitable for non-subsidised operators.

(69) The complainant considers that State aid elements are identifiable in the direct State subsidy for IFP, the creation and capitalisation by IFP of its commercial subsidiary Axens, the financing of IFP's refining and petrochemicals section, the exclusive distributor for which is Axens, and the exclusive licences which IFP grants Axens for its technologies.

(70) The complainant takes the view that the current financing of the activities of IFP and Axens by the State, which has not been notified to the Commission and is not covered by any of the Commission's earlier decisions, constitutes unlawful State aid. It stresses in this connection the factual differences between the findings of the Commission's earlier decisions and the current situation in which IFP and Axens find themselves:

— the subsidiary Axens is a commercial entity,

— Axens has exclusive or preferential access to IFP's services and research results,

— IFP holds 100 % of Axens's share capital,

— in the market for technologies, most operators, including the complainant, are unsubsidised. The subsidised activities of the IFP/Axens entity lead to price distortion.

(71) The complainant thus considers that IFP departs significantly from the model of a public non-profit-making research establishment, as referred to in point 2.4 of the 1996 R & D framework, in the area of the commercial activities of its subsidiary Axens. On the contrary, in its view IFP and Axens constitute a single economic entity which acts in the market in direct competition with other operators. According to the complainant, several elements indicate that IFP and Axens are to be considered a single economic entity and hence an undertaking within the meaning of Article 87(1) of the Treaty:

— IFP holds 100 % of Axens's share capital,

— IFP behaves as an active shareholder by taking part in the definition of its subsidiaries' strategy,

— the staff of Axens and IFP visit potential customers together,

— Axens uses its name in connection with IFP's technologies (as can be seen from Axens's logo, which incorporates that of IFP).

(72) The resources granted by the French State to the IFP/Axens entity in order to finance research in the fields of refining, gas treatment and petrochemicals technologies constitute State resources. According to the complainant's estimates, IFP's R & D expenditure in these fields comes to about EUR 100 million, whereas Axens reimburses no more than half of these costs to its parent company. The complainant accordingly estimates the aid in favour of the IFP/Axens entity at EUR 50 million a year.

(73) The competitive advantage stems, according to the complainant, from the fact that the IFP/Axens entity does not have to cover all of its R & D costs and that it can, in consequence, exert downward pressure on market prices in the fields concerned. The complainant considers that such an advantage introduces the risk of a foreclosure effect to the detriment of other market operators.

(74) According to the complainant, the technologies market is a worldwide, or at the very least, European market. The State support for the IFP/Axens entity therefore affects intra-Community trade.

(75) Consequently, the complainant considers that the State support for the IFP/Axens entity constitutes State aid within the meaning of Article 87(1) of the Treaty.

(76) The complainant argues that, insofar as it is an activity close to the market whose results are directly marketable, the development of refining technologies is not covered by the definition of pre-competitive activities contained in the 1996 R & D framework. The aid granted to the IFP/Axens entity is therefore operating aid incompatible with the Treaty's State aid rules.

(77) The complainant stresses that, even if the activities of the IFP/Axens entity were to be considered pre-competitive development activities, the aid would exceed the permissible ceiling laid down in the 1996 R & D framework for such activities, which is 25 %, and could also exceed the ceiling of 50 % laid down for industrial research.

(78) Should it be found that research and development activities as defined in the 1996 R & D framework are involved, the complainant considers that the incentive effect of the aid is questionable. According to the complainant, the aid to the IFP/Axens entity dissuades other market operators from investing in R & D in these fields insofar as their revenues are affected by the existence of State aid and are insufficient to offset their R & D costs.

(79) The complainant concludes, therefore, that the State aid in favour of the IFP/Axens entity is unlawful and incompatible with the common market.

### 5.2. **Comments submitted by Axens**

(80) First, Axens states that it was set up in 2001 to bring together in a single commercial entity IFP's activities relating to refining and petrochemicals processes and those of the subsidiary relating to the production of catalysts. It possesses all of the functions (financial, legal, human resources) needed to conduct its business completely autonomously, and its day-to-day running is carried out by its management under the responsibility of its Chief Executive Officer. Only very few decisions are taken as high as management board level, and its shareholder allows its top management a great deal of autonomy when it comes to commercial and industrial decision-making. It therefore contests the Commission's analysis that IFP and Axens constitute a single economic entity.

(81) Secondly, Axens points out that the 2001 reorganisation was carried out in accordance with the plan explicitly approved by the Commission. It considers it could legitimately trust in the validity of this legal and financial framework, the questioning of which would seriously hamper its development.

(82) Thirdly, Axens argues that most operators in the refining and petrochemicals technologies and catalysts markets have recourse to a combination of internal and partnership research. Criterion, a subsidiary of Shell, has access to the latter's research, and ABB Lummus has agreements with Chevron and Shell, UOP with Total and other operators and Albermale with ExxonMobil. Axens indicates that its collaboration with IFP is to be seen in this context and has been structured transparently through the three research and licensing agreements. These are based, from the point of view of each of the parties, on a traditional commercial logic. Axens considers that the fact that the portion of its turnover that is devoted to research expenditure is comparable to the outlay expended by its competitors is further proof that it derives no advantage from its relationship with IFP.

(83) Lastly, Axens stresses that it faces competition from very powerful operators who are often actively supported by their countries of origin. In the United States, the Department of Energy devotes a budget of several hundred million dollars to project support.

### 5.3. **Comments submitted by UOP**

(84) The registered office of UOP Limited is in the United Kingdom. The company has two production sites, one in the United Kingdom and one in Italy, and is active in 17 Member States. It specialises in the design, engineering, licensing and servicing of such processes as oil conversion, clean fuel production, fuel desulphurisation and in petrochemicals technologies. It also produces catalysts, molecular filters, adsorbents and other specialised equipment.

(85) UOP and the IFP/Axens entity are competitors in the fields of petroleum production and desulphurisation technologies, aromatics production and extraction technologies and catalysts for a wide range of clean fuel production processes. UOP is in favour of initiating the formal investigation procedure in respect of the aid paid to IFP and agrees with most of the Commission's conclusions.

(86) First, UOP has noticed a sharp increase in IFP's activities in recent years. IFP has thus restructured one licensing activity which is relatively insignificant and open to all enterprises, so as to compete directly with private operators in the process market. UOP points out that Community case law requires that, where the State decides to act like an economic operator, it must act under the same conditions as a private operator. UOP considers in this respect that an operating deficit of more than EUR 555 million over the past three years would be unacceptable to a normal shareholder.

(87) Against this background, UOP has asked the Commission to order France to suspend the State support for IFP in accordance with Article 11 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([20]).

([20]) OJ L 83, 27.3.1999, p. 1.

(88) Secondly, UOP considers that the fact that the IFP/Axens entity does not have to cover all of its R & D expenditure has enabled it not only to acquire a significant share of the market in refining and petrochemicals technologies but also to threaten its competitors' profitability. It argues that the proximity to the market and the low level of the IFP/Axens entity's R & D activities is evidence that the aid has no incentive effect. Lastly, it considers that any benefit to be derived from the aid would be largely offset by the risk of crowding out private operators in the relevant markets, it being its view that private operators will have to reduce their R & D expenditure in the medium term in order to remain competitive with a largely subsidised rival.

(89) Thirdly, UOP shares the Commission's analysis that IFP and its subsidiary Axens constitute a single economic entity. The capital structure, management, preferential relations and degree of economic integration of IFP and its subsidiary Axens all point to that conclusion. UOP stresses in this respect that the economic integration of the two entities is borne out by the fact that Axens is the sole distributor of the technologies developed by IFP and the main and potentially only recipient of IFP's findings. Such arrangements show, according to UOP, that IFP and Axens are indubitably dependent on one another, work in concert and pursue identical interests in the market. UOP considers, moreover, that, as Axens's only shareholder, IFP is in a position to determine Axens's short- and medium-term strategy.

(90) Fourthly, UOP considers, like the Commission, that, for there to be no advantage to the IFP/Axens entity, IFP's budget devoted to R & D carried out in collaboration with or on behalf of Axens would have to be financed by revenue earned in the market.

(91) Fifthly, UOP suggests that the Commission should bear in mind the specificity of the market for process technology licences when it seeks to establish a correspondence between the R & D activities of the IFP/Axens entity and the categories of research defined in Annex I to the 1996 R & D framework. This specificity is due, in its opinion, to the fact that the IFP/Axens entity and its competitors market, not a product or a service, but a process. According to UOP, the fact that the industry habitually uses the term 'R & D' to designate the development of a marketable process must not make the Commission lose sight of the fact that such development is downstream of R & D activities as defined in the 1996 R & D framework. In this respect UOP argues that R & D for the refining and petrochemicals processing industries can be categorised according to three stages:

(a) a fundamental research stage during which new materials and process concepts are developed and tested up to proof of principle ([21]) demonstration;

(b) a process and material development stage during which the materials and process concepts discovered are developed for commercial application;

(c) an application development stage during which tools are built, enabling reproducible performance forecasting and materials manufacturing so as to offer the product in a competitive context.

(92) UOP considers that stages (b) and (c) form an integral part of commercial development.

(93) Lastly, though it shares the Commission's analysis on the economic unity of IFP and its subsidiary Axens, UOP has furnished certain additional information in the event of the Commission's concluding at the end of the formal investigation procedure that IFP and Axens constitute two separate economic entities. According to UOP, the process market proposes products which are not comparable. Consequently, the only way to ensure that Axens pays the market price for IFP's results would be to have recourse to a tendering procedure. UOP thus considers that the right of first refusal constitutes in itself an advantage in that, by granting Axens a right of first refusal, IFP forgoes the opportunity of selling its results via a tendering procedure to the highest bidder.

## 6. COMMENTS FROM FRANCE ON THE COMMENTS FROM THIRD PARTIES

(94) France's comments concern UOP's comments and the complaint.

### 6.1. In response to UOP's comments

(95) First, France contests UOP's assertion as to the existence of a single entity in the form of IFP/Axens, pointing to Axens's autonomy from IFP and to the fact that IFP is a research, teaching and documentation institute — a feature which distinguishes it fundamentally from its subsidiary Axens and from UOP Limited.

([21]) Also known as 'proof of concept'.

(96) Concerning Axens's autonomy from IFP, France states first that, according to established Community case law, the ownership structure of the capital of a subsidiary is not, by itself, a sufficient criterion for determining whether that subsidiary may or may not be regarded as enjoying economic autonomy from its parent company. Despite being wholly owned by IFP, Axens is totally independent in the market. This independence is confirmed by several items of evidence:

(a) Axens has an autonomous decision-making process and a financial and human organisation of its own;

(b) Axens sets freely its commercial policy and its sales targets and gross margins;

(c) Axens acts in the refining and petrochemicals market in its own name and on its own behalf and has the power to contract without IFP's prior consent;

(d) Axens enjoys financial autonomy from IFP within the limits of the reserved powers specified in its articles of association and is not the sole distributor of IFP technologies.

(97) As regards IFP's nature as a non-profit-making research institute, France reiterates that IFP is a research institute whose primary purpose is to carry on research activities and disseminate the results thereof through education, publication or technology transfer, any profits being reinvested in their entirety in research or the dissemination of its results.

(98) Secondly, given that in accordance with the first subparagraph of point 2.4 of the 1996 R & D framework the resources transferred by the State to IFP do not constitute State aid, France contests UOP's assertion that those resources ([22]) constitute operating aid.

(99) Thirdly, according to UOP, almost all of the public subsidy paid to IFP is used to finance market-oriented work and hence the 1996 R & D framework does not apply. This claim is contested by France, which states that IFP fulfils above all a general interest mission focused on fundamental research and the exploitation of its results as well as on teaching and the dissemination of knowledge — activities which must not be confused with the strictly commercial objectives pursued by private operators such as UOP and Axens.

(100) Moreover, the research work which IFP carries out for Axens under the industrial research agreement consists of (a) technical feasibility studies and (b) industrial research. IFP does not do any pre-competitive research work on behalf of Axens, the fact being that the latter carries out and finances the work on its own. Inasmuch as the financial schedules included with France's comments of February 2006 attest that IFP complies fully with the provisions of Directive 80/723/EEC, France considers that the budgetary allowance is indeed used to fulfil its general interest mission and to finance R & D work within the meaning of the 1996 R & D framework.

(101) Fourthly, according to UOP, the right of first refusal confers an advantage on Axens, which allegedly does not pay the market price for such a right. France stresses the importance of assessing the economic impact of the remuneration paid by Axens to IFP as a whole. Besides dividends, the components of this overall remuneration (consisting in the remuneration for the right of first refusal and the royalties paid under the framework licensing and product licensing agreements) were determined in 2001 according to an economic logic. This logic is intended to ensure that Axens does not derive any economic advantage from its relationship with IFP and to guarantee a suitable, steady return from year to year for IFP, sufficiently independent of the combination resulting from Axens's sales at any given time so as to avoid any risk to IFP from excessive variations in resources.

(102) France maintains that it is only this overall remuneration, actually borne by Axens, viewed against its total turnover, that should be analysed in the light of market conditions. Having regard to these elements, the right of first refusal does not create any competitive advantage in favour of Axens or any distortion of competition.

(103) Fifthly, France also contests the assertion that the existence of alleged unlawful State aid in favour of the IFP/Axens entity has caused loss or damage to competitors and impaired the innovation dynamic. France points out that UOP Limited is the only competitor among the many in existence to have submitted comments to the Commission. France stresses, moreover, that no proof has been furnished of such alleged loss or damage.

([22]) According to UOP, this amount came to EUR 555 million over the last three years, while according to France it seems to correspond to the sums received by IFP by way of the budget allocation for the years 2003, 2004 and 2005 (being in reality exactly EUR 507 million).

(104) Lastly, France considers that the innovation dynamic is not impaired in the refining and petrochemicals market. In this connection, in the process licensing and catalyst market, market share analysis shows clear domination by the UOP group. If there is any market power, it lies in France's view with UOP and not with Axens. France adds that, if UOP's market power has weakened, this can be attributed to UOP's own strategic errors, inter alia, in the desulphurisation market, in which UOP has ceased to invest, thereby missing out on a strong revenue-generating activity.

6.2. **In response to the anonymous complaint**

(105) First, France reaffirms that the reorganisation of IFP's activities was indeed notified to the Commission. The 2001 letters, by which it informed the Commission of the internal reorganisation plan which led to IFP's commercial activities being split off into a subsidiary, did constitute notifications within the meaning of Article 88(3) of the Treaty.

(106) Secondly, France repeats the arguments advanced both in its own comments (see Section 4.3) and in response to the comments from UOP (see recitals 95 *et seq*.) which contradict the assertion that IFP and Axens form a single economic unit.

(107) Thirdly, France emphasises that the research carried out by IFP at the 'Refining-Petrochemicals' results centre benefits various industrial partners from several countries […] (**), and not just Axens as the complainant claims.

(108) Fourthly, contrary to the complainant's assertion that over half of Axens's income is generated by the sale of process licences and the provision of related services, France indicates that the share of Axens's turnover in 2003, 2004 and 2005 accounted for by process licensing came to 36 %, 38 % and 31 % respectively.

(109) Fifthly, France contests the complainant's assertion that Axens does not have any research facilities of its own. On the contrary, Axens has its own human and material resources with which to carry out its pre-competitive development work with a view to pre-market type approval, namely: dimensioning software, process simulation tools, catalyst and adsorbent evaluation apparatus, and pre-industrial-extrapolation catalyst development and unit step sequence simulation pilot plants. Axens's resources have, moreover, according to France, enabled it to finalise the development of products and processes proposed by third parties other than IFP.

(110) Sixthly, France reaffirms that, through its mission and its activities, IFP still possesses the characteristics of a non-profit-making institution performing fully a general-interest mission conferred by the State. This analysis is borne out by the functioning and organisation of IFP and its subsidiaries insofar as IFP has ensured that its commercial subsidiaries are completely autonomous and independent. France considers therefore that, in accordance with the first subparagraph of point 2.4 of the 1996 R & D framework, the financing of IFP, a non-profit institution, does not constitute State aid.

(111) Seventhly, France refutes specifically the point that IFP's research activity ought to be seen as the mere development of a technology process capable of being used directly by commercial enterprises for their industrial production. It provides on this point detailed information concerning the development cycles of processes and products.

(112) Eighthly, France refers to the comments transmitted following the initiation of the procedure concerning the complainant's assertion that the remuneration for the research work carried out by IFP on behalf of Axens is not in line with market conditions (see recital 60).

(113) Ninthly, France contests the assertion that the amount of aid allegedly received by Axens came to EUR 50 million for 2003, basing itself in this respect on the financial schedules provided.

(114) Lastly, France considers that, contrary to what the complainant asserts, Axens's competitors very generally benefit from (direct and indirect) State support for their R & D work. For example, the UOP group receives funding for its internal R & D programmes from the National Institute of Standards and Technologies (NIST). It outsources, moreover, part of its research through partnerships with research institutes and laboratories or with universities, which are themselves in receipt of public funding. UOP thus collaborates with the Pacific Northwest National Laboratory, the Argonne National Laboratory, the Synchrotron Catalysis Consortium of the University of Delaware, the College of Engineering of the University of Illinois at Urbana Champaign, and Sintef in Norway.

## 7. **ASSESSMENT**

### 7.1. **Existence of State aid**

#### 7.1.1. *Identification of potential beneficiaries*

(115) In its 1996 and 1998 decisions, the Commission found that the State aid granted for IFP's R & D activities did not fall within the scope of Article 87(1) of the Treaty insofar as IFP was a non-commercial, non-profit-making research organisation.

(116) However, in its decision to initiate the procedure the Commission, for the reasons set out in recital 37 of this Decision, partly called this analysis into question. It found, inter alia, that, through its subsidiaries Axens, Beicip-Franlab and Prosernat, IFP was engaged in economic activities in, respectively, the market for refining and petrochemicals technologies, the market for oilfield operation consultancy services and the contract development of oilfield software, and the market for gas treatment and sulphur recovery technologies (hereinafter called 'the relevant markets'). Consequently, it must be examined whether or not the public subsidy paid to IFP amounts to State aid in the relevant markets.

(117) In order to establish the existence of State aid, the Commission has identified potential beneficiaries. The Commission considers that, from a competition standpoint, IFP and its subsidiaries Axens, Beicip-Franlab and Prosernat cannot be deemed distinct economic operators. It bases this view primarily on the direct holding by IFP of 100 % of Axens's capital and 100 % of Beicip-Franlab's capital and on the indirect holding of 100 % of Prosernat's capital.

(118) Capital structure is commonly used by the Commission in its competition analyses as a measure of enterprises' independence. In this connection the Commission would reiterate that, by taking into account the capital structure criterion as specified in Article 3(3) of the Annex to the SME Recommendation, it is possible to eliminate from the SME category groups of enterprises whose economic power may exceed that of an SME. The SME Recommendation states that enterprises are 'linked' where one enterprise has a majority of the shareholders' or members' voting rights in another enterprise. This recommendation is also used in other Commission communications, including the Community guidelines on State aid for rescuing and restructuring firms in difficulty ([23]), to determine whether or not an enterprise is independent. Capital structure is also referred to in Article 5(4)(b) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ('the EC Merger Regulation') ([24]) and in Article 1(2) of Commission Regulation (EC) No 772/2004 of 27 April 2004 on the application of Article 81(3) of the Treaty to categories of technology transfer agreements ([25]).

(119) Besides the criterion of capital structure, the Commission takes into account several elements which, taken together, confirm the Commission's analysis that IFP and its subsidiaries are, in the eyes of customers and competitors in the relevant markets, indistinguishable. As the Court of Justice of the European Communities stated in its judgment in Intermills/Commission ([26]), 'in spite of the fact that the three manufacturing companies each has a legal personality separate from the former SA Intermills, all those undertakings together form a single group, at least as far as the aid granted by the Belgian authorities is concerned. The Commission was therefore justified in considering the entire group to be a single "undertaking" for the purposes of the application of Article 92 of the Treaty'.

(120) As regards the tasks and activities of IFP and its subsidiaries, the Commission notes that, whereas the principal object and the statutes of IFP differ from those of its subsidiaries, the exploitation in the market of IFP's R & D results numbers among the priorities laid down by the State in its contract of objectives with IFP and forms part of IFP's development strategy, the aim being to 'secure a financial return on its R & D expenditure, thereby enhancing its research effort' (obtenir un retour financier sur ses dépenses de R & D, qui vient amplifier son effort de recherce) while profiting from the opportunities afforded by the markets:

— in the 'Refining-Petrochemicals' field, the contract of objectives states that 'It is IFP's ambition, during the current decade, to widen its field of activity and increase its market share so as to become a key player at world level … [The aim is] to strengthen the new business hub formed by IFP's Industrial Division and Procatalyse [Axens], which is to benefit from the fillip provided by licence sales and to make the most of IFP's R & D potential in this field'. (L'ambition de l'IFP, au cours de la décennie en cours, est d'élargir son domaine d'intervention et d'accroître ses parts de marchés pour devenir, au plan mondial, un acteur incontournable. (…) [Il s'agit de] renforcer le nouveau pôle constitué par la Direction Industrielle de l'IFP et Procatalyse [Axens], destiné à bénéficier de l'effet d'entrainement associé aux ventes de licences et à valoriser au mieux le potentiel de R & D de l'IFP dans ce domaine),

([23]) OJ C 244, 1.10.2004, p. 2, footnote 22.
([24]) OJ L 24, 29.1.2004, p. 1.
([25]) OJ L 123, 27.4.2004, p. 11.
([26]) Judgment of the Court of Justice of 14 November 1984 in Case 323/82 (ECR 3809).

— in the 'Exploration-Production' field, 'the best use should be made, on a case-by-case basis, of "Group competencies", in particular those of direct subsidiaries, and every possible synergy should be harnessed from this arrangement in order to ensure the most effective possible coverage of markets' (il convient, au cas par cas, d'utiliser au mieux les 'compétences Groupe', notamment celles des filiales directes, et de tirer toutes les synergies possibles de ce dispositif, pour assurer la couverture la plus efficace possible des marchés) ([27]).

(121) On the question of effective control of the subsidiaries, the Commission has taken account, first, of the presence of IFP managers in the subsidiaries' decision-taking bodies and, secondly, of the decision-taking centres for strategic planning and key decisions:

— Axens: as at 10 November 2005, of the nine members of its management board, six also belonged to IFP's senior management, and five in particular sat on IFP's executive committee. The management board is alone empowered to adopt Axens's annual budget, investment plan and financing plan, and any expenditure in excess of EUR 762 000 has to be validated by it,

— Beicip-Franlab: as at 1 January 2003, three of the seven members of Beicip-Franlab's supervisory board belonged to IFP's senior management. Under Beicip-Franlab's articles of association, the supervisory board exercises ongoing supervision and control over the executive board,

— Prosernat: as at 1 January 2003, three of the five members of Prosernat's management board also belonged to IFP's executive committee. Prosernat's management board decides on strategic plans, the annual budget, the creation of new activities and joint venture agreements.

(122) The Commission notes that, as regulated agreements, the exclusive agreements are governed by specific rules according to which IFP's representative on the management board does not participate in voting on matters to do with the exclusive agreements. Notwithstanding this, even if the IFP representative does not take part in the vote, other members of the management board who are also senior IFP managers do take part.

(123) The Commission concedes that the exclusive agreements do not in themselves constitute evidence of an absence of autonomy on the part of the enterprises. It notes, however, that the agreements are essential to the subsidiaries' economic activities.

(124) The Commission also takes account of the fact that the possibilities for collaborative research with other enterprises in the subsidiaries' fields of activity are strictly defined in the exclusive agreements. Thus, IFP can embark on a research project in the fields of activity of the subsidiaries concerned only insofar as the latter do not wish to carry out the project after exercising their right of first refusal ([28]). Similarly, IFP has a right of first refusal over all the research work the subsidiaries concerned may wish to carry out. It is only after IFP has exercised its right of first refusal that the subsidiaries concerned may propose the research project to other enterprises ([29]). The Commission considers these restrictions to be evidence of strong economic integration between IFP and the subsidiaries concerned.

(125) The Commission has taken account, moreover, of the existence of assignment contracts for, among other things, the provision of premises and staff:

— for Axens: premises, corporate catering, staff, administrative services,

— for Beicip-Franlab: liquidity, staff,

— for Prosernat: legal and financial services.

(126) On the question of how IFP and its subsidiaries are perceived in the relevant markets, the Commission considers that several elements point to IFP and the subsidiaries concerned having a common presence and a common image in the eyes of their customers and competitors. Besides the words 'IFP Group Technologies' on Axens's and Prosernat's logos, there are direct links between the Internet sites of the subsidiaries concerned and the Internet site of IFP. Axens and Prosernat refer on

([27]) Contract of objectives 2001-05, p. 3.

([28]) […] (**).

([29]) […] (**).

their Internet sites to IFP's R & D efforts in their fields of activity ([30]). Beicip-Franlab's Bahrain office calls itself 'IFP Middle East Consulting'. And IFP and Axens participate jointly in various conferences ([31]). The Commission has also noted several references to a single entity, IFP/Axens, in advertisements and publications ([32]) and on the Internet sites of players in the industry ([33]).

(127) Lastly, the Commission notes an overlap between the fields of activity of IFP and those of its subsidiaries Axens, Beicip-Franlab and Prosernat, which heightens the necessity of regarding the IFP group as a single enterprise.

(128) In conclusion, the objective of exploiting R & D results is at the heart of IFP's development strategy as set out in its contract of objectives with the State. The holding of the subsidiaries' capital and the presence of senior IFP managers in the subsidiaries' organs attest to a *de jure* and de facto control by IFP of the subsidiaries concerned. The exclusive agreements between IFP and the subsidiaries concerned in key areas of their activities bear witness to the economic integration of the entities involved. The common image and presence of IFP and its subsidiaries in the relevant markets are further proof of this. Consequently, the Commission considers that, in the light of its decision-making practice and the case law of the Court of Justice, the subsidiaries concerned are indistinguishable, as economic operators in the relevant markets, from their parent company IFP.

(129) In the light of the above, the Commission considers that the beneficiaries of any State aid are the entities IFP, Axens, Beicip-Franlab and Prosernat in respect of their activities in the market for refining and petrochemicals technologies, in the market for consultancy services in relation to oilfield operation and the contract development of oilfield software, and in the market for gas treatment and sulphur recovery technologies.

7.1.2. *Determination of the selective advantage financed by State resources*

(130) Insofar as it has been shown that IFP carries on economic activities through its subsidiaries Axens, Beicip-Franlab and Prosernat, the support provided by the State for IFP in the three subsidiaries' fields of activity is liable to be caught by Article 87(1) of the Treaty.

(131) The question the Commission must answer before concluding that a competitive advantage exists is that of whether the public financing of IFP also benefits IFP's economic activities in the relevant markets. In this connection the Commission sets out its interpretation of the concept of aid where the same entity carries on both economic and non-economic activities in the new Community framework for State aid for research and development and innovation ([34]) of 2006, which reflects the Commission's position on the subject: 'If the same entity carries out activities of both economic and non-economic nature, in order to avoid cross-subsidisation of the economic activity, the public funding of the non-economic activities will not fall under Article 87(1) of the EC Treaty, if the two kinds of activities and their costs and funding can be clearly separated. Evidence that the costs have been allocated correctly can consist of annual financial statements of the universities and research organisations' ([35]).

(132) In other words, the Commission must determine whether there is any cross-subsidisation of IFP's economic activities through the financing by the State of its non-economic activities. To this end, the Commission has examined IFP's accounts in order to identify the amount of any State subsidy earmarked for commercial activities. IFP and the subsidiaries concerned are distinct legal entities and their accounts are separate. The Commission considers that, if there is any subsidisation of economic activities, it results from the level of the remunerations paid by the subsidiaries concerned to the parent company and is reflected in IFP's accounts.

(133) First, the Commission notes that IFP's budget is organised, by type of activity, around seven results centres, which allows effective accounting separation of the activities of R & D, training, knowledge dissemination and management of IFP's portfolio.

([30]) Extract from Axens's Internet site: 'Axens is a refining, petrochemical and natural gas market focused company offering market-leading products including processes, catalysts, adsorbents and equipment, backed by nearly fifty years of R & D and industrial success'. Extract from Prosernat's Internet site: 'The association of all the scientific skills and development know-how of Prosernat's mother company IFP, with Prosernat's industrial experience brings a unique opportunity to turn innovative ideas into an industrial reality'.

([31]) See, for example, single IFP/Axens representative at the 10th Congress of the Société Française de Génie des Procédés (http://inpact.inp-toulouse.fr/SFGP/pageaccueil.html).

([32]) See, for example, 'Liquefin, developed and commercialised by IFP-Axens', in 'New liquefaction process promises lower costs', Oil & Gas Journal, 19.8.2002, 'IFP is the world's second largest process licensor in refining and petrochemicals (via its subsidiary Axens) and is an internationally recognised center of excellence in exploration and production'. www.tmcnet.com, 15.12.2005.

([33]) See, for example, on the site www.topsoe.com, references to units licensed by 'IFP/Axens'; reference to 'IFP (Axens)' on the site of Nexant, a consultancy firm in the energy sector (http://nexant.ecnext.com/coms2/summary_0255-3019_ITM); see also the presentation of the GTL Eni-IFP/Axens project at http://gcceu-conference.epu.ntua.gr

([34]) OJ C 323, 30.12.2006, p. 1.

([35]) Point 3.1.1, first subparagraph.

(134) In this context, the Commission considers that the accounts which are relevant to its examination are those of the 'Refining-Petrochemicals' results centre for activities in the field of refining and petrochemicals technologies and for activities in the field of sulphur recovery technologies, and those of the 'Exploration-Production' results centre for activities in the field of oilfield operation consultancy services and the contract development of oilfield software and for activities in the field of the market for gas treatment technologies. The Commission considers that the public financing of projects carried out under the heading of 'Exploratory Research' does not fall within the scope of its examination insofar as such projects consist of fundamental research within the meaning of Annex I to the 1996 R & D framework, are high risk and are not aimed at a specific industry.

(135) Secondly, the Commission considers that the system of analytical accounts implemented within IFP effectively allows an allocation of (non-State-budgetary-allowance) income and expenditure within each results centre. It notes in this connection that IFP's analytical accounting is based on the concept of project. Projects are grouped by results centre. Within each results centre, projects are listed by segment or type. The allocation of income and expenditure in each results centre is done project by project. The Commission notes, moreover, that IFP's budget and annual accounts are subject to independent external scrutiny by two auditors.

(136) Thirdly, the Commission notes that the results centres have their own revenues inasmuch as the State budgetary allowance is not analytically allocated to them. This may result in an accounting deficit between the income and expenditure allocated to them. The centres' own revenues comprise remunerations for services rendered, licence fees and dividends paid by subsidiaries.

(137) Fourthly, the Commission observes that all the costs incurred by IFP on a given project are entered in the accounts, including not only expenses directly chargeable to the project (project-specific purchases of supplies and small movable equipment, contracted-out services, travel, documentation, maintenance and leasing) but also indirect expenses (staff wages and social security contributions, the amortisation of fixed tangible and intangible assets, overheads). Indirect expenses are charged to the project in proportion to the number of man hours on the basis of an hourly rate calculated according to the staff category concerned (engineers, technicians, etc.). The Commission considers that this charging method is objective and relevant from an accounting point of view in the light of the activities concerned.

(138) Fifthly, the Commission notes that the cost of horizontal projects carried out within the results centres on the segments 'trade equipment' and 'support activities' is also passed on at the level of each project either directly or in proportion to the total expenses of the segment to which it belongs (competency acquisition or industrial research).

(139) Lastly, the Commission takes note of the fact that the incidental assignments mentioned in recital 125 form the subject matter of agreements between IFP and the subsidiaries concerned. These services are invoiced by IFP on a full-cost basis and charged to the results centres concerned.

(140) The Commission is therefore able to conclude that the expenses of the 'Refining-Petrochemicals' and 'Exploration-Production' results centres effectively reflect the totality of the costs of IFP's activities in the relevant markets.

(141) Nevertheless, the Commission takes note of the fact that there is no exact correspondence between the 'Refining-Petrochemicals' and 'Exploration-Production' results centres, on the one hand, and the fields of activity of the subsidiaries concerned, on the other. In other words, to use the terminology employed in the research agreements, the results centres group together activities not only in the subsidiaries' exclusive fields but also in non-exclusive fields.

(142) The 'Refining-Petrochemicals' results centre encompasses IFP's R & D activities in the field of sulphur recovery technologies, the results of which are exploited by the subsidiary Prosernat, in the field of the technologies of refining, petrochemicals, GTL (gas to liquid) and vegetable oil esters for the production of diesel fuels, the results of which are exploited by the subsidiary Axens, and in the field of CTL (coal to liquid), biomass (excluding vegetable oil esters for the production of diesel fuels) and hydrogen production, the results of which are exploited in collaboration with other industrial partners.

(143) The 'Exploration-Production' results centre covers IFP's R & D work in the field of oilfield operation consultancy services and the contract development of oilfield software, the results of which are exploited by the subsidiary Beicip-Franlab, in the field of gas treatment technologies, the results of which are exploited by the subsidiary Prosernat, and in the field of $CO_2$ recovery and hydrogen transport, the results of which are exploited in collaboration with other industrial partners.

(144) The Commission takes into consideration the fact that several projects carried out within the 'Refining-Petrochemicals' and 'Exploration-Production' results centres on the 'competency acquisition' segment count as fundamental research within the meaning of Annex I to the 1996 R & D framework and have their results widely disseminated among Community enterprises without discrimination. These projects have as their objective the emergence of new ideas through well-upstream creative research and the development of competencies. France has submitted to the Commission a list of projects carried out on these segments together with project descriptions. The Commission takes note, moreover, of the fact that IFP disseminates the results of this work using a number of tools, such as its own scientific journal *Oil & Gas Science and Technology*, which is freely accessible online, the organisation of and participation in conferences, the publication of works, partnerships with other research centres and doctoral sponsorships.

(145) Bearing in mind the elements set out in recitals 133 to 139, the Commission considers that IFP's system of analytical accounts makes it possible to trace all costs incurred by and remuneration received from its economic activities. The Commission would observe, however, that, in the light of the current organisation of IFP's accounts, the distinction between economic and non-economic activities necessitates a close analysis of the results centres' accounts, project by project. It considers, therefore, that, for the future, IFP must organise and publish its accounts in such a way as to distinguish more clearly, in accordance with the principles laid down by Directive 2006/111/EC, between its economic and its non-economic activities, for example by grouping its economic activities within one and the same results centre.

(146) Following its examination of the accounts of IFP's results centres, the Commission is able to establish the amount of IFP's R & D project costs and of IFP's own resources in the exclusive fields of activity of the subsidiaries Axens and Prosernat, namely the technologies of refining, petrochemicals, GTL and vegetable oil esters for the production of diesel fuels, and the technologies of gas treatment and sulphur recovery:

*Table 1*

*(EUR)*

| | 2003 | 2004 | 2005 | 2006 |
|---|---|---|---|---|
| Expenditure | […] (**) | […] (**) | […] (**) | […] (**) |
| Own resources | […] (**) | […] (**) | […] (**) | […] (**) |
| Accounting deficit | […] (**) | […] (**) | […] (**) | […] (**) |

(147) Inasmuch as these data point to an accounting deficit, IFP's commercial activities in the areas of the technologies of refining, petrochemicals, GTL and vegetable oil esters for the production of diesel fuels and of the technologies of gas treatment and sulphur recovery are not fully financed out of own resources and hence benefit from IFP's State funding. This constitutes a selective advantage financed by State resources.

(148) The combined deficit for the period 2003-06 amounts therefore, for the two relevant markets, to [less than EUR 50 million] (**). This amount is, however, well below the amount cited by UOP.

(149) IFP's activities in the field of oilfield operation consultancy services and the contract development of oilfield software deserve special mention. The Commission notes that the development agreement between IFP and its subsidiary Beicip-Franlab, as modified by the amendment signed on 16 December 2005 and applicable from 1 January 2005, provides that Beicip-Franlab is to reimburse IFP for all the costs, plus legal interest, of work carried out by the latter in Beicip-Franlab's field of activity, including research into algorithms, models and methodologies. The Commission has checked the remunerations paid by Beicip-Franlab to IFP in 2003 and 2004 and found that they broadly cover the cost of work done by IFP in its subsidiary's exclusive domain.

(150) The Commission is therefore able to conclude that the work of IFP and Beicip-Franlab is financed entirely out of income earned in the market for oilfield operation consultancy services and the contract development of oilfield software. In this market, IFP and Beicip-Franlab therefore do not enjoy a competitive advantage.

7.1.3. *Conclusion on the existence of aid*

(151) In conclusion, certain of IFP's activities fall outside the scope of its non-economic activities insofar as they give rise to commercial exploitation by its subsidiaries. The Commission has come to the conclusion that the subsidiaries concerned cannot be considered autonomous from their parent company insofar as their activities form part of IFP's development strategy, IFP exercises not only de jure but also de facto control, exclusive agreements bear witness to strong economic integration, and IFP and the subsidiaries concerned have a common image in the eyes of operators in the relevant sectors.

(152) Moreover, IFP benefits, for its commercial activities with the exception of the field of activity of its subsidiary Beicip-Franlab, from partial public financing, which constitutes a selective advantage insofar as it is granted to only one enterprise. This financing is, furthermore, imputable to the State.

(153) The Commission considers that, in the fields of activity of Axens and Prosernat, the other criteria for the existence of aid are also fulfilled.

(154) The Commission considers further that any contribution to activities in the fields of activity of Axens and Prosernat strengthens the competitive position of IFP and its subsidiaries and potentially involves a distortion of competition.

(155) Regarding the field of activity of IFP and Axens, the Commission takes note of the information communicated by France and reproduced by Axens in its comments, intended to show the high amount, compared, inter alia, with other enterprises in the sector, of the additional research costs financed by the subsidiary Axens out of its own resources. Nevertheless, the Commission considers that an absence of advantage cannot be deduced from this high amount insofar as the analysis of IFP's accounts clearly shows an accounting deficit between costs and resources in Axens's field of activity.

(156) Regarding the field of activity of IFP and Prosernat, the Commission takes note of France's comments to the effect that collaboration in most projects carried on in the field of oilfield research and exploration is open without discrimination to numerous industrial partners. Nevertheless, some projects fall under the exclusive agreements between IFP and Prosernat, and hence any collaboration with other industrial partners is strictly regulated and limited. The consequence for Prosernat is a selective advantage financed by State resources.

(157) Furthermore, this distortion of competition is liable to have an impact on intra-Community trade insofar as the fields of activity of the subsidiaries concerned constitute competitive markets at world level. The market for refining and petrochemicals technologies is a worldwide market open to competition since the 1950s. The main competitors of IFP and Axens in this market are UOP, Chevron, Lummus, Shell, ExxonMobil, Haldor Topsoe and ConocoPhillips. In the market for gas treatment and sulphur recovery technologies, IFP and Prosernat compete with such gas treatment equipment suppliers as KCC, KPS, SIIRTEC-NIGI, Hanover Maloney, Frames, TDE and GPS, with such gas sweetening technology licensees as UOP, ExxonMobil, Shell Global Solutions, BASF, Eneos and Huntsman, and with such sulphur specialists as Jacobs, Black & Veath Pritchard, Lurgi, Parsons, Technip-KTI, SIIRTEC-NIGI, CBI and TPA.

(158) Consequently, the Commission refutes the argument advanced by France to the effect that not all the elements necessary for classifying the State support for the activities of IFP and its subsidiaries Axens and Prosernat as State aid within the meaning of Article 87(1) of the Treaty are present.

(159) Lastly, the Commission would point out that the question of the existence of additional State aid within the meaning of Article 87(1) of the Treaty, resulting from the new EPIC status and a potential unlimited State guarantee for IFP stemming from that status ([36]), is the subject of a separate investigation in another proceeding (NN 11/08). This separate investigation is made possible, inter alia, by the relatively recent nature of the new EPIC status compared with the set of measures examined by the present Decision.

([36]) See the initiation Decision of 29.11.2007, Unlimited State guarantee for La Poste (C 56/2007).

### 7.2. **Lawfulness of the aid**

(160) The Commission has shown that IFP and its subsidiaries Axens and Prosernat enjoy a selective advantage financed by State resources. This advantage stems from the non-coverage by their own resources of R & D activities in the fields of activity of Axens and Prosernat. The non-coverage of IFP's expenditure in the fields of activity of Axens and Prosernat is the result of intra-group transfer mechanisms as established by the exclusive agreements between IFP and Axens, on the one hand, and IFP and Prosernat, on the other. The Commission considers, therefore, that the existence of the aid has come about as a result of the concomitance of the existence of commercial subsidiaries and the signature of exclusive agreements between those subsidiaries and the parent company, insofar as those agreements do not guarantee total coverage of the costs of work carried out by IFP on behalf of Axens and Prosernat. As a reminder, the agreements between IFP and Axens took effect on 1 January 2001 and those between IFP and Prosernat on 1 January 2002.

(161) The Commission takes note of the comments submitted by France and summarised in Section 4.1. It understands that France is of the opinion that it notified the main thrust of the structural and contractual changes to the Commission in 2001. Nevertheless, in the Commission's opinion the growth in IFP's commercial activity since 2001 through its subsidiaries is such that it significantly affects any previous economic and legal analysis. Hence it is adhering to its assessment, as set out in point 3.2 of the decision to initiate the procedure, as regards the unlawfulness of the aid, according to which the aid at issue must be considered unlawful as from the date of expiry of the validity of its 1998 decision, i.e. as from 1 January 2003.

(162) The Commission takes note of the comments from France and Axens concerning the situation of legitimate expectation on the part of the beneficiaries. Nevertheless, in the light of the elements that follow and insofar as the Commission concludes that the aid granted to IFP and its subsidiaries is compatible with the common market, it is not necessary for the Commission to rule on the matter.

### 7.3. **Request for a suspensive order**

(163) The Commission has not acceded to a request from UOP that it take a decision ordering France to suspend payment of any unlawful aid. First of all, the State support granted to IFP constitutes the main source of financing for activities other than the economic activities of IFP and its subsidiaries Axens and Prosernat, such as training, fundamental research, collaborative R & D and the dissemination of R & D findings, which the Commission considers in principle to be non-economic and which account for more than 90 % of the State support granted to IFP. Secondly, the Commission took the view that such a decision was irrelevant insofar as it was reasonable to anticipate the compatibility of at least part of the aid.

### 7.4. **Basis for examining the compatibility of the aid**

(164) Before examining the research stages provided for in the 1996 R & D framework, the Commission must determine whether IFP's State-aided activities do in fact come under the heading of research and development. In this connection, the Commission would refer to the Frascati Manual ([37]), which gives definitions of R & D and classifications of its constituent activities.

(165) The Frascati Manual provides criteria for distinguishing R & D from related scientific, technological and industrial activities. The basic criterion proposed by the Manual is the existence, in the case of R & D, of an appreciable element of novelty and the resolution of scientific and/or technological uncertainty.

(166) There are a number of supplementary criteria in the form of the objectives of projects, the unknown nature of the phenomena, structures or relationships on which projects are based, the novel application of knowledge or techniques already acquired, the likelihood that projects will result in new (extended or deeper) understanding of phenomena, relationships or manipulative principles likely to be of interest to more than one organisation, the patentability of results, the type of staff working on projects, the methods used, the general nature of the findings or results of a project and, where applicable, the more natural classification of the project in other fields of activity.

(167) Lastly, the Frascati Manual states that 'If the primary objective is to make further technical improvements on the product or process, then the work comes within the definition of R & D. If, on the other hand, the product, process or approach is substantially set and the primary objective is to develop markets, to do pre-production planning or to get a production or control system working smoothly, the work is no longer R & D'.

([37]) Published in 2002 by the Organisation for Economic Cooperation and Development.

(168) The Commission notes that the activities carried on by IFP in collaboration with its subsidiary Axens concern the development of new processes and new products (catalysts and adsorbents) for the lowest-cost and eco-friendly production of fuels and petrochemical intermediates from all accessible carbon sources. It notes that the activities carried on by IFP in collaboration with its subsidiary Prosernat concern the development of new processes and equipment for natural gas treatment and sulphur recovery.

(169) In this context, the novelty of projects lies in the component parts, their relationships and/or the characteristics of the target processes or products. On each project, sticking points are identified. By way of illustration, IFP has carried out a project aimed at developing a new process for producing high-octane paraffin bases from heavier charges than those currently treated, making it possible to tackle the problem of reducing the aromatics content of the petrol pool.

(170) The Commission takes into account, moreover, the fact that the State-supported work takes place prior to type approval of the processes and products. It notes that the results of the projects carried out are wide in scope and patented, that the staff employed on the projects consists mainly of research workers and technicians and that the methods are based on experimentation, interpretation and modelling. Lastly, the Commission observes that activities of the same type carried on by other operators in the sector are usually classified as research activities ([38]).

(171) In conclusion, the Commission cannot accept the complainant's argument that the activities to which the present proceeding relates cannot be classed as R & D. The Commission considers, on the contrary, that the activities carried on by IFP in collaboration with its subsidiaries do fall under the heading of R & D.

(172) Inasmuch as what is at issue is State aid for R & D work, the rules applicable for the purposes of examining its compatibility are the rules on State aid for research and development. To the extent that the aid, which stems from the existence of commercial subsidiaries with which IFP concluded exclusive agreements between 1 January 2001 and 1 January 2003, is considered unlawful as from 1 January 2003, the rules applicable for the purposes of examining its compatibility are those of the 1996 R & D framework.

([38]) See in this connection Sintef's website: http://www.sintef.no/default.aspx?id = 490

### 7.5. **Compatibility of the aid**

#### 7.5.1. *Research stages*

(173) Annex I to the 1996 R & D framework provides a definition of industrial research and pre-competitive development activity:

(a) industrial research consists of planned research or critical investigation 'aimed at the acquisition of new knowledge, the objective being that such knowledge may be useful in developing new products, processes or services or in bringing about a significant improvement in existing products, processes or services';

(b) pre-competitive development activity is aimed at 'the shaping of the results of industrial research into a plan, arrangement or design for new, altered or improved products, processes or services, whether they are intended to be sold or used, including the creation of an initial prototype which could not be used commercially. This may also include the conceptual formulation and design of other products, processes or services and initial demonstration projects or pilot projects, provided that such projects cannot be converted or used for industrial applications or commercial exploitation. It does not include the routine or periodic changes made to products, production lines, manufacturing processes, existing services and other operations in progress, even if such changes may represent improvements'.

(174) In this context, the Commission has examined the work cycle and allocation resulting from the industrial research agreement between IFP and its subsidiary Axens and the complete lists of and explanatory notes to projects carried out between 2003 and 2006 supplied by France:

(175) IFP conducts research work. The work seeks to examine the feasibility of a synthesis route and corresponds to feasibility studies preparatory to industrial research work within the meaning of the 1996 R & D framework:

(a) for a catalyst, samples based on small quantities (of the order of a gram), often in powder form, are prepared and tested with a view to studying the chemical reactions. This stage leads to the description of a procedure for preparing a catalyst sample presenting a desired activity or selectivity;

(b) for a technology or a process, feasibility is established from digital simulations, paper studies of models and experimentation with concepts.

(176) Next, a preliminary examination is made of the patent situation in order to ascertain the innovativeness of the research. At the end of this examination, IFP presents a scientific and technical dossier to its subsidiary, which exercises its right of first refusal.

(177) When Axens wishes to carry on the research on the basis of the dossier, IFP performs industrial research work 'aimed at acquiring the new knowledge or bringing about the improvements needed to develop new processes, products and technologies or improve those which already exist' (visant à acquérir les connaissances nouvelles ou les perfectionnements, permettant la mise au point de nouveaux procédés, produits et technologies ou le perfectionnement de ceux qui existent déjà) ([39]). The work consists in studying new synthesis routes or their improvement, on a scale unrelated to the industrial scale. The Commission considers that it is aimed at validating concepts and that it comes under the heading of industrial research within the meaning of the 1996 R & D framework:

(a) for a catalyst, this stage covers experimentation into new synthesis routes. The formulation defined during the research work is tested on samples of the order of a kilogram, the change of scale generating most of the time differences in structure and properties. A summary and detailed analyses are produced of the effluent from the catalyst thus obtained and the effects of inhibitors and poisons are studied;

(b) for a process, the industrial research work seeks to study the basic elements of the technologies, the appropriate conditions for implementing the catalyst and the dimensioning elements of the reaction system. A digital model is constructed by mapping the performance generated.

(178) Once the industrial research work is completed, a catalyst or process dossier is delivered by IFP to its subsidiary. At this stage, Axens may decide to proceed with development by conducting pre-competitive development work in order to prepare for industrialisation. The work during this stage covers testing and consolidation of the results of the work done during the stage described in recital 177 on prototypes representing the industrial chain:

(a) for a catalyst, a product test batch is produced at a scale representative of the industrial chain by adapting the operating procedures resulting from the industrial research work. This adaptation may give rise to raw material changes for cost, hygiene, safety or environmental reasons. The prototypes are tested on a reference charge and modified to achieve the desired performance. Tests are carried out to supplement the mapping of the catalyst's performance. Only at this stage is the choice of analysers and equipment decided on;

(b) for a process, a risk analysis study is conducted; industrial models of processes or combinations of processes are produced and a process white paper detailing the management of events is drawn up.

(179) A committee of experts is appointed to decide on and validate the product or process type approval stages. It is not until after type approval, which makes it possible to verify whether environmental and safety constraints have been effectively taken into account, that the decision is taken to market or industrially launch ([40]) the process and/or product. The products and processes resulting from the research work are thus not marketed until after they have been type approved nor are they industrially launched before that stage.

(180) The Commission considers that this work cannot be equated with routine operations on the industrial chain inasmuch as it lies outside the scope of industrial exploitation. It concludes that it comes under the heading of pre-competitive development activity within the meaning of the 1996 R & D framework. It notes that, in any case, the cost of the work is borne fully by the subsidiary Axens out of its own resources.

(181) Regarding the work carried out by IFP in collaboration with its subsidiary Prosernat, the Commission observes that the work cycle and allocation between IFP and its subsidiary Prosernat are governed by an industrial research agreement which, applied to gas treatment and sulphur recovery technologies, follows the same pattern as the industrial research agreement between IFP and its subsidiary Axens. This analysis is confirmed by an examination of the complete lists of and explanatory notes to projects carried out between 2003 and 2006 supplied by France.

([39]) Article 1-22 of the industrial research agreement.

([40]) The industrial launch is marked by the first commercial unit built under a third party process sub-licence or the first commercial charge of product used.

(182) In conclusion, the Commission considers that the activities financed by State resources do indeed correspond to the research stages defined in Annex I to the 1996 R & D framework. It notes that, in any case, the activities closest to the market, namely the activities of pre-competitive development and commercial development, are financed entirely by the subsidiaries out of their own resources, from income earned in the markets, and that the public financing concerns only the industrial research stages. The Commission cannot therefore accept UOP's argument that the State aid for the economic activities of IFP and its subsidiaries Axens and Prosernat constitutes operating aid.

7.5.2. *Eligible costs*

(183) Annex II to the 1996 R & D framework specifies the costs which may be taken into account in calculating the intensity of aid for research and development:

— personnel costs (researchers, technicians and other supporting staff employed solely on the research activity),

— costs of instruments, equipment, and land and premises used solely and on a continual basis (except where transferred commercially) for the research activity,

— cost of consultancy and equivalent services used exclusively for the research activity, including the research, technical knowledge and patents, etc. bought from outside sources,

— additional overheads incurred directly as a result of the research activity,

— other operating expenses (e.g. costs of materials, supplies and similar products) incurred directly as a result of the research activity.

(184) Annex II to the 1996 R & D framework states, moreover, that, where they are generated by other activities as well — in particular other R & D activities — costs must be broken down between the subsidised R & D activity and other activities.

(185) The Commission notes, first, that the costs directly chargeable to projects relate to sub-contracting, travel, insurance and documentation, and supplies and small equipment. They correspond respectively to the cost of consultancy and equivalent services, additional overheads and other operating expenses. The Commission observes that these costs are incurred directly and exclusively as a result of the research activities.

(186) The Commission notes, secondly, that the other costs chargeable to projects relate to expenditure on research personnel, the amortisation of fixed tangible and intangible assets and other overheads and correspond respectively to personnel costs, the costs of instruments, equipment, and land and premises, and additional overheads. These costs are incurred directly as a result of the research activities and are broken down between the different research projects in proportion to the time spent by the research personnel on each project.

(187) The costs of horizontal R & D projects relating to the methods and equipment used in other R & D projects may be equated with additional overheads incurred directly as a result of the research activities. The costs of these horizontal projects are allocated in proportion to the costs of each R & D project. The Commission considers that the allocation methods used are appropriate.

(188) The Commission concludes that the project costs are in conformity with the eligible costs set out in Annex II to the 1996 R & D framework.

7.5.3. *Intensity of the aid*

(189) Pursuant to point 5.4 of the 1996 R & D framework, the maximum permissible aid intensity for technical feasibility studies preparatory to industrial research projects is 75 %. Pursuant to point 5.3 of the framework, the maximum permissible aid intensity for industrial research projects is 50 %. Pursuant to point 5.5 of the framework, the maximum permissible aid intensity for pre-competitive development projects is 25 %. Pursuant to point 5.9 of the framework, in cases of activity spanning industrial research and pre-competitive development activities, the maximum permissible aid intensity must not exceed the weighted average of the permissible aid intensities applicable to the two types of research.

(190) The Commission notes, first, that IFP financed out of its own resources, thanks to the remunerations paid by its subsidiaries and without any financial intervention by the State, more than 50 % of the costs of its technical feasibility studies and industrial research work between 2003 and 2006. The Commission notes that the permissible aid intensity may be higher than 50 % if it takes into account the part of the technical feasibility studies that qualifies for aid of an intensity of 75 %. The Commission has drawn up the following table on the basis of the project lists detailing the annual costs by project and by research stage and on the basis of the statement of IFP's resources. In performing this exercise, the Commission has followed a conservative approach by including all costs falling under, directly or indirectly ([41]), exclusive fields of activity of Axens and Prosernat and excluding all proceeds other than those paid by Axens and Prosernat ([42]).

*Table 2*

| | 2003 | 2004 | 2005 | 2006 |
|---|---|---|---|---|
| Annual number of projects carried out ([1]) | | | | |
| Area of activity IFP/Axens | […] (**) | […] (**) | […] (**) | […] (**) |
| Area of activity IFP/ Prosernat | […] (**) | […] (**) | […] (**) | […] (**) |
| Total | 48 | 54 | 55 | 68 |
| Annual cost of technical feasibility studies (EUR) | | | | |
| Area of activity IFP/Axens | […] (**) | […] (**) | […] (**) | […] (**) |
| Area of activity IFP/ Prosernat | […] (**) | […] (**) | […] (**) | […] (**) |
| Total | 5 759 184 | 4 032 859 | 4 392 411 | 7 393 767 |
| Annual cost of industrial research work (EUR) | | | | |
| Area of activity IFP/Axens | […] (**) | […] (**) | […] (**) | […] (**) |
| Area of activity IFP/ Prosernat | […] (**) | […] (**) | […] (**) | […] (**) |
| Total | 40 180 231 | 48 536 142 | 38 183 597 | 49 007 913 |
| Own resources (EUR) | | | | |
| Amount | […] (**) | […] (**) | […] (**) | […] (**) |
| Annual State aid (EUR) | | | | |
| Amount | 18 958 910 | 19 243 217 | 8 952 630 | 11 280 522 |
| Intensity | 41 % | 37 % | 21 % | 20 % |
| Maximum permissible intensity ([2]) | 53 % | 52 % | 53 % | 53 % |

([1]) Some projects are multiannual. In the interests of exhaustiveness, 'number of projects' means the number of projects under way in any one year. Amounts are shown non-cumulatively for a given year.
([2]) Weighted average of the permissible aid intensities for industrial research and feasibility studies, in accordance with point 5.9 of the 1996 R & D framework.

([41]) Including the costs of horizontal projects, see recital 138.
([42]) Own resources consist of dividends, royalties and other proceeds such as the income from patents filed by IFP. The Commission has taken into account in its examination only remuneration paid by Axens and Prosernat.

(191) The Commission notes, secondly, that the share of the financing from own resources of the research activities of IFP and its subsidiaries may be higher if allowance is made for the pre-competitive development activities which potentially qualify for aid of an intensity of 25 %. This is because the pre-competitive development activities are financed fully by the subsidiaries Axens and Prosernat out of their own resources without any financial intervention either by the State or by IFP.

(192) Thirdly, the Commission has checked on compliance with the permissible intensities by research stage on the basis of the annual lists of projects carried out between 2003 and 2006. For subsequent years, France will have to submit an annual report to the Commission so that the latter may satisfy itself that the aid intensities by research stage and by project are complied with. The report will have to cover all projects carried out in the fields of activity of Axens and Prosernat, giving their costs by research stage and the amounts of public financing and of own resources allocated by IFP and its subsidiaries. The Commission considers that the aid rate must remain below 50 % in order to ensure compliance with the permissible intensities.

(193) Lastly, the Commission observes that compliance with the intensities depends to a large extent on the amount of own resources available to IFP for its projects in the fields concerned. These own resources consist mainly in the remunerations paid by the subsidiaries Axens and Prosernat to IFP. The Commission considers, therefore, that a clause must be inserted in the exclusive agreements governing such remuneration so as to ensure that a minimum variable remuneration, covering at least 25 % of the costs of feasibility studies preparatory to industrial research activities, 50 % of the costs of industrial research and, where appropriate, 75 % of the costs of pre-competitive development activities, carried out by IFP in the subsidiaries' fields of activity, is paid to the parent company ([43]).

(194) In conclusion, the Commission considers that the aid intensities permitted by the 1996 R & D framework are complied with provided the conditions laid down in recitals 192 and 193 are satisfied.

7.5.4. *Cumulation*

(195) The provisions of the 1996 R & D framework on cumulation (set out in point 5.12 of the framework) are complied with. The Commission has calculated the total amount of public financing irrespective of its origin.

([43]) These percentages correspond respectively to aid intensities of 75 % of the costs of feasibility studies preparatory to industrial research activities, 50 % of the costs of industrial research and 25 % of the costs of pre-competitive development activities.

7.5.5. *Incentive effect*

(196) First, the Commission takes note of the fact that the research activities of IFP and its subsidiaries are guided by a logic, initiated by the State, of ensuring the long-term security of energy supplies. Hydrocarbons are of strategic importance to the present-day economies of the Member States, owing in particular to their preponderance in transport and chemicals. The activities of IFP and its subsidiaries are to be seen against the threefold background of increasing energy demand primarily driven by increased mobility and trade, the steady exhaustion of oil and gas reserves, and mastery of greenhouse gas emissions. The Commission notes that the research conducted by IFP and its subsidiaries focuses in particular on the following priority areas:

(a) renewing reserves and increasing production of oil and gas. The aim is not only to increase exploration success and deposit recovery rates but also to allow the exploitation of unconventional resources (ultra-deep offshore, extra-heavy crudes, asphalt sands, etc.). By way of illustration, one of the major actions in this area is the development of a process for gases with a high $H_2S$ and $CO_2$ content;

(b) designing clean, high-efficiency refining processes. The aim here is to optimise the production of fuels and petrochemical bases while reducing the impact of the refining and petrochemicals industries on the environment. Moreover, the exploitation of unconventional deposits necessitates the development of conversion technologies. This priority area includes hydrocracking research;

(c) developing innovative fuels and engine technologies in order to reduce vehicle emissions and consumption. The use of high-hydrogen gaseous fuels is one of the main avenues being pursued;

(d) diversifying the energy sources used in fuel production. One priority is the production of synthetic fuels from various energy sources (biomass, gas or carbon).

(197) The Commission notes that IFP's research programmes are scrutinised by technical committees the composition and procedures of which are prescribed by the Minister responsible and which ensure effective follow-up of the above priorities.

(198) Secondly, the Commission has regard to the fact that the development of new energy technologies, including biofuels and gas recovery, numbers among the Community's priorities in relation to research, energy policy and environmental policy.

(199) Thirdly, the Commission notes that, thanks to State support, IFP and its subsidiaries have been able to conduct additional research activities which would otherwise not have been pursued owing to the technological risk or the highly uncertain return on investment. In particular, in the field of refining and petrochemicals technologies, the considerable risk associated with the first industrial units means that enterprises operating in this market must be highly selective when it comes to choosing R & D projects. By way of illustration, IFP and Axens have been able to carry out the following research projects: new catalysts and technologies in the middle distillate hydroprocessing field; a more efficient adsorbent and technology for the production of para-xylene; a new process in the LNG field based on the use of new concepts and technologies from the refrigeration field; and a new, cleaner and more efficient process for the production of biodiesel by esterification of vegetable oils.

(200) Fourthly, the Commission notes a favourable trend since 2002 in various indicators of the R & D effort by IFP and its subsidiaries Axens and Prosernat. The expenditure and staff allocated to R & D by IFP and its subsidiaries Axens and Prosernat in the subsidiaries' exclusive fields of activity increased over the period 2003-06 despite the amount of State aid being reduced by 41 %:

*Table 3*

| Progression of the indicators over the period 2003-06 | IFP/Axens | IFP/Prosernat |
|---|---|---|
| Expenditure allocated to R & D in the exclusive field | […] (**) | […] (**) |
| Staff allocated to R & D in the exclusive field | […] (**) | […] (**) |

(201) Fifthly, the Commission notes that the proportion of turnover accounted for by R & D expenditure is particularly high. In Prosernat's field of activity, it came to 9 % in 2006. In Axens's field of activity, that same year it came to 13 %, a much higher figure than for the sector as a whole. For four reference companies in Axens's area of business, the proportion of turnover accounted for by R & D expenditure varied from 2,3 % to 10 % ([44]).

(202) Sixthly, the Commission takes into consideration the fact that IFP and its subsidiaries are faced, in the fields of application of their research, with various constantly evolving rules and regulations depending on the geographic area concerned. In particular, since 2000, the refining sector has had to meet increasingly severe environmental standards. To the scientific and technological risks peculiar to R & D projects, there are thus added significant regulatory risks. Moreover, the results of the research carried out by IFP and its subsidiaries are difficult to protect owing to the large number of countries in which they are exploited and the diversity of patent laws applicable there.

(203) Seventhly, contrary to what UOP maintains, the Commission considers that the State support for IFP and its subsidiary Axens is not, by virtue either of its nature or its scale, liable to impair the dynamic of the refining technologies market. First of all, the Commission notes that supply in this market is highly differentiated, while the number of customers is limited. A world round-up of refining or petrochemical units in operation in 2005 thus shows that there were seven types of process. Moreover, customers choose a technology in the light of various criteria, some of which, such as the cost of the associated installation and the profitability of the investment, while they are regarded as critical, are completely exogenous to the aided research projects. Lastly, the Commission observes that certain competitors of IFP and Axens have a strong competitive position which should enable them to maintain their R & D plans in this market. UOP thus has a world market share corresponding to 57 % in value terms of existing licensed refining units, whereas the share held by IFP and Axens comes to 7 %.

(204) Lastly, the Commission notes that the European Union's trading partners also devote substantial budget resources to financing research into energy. Thus, the US Department of Energy had a budget of USD 5 794 billion in 2005 — a budget which has been growing steadily for the past 15 years. The Department subsidises numerous research programmes, including in the field of biodiesels. The Commission takes note of the fact that

([44]) *Source*: Yahoo! Finance.

the competitors of IFP and Axens also enjoy substantial State support. This is the case with UOP, which receives funding from the National Institute of Standards and Technology for its research into catalysts ([45]). UOP also benefits from indirect State support through its numerous partnerships with research institutes and universities.

(205) In conclusion, the Commission considers that the aid for IFP and its subsidiaries Axens and Prosernat has an incentive effect having regard to the strategic nature of the research carried out, the qualitative and quantitative progress made in the research effort and the risks and difficulties inherent in the sectors of activity concerned. It considers further that the aid should not impair the innovation dynamic in the markets. It takes note, moreover, of the support granted by other countries to IFP's competitors.

(206) The annual report that is to be submitted by France to the Commission until the exclusive agreements between IFP and its subsidiaries Axens and Prosernat expire will have to show that the aid still has an incentive effect.

### 7.6. **Conclusion**

(207) In the light of all the above considerations, the Commission concludes that the aid granted to IFP and its subsidiaries Axens et Prosernat is in keeping with the provisions of the 1996 R & D framework, subject to compliance with the conditions set forth in recitals 192, 193 and 206,

HAS ADOPTED THIS DECISION:

*Article 1*

The measure which France has implemented for the Institut Français du Pétrole (IFP) and its subsidiary Beicip-Franlab does not constitute aid within the meaning of Article 87(1) of the Treaty.

*Article 2*

1. The measure which France has implemented for IFP and its subsidiaries Axens and Prosernat constitutes aid within the meaning of Article 87(1) of the Treaty.

2. The aid is compatible with the common market within the meaning of Article 87(3)(c) of the Treaty subject to the conditions laid down in Articles 3 to 6 of this Decision.

*Article 3*

1. This Decision shall be valid until the end of the exclusive agreements in force on the date of this Decision between IFP and its subsidiaries Axens and Prosernat (hereinafter called 'the exclusive agreements').

2. Any prolongation or amendment of the exclusive agreements must be notified to the Commission.

*Article 4*

1. IFP shall organise and publish its accounts in such a way as to distinguish clearly between its economic and its non-economic activities.

2. Until the date of expiry of the exclusive agreements, France shall submit to the Commission an annual financial report in order that the latter might verify the amount of public funds allocated to IFP's activities in the exclusive fields of activity of Axens and Prosernat.

*Article 5*

1. Until the date of expiry of the exclusive agreements, France shall submit to the Commission a detailed annual report on the projects carried out by IFP in the exclusive fields of activity of Axens and Prosernat, specifying, by project, the costs by research stage, the amount of public funds allocated and the incentive effect of the aid.

2. France shall notify individually to the Commission any aid of an amount in excess of the thresholds laid down in the 2006 Community framework for State aid for research and development and innovation.

*Article 6*

The exclusive agreements shall be amended so as to provide for payment by Axens and Prosernat of a minimum remuneration to IFP, covering at least 25 % of the costs of feasibility studies preparatory to industrial research work, 50 % of the costs of industrial research and 75 % of the costs of precompetitive development by IFP in the fields covered by the exclusive agreements.

([45]) *Source*: UOP and NIST press releases.

*Article 7*

France shall inform the Commission within two months from the date of notification of this Decision of the measures it has taken to comply herewith.

*Article 8*

This Decision is addressed to the French Republic.

Done at Brussels, 16 July 2008.

*For the Commission*
Neelie KROES
*Member of the Commission*

# COMMISSION DECISION

## of 23 February 2009

## on the adoption of the Work Plan for 2009 for the implementation of the second programme of Community action in the field of health (2008 to 2013), and on the selection, award and other criteria for financial contributions to the actions of this programme

**(Text with EEA relevance)**

(2009/158/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Decision No 1350/2007/EC of the European Parliament and of the Council of 23 October 2007 adopting a second programme of Community action in the field of health (2008 to 2013) [1], and in particular Article 8(1) thereof,

Having regard to Commission Decision 2004/858/EC of 15 December 2004 setting up an executive agency, the 'Executive Agency for the Public Health Programme', for the management of Community action in the field of public health — pursuant to Council Regulation (EC) No 58/2003 [2], and in particular Article 6 thereof,

Whereas:

(1) Decision No 1350/2007/EC (hereinafter referred to as the Programme Decision) established the second programme of Community action in the field of health (2008 to 2013), hereinafter referred to as 'second Health Programme'.

(2) The second Health Programme is intended to complement, support and add value to the policies of the Member States and contribute to increased solidarity and prosperity in the European Union. The Programme's objectives are to improve citizens' health security; to promote health, including the reduction of health inequalities and to generate and disseminate health information and knowledge.

(3) Under Article 8 of the Programme Decision, the Commission shall adopt an annual Work Plan setting out priorities and actions to be undertaken, including the allocation of financial resources, criteria for the percentage of Community financial contribution, including criteria for assessing whether or not exceptional utility applies, the arrangements for implementing the joint strategies and actions referred to in Article 9 of the same Decision.

(4) Under Article 8 of the Programme Decision, the Commission shall adopt selection, award and other criteria for financial contributions to the actions of the Programme in accordance with Article 4 of the same Decision.

(5) According to Article 6 of Decision 2004/858/EC, the Executive Agency for Health and Consumers carries out certain activities for implementation of the programme on public health and should receive the necessary appropriations for that purpose.

(6) Under Article 75 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities [3] (hereinafter referred to as the Financial Regulation), the commitment of the expenditure should be preceded by a financing decision adopted by the institution or the authorities to which powers have been delegated by the institution.

(7) Under Article 110 of the Financial Regulation, grants are subject to an annual programme, to be published at the start of the financial year.

(8) Under Article 166 of the Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities [4] (hereinafter referred to as implementing rules of the Financial Regulation) the annual work programme for grants is adopted by the Commission. It is to specify the basic act, the objectives and the schedule of calls for proposals with the indicative amount and the results expected.

(9) According to Article 90 of the implementing rules of the Financial Regulation, the decision adopting the annual work programme referred to in Article 110 of the Financial Regulation may be considered to be the financing decision within the meaning of Article 75 of the Financial Regulation, provided that this constitutes a sufficiently detailed framework.

[1] OJ L 301, 20.11.2007, p. 3.
[2] OJ L 369, 16.12.2004, p. 73.
[3] OJ L 248, 16.9.2002, p. 1.
[4] OJ L 357, 31.12.2002, p. 1.

(10) Under Article 168(1)(c) and (f) of the implementing rules of the Financial Regulation, the Commission can decide to award grants without a call for proposals to bodies with a duly substantiated *de jure* or *de facto* monopoly.

(11) The measures provided for in this Decision are in accordance with the opinion of the Committee of the second programme of Community action in the field of health (2008 to 2013),

HAS DECIDED AS FOLLOWS:

*Article 1*

1. The Work Plan for 2009 for the implementation of the second programme of Community action in the field of health (2008 to 2013) as set out in Annex I and the selection, award and other criteria for financial contributions to the actions under the second Community Programme in the field of health (2008 to 2013), as set out in Annexes II, IV and V are hereby adopted.

They will serve as the financing decision for grants and contracts the awarding of which does not require a Commission decision.

2. Within the maximum indicative budget of each specific action, cumulated changes not exceeding 20 % are not considered to be substantial provided that they do not significantly affect the nature and objectives of the Work Plan. The authorising officer, as referred to in Article 59 of the Financial Regulation, may adopt such changes in accordance with the principles of sound financial management.

3. The Director-General for Health and Consumers shall ensure the overall implementation of this Work Plan.

*Article 2*

Grants identified in this Work Plan to bodies with a *de jure* or *de facto* monopoly are awarded under the conditions provided for in Article 168(1)(c) and (f) of the implementing rules of the Financial Regulation.

*Article 3*

The budget allocations necessary for management of the programme of Community action in the field of public health (2008 to 2013) shall be delegated to the 'Executive Agency for Health and Consumers' under the conditions and within the limits of the amounts laid down in the Work Plan in Annex I.

The operating subsidy entered in the budget line 17 01 04 30 shall be paid to the 'Executive Agency for Health and Consumers'.

*Article 4*

The appropriations covered by the Work Plan in Annex I may be used to pay default interest in accordance with Article 83 of the Financial Regulation.

Done at Brussels, 23 February 2009.

*For the Commission*
Androulla VASSILIOU
*Member of the Commission*

*ANNEX I*

**Annual Work Plan 2009 including budgetary implications and funding criteria for grants**

## 1. GENERAL CONTEXT

### 1.1. Policy and legal context

Decision 1350/2007/EC (hereinafter referred to as the Programme Decision) established the second programme of Community action in the field of health (2008 to 2013), hereinafter referred to as the second Health Programme.

The second Health Programme is intended to complement, support and add value to the policies of the Member States and contribute to increased solidarity and prosperity in the European Union. The Programme's objectives are to improve citizens' health security; to promote health, including the reduction of health inequalities and to generate and disseminate health information and knowledge.

In Article 8(1) of the Programme Decision it is stated that the Commission shall adopt:

(a) the annual Work Plan for the implementation of the Programme, setting out:

(i) priorities and actions to be undertaken, including the allocation of financial resources;

(ii) criteria for the percentage of Community financial contribution, including criteria for assessing whether or not exceptional utility applies;

(iii) the arrangements for implementing the joint strategies and actions referred to in Article 9;

(b) selection, award and other criteria for financial contributions to the actions of the Programme in accordance with Article 4.

According to Article 75 of the Financial Regulation (FR) applicable to the general budget of the European Communities, the commitment of the expenditure should be preceded by a financing decision adopted by the institution or the authorities to which powers have been delegated by the institution. According to Article 90 of the detailed rules for the implementation of the Financial Regulation (IR), the decision adopting the annual work programme referred to in Article 110 of the FR, may be considered to be the financing decision provided that this constitutes a sufficiently detailed framework. This document aims to fulfil those obligations and present the different activities scheduled for 2009 which is the second year of the implementation of the second Health Programme.

The Executive Agency for Health and Consumers (EAHC) assists the Commission in the implementation of the Work Plan for 2009 according to the provisions of this Work Plan and of Commission Decision C(2008) 4943 of 9 September 2008 delegating powers to it.

### 1.2. Resources

The Programme Decision sets a total budget of EUR 321 500 000 for the period from 1 January 2008 to 31 December 2013.

The budgetary authority has approved a total budget of EUR 48 480 000 [1] for 2009 for the budget lines 17 03 06 and 17 01 04 02.

| Budget line | EUR |
|---|---|
| 17 03 06 — Community action in the field of health | 47 000 000 |
| 17 01 04 02 — Expenditure on administrative management | 1 480 000 |
| Total | 48 480 000 |

[1] Indicative amount, subject to approval of the Budget Authority.

The budget line '17 01 04 02 — Expenditure on administrative management of the programme' will be used for the organisation of workshops and experts meetings, publications, various communication activities and other current expenditure supporting the implementation of the objectives of the programme. The Commission will remain responsible for the implementation of this budget line.

Additional contributions from EFTA countries members of the European Economic Area (Iceland, Liechtenstein, and Norway) and candidate countries participating in the Programme are estimated at EUR 1 163 520 from EEA/EFTA countries and EUR 138 000 from Croatia ([1]).

The total budget for 2009 is therefore estimated at EUR 49 781 520:

— the total for the operating budget is estimated at EUR 48 261 000,

— the total for the administrative budget is estimated at EUR 1 520 520.

The budget line for administrative appropriations related to the EAHC is 17 01 04 30.

1.2.1. *Indicative amounts*

The amounts indicated in the following chapters are indicative. In accordance with Article 90(4) of IR, non-substantial variations in the order of +/- 20 % of each item are possible under each financing mechanism.

## 2. FINANCING MECHANISMS

The full range of financing mechanisms offered under the second Health Programme will be implemented in 2009. The budget for call for proposals for projects has been reduced and greater focus has been given to calls for tender and other financing mechanisms, such as joint actions and operating grants, with the aim to maximise the efficiency and added value of actions financed, and to ensure that finances are channelled more directly towards meeting programme objectives. However, in case resources from the operating budget would remain available at the end of 2009, these will be reallocated to the funding of grants selected through the 2009 call for proposals for projects as a priority.

All financing mechanisms will be executed under the responsibility of the EAHC, except point 2.9 which is under the direct responsibility of the Commission. Relevant calls and information will be published on the EAHC website ([2]).

### 2.1. Call for proposals for projects

The grants should be financed under budget line 17 03 06 — Community action in the field of health. The total indicative amount for the call for proposals for projects is estimated at EUR 24 130 500 (around 50 % of the operating budget).

A call for proposals for projects will be published in the *Official Journal of the European Union* at the end of February 2009 (indicative date) describing the areas for funding, the selection and award criteria and the procedures for application and approval.

All projects should provide high European added value, be innovative in nature and the duration should not normally exceed three years. The expected impact of the project should be measured by appropriate indicators, preferably the healthy life years indicator. Where relevant, information should be included on how a gender perspective and health inequalities will be taken into account.

All proposals must demonstrate, where relevant, that synergies can be identified with current research activities funded under the health and related themes of the 7th Research Framework Programme ([3]).

([1]) Indicative amount: this figure is the maximum amount and depends on the actual amount of the contribution paid by EEA/EFTA and candidate countries.
([2]) http://ec.europa.eu/eahc/
([3]) OJ L 412, 30.12.2006, p. 1.

As far as the allocation of resources for the call for proposal for projects is concerned, a balance between the programme's different strands will be pursued, while taking into account the quality and quantity of proposals received, unless particular public health emergencies (e.g. pandemic influenza) arise to justify any reallocation of resources.

Given the complementary and motivational nature of Community grants, at least 40 % of the project costs must be funded from other sources. Consequently, normal financial contribution can be up to 60 % per project of the eligible costs for the projects considered. In each individual case the maximum percentage to be awarded will be determined.

A maximum Community contribution per beneficiary (i.e. per main and per associated beneficiary) of 80 % of eligible costs could be envisaged where a proposal is of exceptional utility, as specified under point 3.1. No more than 10 % of the number of funded projects should receive Community contribution of over 60 %.

It should be noted that the indicative amount for Community financial participation in the selected projects can vary from – 10 % to + 10 % in respect of the amount requested by the beneficiary.

The selection, award and other criteria for financial contributions to the actions of the Programme, in accordance with Article 4 of the Programme Decision, are detailed in Annex II.

Details concerning eligibility of travel costs and subsistence expenses are provided in Annex III.

2.2. **Calls for tender**

Services procurements should be financed under 17 03 06 — Community action in the field of health. The indicative number of contracts are specified under points 3.2, 3.3 and 3.4 of this Work Plan. All contracts are service contracts.

The overall indicative amount for tenders would be up to EUR 9 652 000 (around 20 % of the operating budget), calls for tenders will be launched during the first semester as indicative date.

2.3. **Joint actions**

Joint actions should be financed under budget line 17 03 06 — Community action in the field of health. The total indicative amount is estimated up to EUR 7 239 000 (around 15 % of the operating budget).

Certain actions in 2009 will be eligible for financing as joint actions by the Community and one or more Member States or by the Community and the competent authorities of other countries participating in the Programme. Participating countries will be invited to submit proposals through a call for proposals for joint actions explicitly identified as such under points 3.2, 3.3 and 3.4 of this Work Plan.

Community contributions may only be awarded to a public body or a non-profit-making body, designated through a transparent procedure by the Member State or the competent authority concerned and agreed by the Commission.

The Community contribution for joint actions shall not exceed 50 %, except in cases of exceptional utility, where the Community contribution shall not exceed 70 %. Exceptional utility occurs for joint actions:

— meeting the criteria specified in point 3.1 and,

— consisting in the participation of bodies from at least 10 participating countries or in the participation of bodies from 3 participating countries, where the action is proposed by a body from a Member State which has acceded to the European Union since 1 May 2004 or by a candidate country.

The selection and award criteria for joint actions are detailed in Annex IV. The procedure for submitting proposals for joint Action will be published with the call for proposals for joint actions, along with the criteria and deadline for submission, at the end of February 2009.

Details concerning eligibility of travel costs and subsistence expenses are provided in Annex III.

2.4. **Operating grants**

Operating grants should be financed under budget line 17 03 06 — Community action in the field of health. The total indicative amount is estimated at EUR 2 500 000 (around 5 % of the operating budget).

Financial support for activities may be awarded to European organisations which fulfil the criteria detailed in Annex V.

Preference will be given to those organisations which cover activities as specified in this Work Plan, points 3.2, 3.3 and 3.4 and activities in the field of cross-border health care, rare diseases, health workforce, patient safety, organ donation and transplantation, cancer prevention and control, flu vaccination, prudent use of antibiotics, childhood vaccination, mental health and youth health.

A call for proposals will be published in the *Official Journal of the European Union* at the end of February 2009, describing the areas for funding, the selection and award criteria and the procedures for application and approval.

The financial support shall not exceed 60 % of the expenditure involved in carrying out eligible activities. In cases of exceptional utility, the Community contribution shall not exceed 80 %. Exceptional utility may occur when activities have very significant European added value, as indicated in point 3.1.

As laid down in Article 4(2) of the applicable legal basis, the renewal of financial contributions set out in paragraph 1(b) to non-governmental bodies and specialised networks may be exempted from the principle of gradual decrease.

2.5. **Conferences in the field of public health and risk assessment**

Financial contributions for conferences organised in the field of public health and risk assessment should be financed under budget line 17 03 06 — Community action in the field of health. The total indicative amount is estimated at EUR 1 100 000: EUR 300 000 for conferences organised by the Presidency of the Union and EUR 800 000 for other conferences.

For administrative reasons conferences eligible for co-funding must be held in the last two months of 2009 or in 2010.

2.5.1. *Conferences organised by the Presidency of the European Union*

Three conferences organised by the Presidency of the European Union, one for each Presidency (second semester 2009 and 2010), are eligible for co-funding by the Community up to EUR 100 000 each, at the maximum community co-financing rate 50 % of the total eligible costs. Policy issues to be addressed in these conferences relate to improve citizens' health security, to promote health, including the reduction of health inequalities, and to generate and disseminate health information and knowledge.

These events, highly political in nature and involving representation at the highest level both from National Authorities and European representatives, are to be organised exclusively by the Member State holding the Presidency. Given the unique role of the Presidency in the framework of Community activities, the Member State responsible for the organisation of the event is considered as a *de jure* monopoly.

According to Article 168(1)(c) of the IR, grants can be allocated without a call for proposals to organisations in a *de jure or de facto* monopoly situation, duly substantiated in the award decision.

The Presidency shall submit a request for grant to the Commission services, via the Permanent Representation, for the conference for which the contribution is requested at least four months before the event. This request for grant shall specify the conference topic, the draft programme, the provisional budget and the composition of the scientific and organisation committees.

2.5.2. *Other conferences*

Financial contributions by the Community, in accordance with Article 2(2) and point 3 of the Annex to the Programme Decision, may be awarded for the organisation of conferences which:

— deal with one or more priorities of this Work Plan as described in points 3.2, 3.3 and 3.4 or with the following issues: cross-border health care, rare diseases, health workforce, patient safety, organ donation and transplantation, cancer prevention and control, flu vaccination, prudent use of antibiotics, childhood vaccination, mental health and youth health,

— have wide European Union dimension, e.g. with the participations of representations from 10 or more countries participating in the second Health Programme,

— are organised by a public body or a non-profit-making body agreed by the Commission, established in a country participating in the second Health Programme, operating at European level and with a balanced geographical coverage.

A call for proposals for conferences will be launched at the end of February 2009 describing the areas for funding, the selection and award criteria and the procedures for application and approval. Selected conferences are eligible for Community contribution up to EUR 100 000 per conference (maximum 50 % of the total budget of the conference), although co-financing is still requested.

2.6. **Cooperation with international organisations**

Funding for actions with international organisations should be financed under budget line 17 03 06 — Community action in the field of health. The total indicative amount is estimated up to EUR 2 300 000, which is around 5 % of the operating budget.

In accordance with Article 12 of the Programme Decision, relations and cooperation with international organisations should be encouraged. This will be done with those international organisations having the capacities needed to tackle health priorities for the European Union identified in the annual Work Plan.

Funding for actions with the international organisations will be allocated through grant agreements without previous call for proposals as foreseen by Article 168(1)(f) of the IR, to a particular type of body on account of its technical competences, its high degree of specialisation or its administrative power.

In fact, these organisations have certain capacities linked to their specific tasks and responsibilities, which make them particularly qualified to carry out some of the actions set out in this Work Plan and for which direct grant agreements are considered to be the most appropriate procedure. Moreover, direct grant agreements will improve the synergies and responsiveness of the European Commission to international organisations where actions are jointly covered.

The amount of the financial contribution can be up to 60 % per organisation of the eligible costs for the actions considered. The Commission will determine in each individual case the maximum percentage to be awarded.

In 2009, the following international organisations may be funded for the implementation of actions specified under points 3.2, 3.3 and 3.4:

— Organisation for Economic Cooperation and Development (OECD),

— World Health Organisation (WHO),

— European Observatory on Health Policies and Health Systems,

— Joint United Nation Programme on HIV/AIDS (UNAIDS),

— The Council of Europe (CoE).

2.7. **Scientific Committees**

The activity of Scientific Committees relevant to Public Health should be financed under budget line 17 03 06 — Community action in the field of health.

An overall amount of EUR 270 000 will be earmarked for the payment of allowances to participants in meetings relating to the work of the scientific committees and of rapporteurs for completion of scientific committee opinions, in the framework of the Scientific Committees ([1]). These allowances will cover all fields relevant to the second Health Programme, i.e. 100 % of costs for the SCHER (Scientific Committee on Health and Environmental Risks) and 50 % (as an indicative percentage) of costs for the SCENIHR (Scientific Committee on Emerging and Newly Identified Health Risks) and for coordination.

2.8. **Sub-delegation to DG regional policy**

Articles 51 and 59 of the FR and Articles 6 to 8 of the internal rules on the implementation of the general budget of the European Communities ([2]) refer to the conditions and rules of the instrument of sub-delegation.

A sub-delegation for a maximum amount of EUR 200 000, under budget line 17 03 06 — Community action in the field of health, will be given to the Directorate-General Regional Policy for supporting the Urban Audit Perception survey which is organised through specific contracts within a framework contract of DG COMM. In this case the Directorate-General Regional Policy's procedures shall apply.

2.9. **Other activities**

Other activities like

— organisation of workshops and expert meetings, including seminars organised at national level among groups of experts to exchange best practices in the areas of the annual Work Plan,

— publications and various communication initiatives to promote the second Health Programme,

will be principally financed under the budget line 17 01 04 02 — Expenditure on administrative management of the programme through calls for tender.

For some specific technical matters, as described in Chapter 3, procurements through administrative agreements with the Joint Research Centre are envisaged which will be financed under budget line 17 03 06 — Community action in the field of health.

3. **PRIORITY AREAS FOR 2009**

Priority actions for 2009 have been selected in line with the Programme Decision. These priorities should be considered in the context of actions already funded under the previous Programme ([3]) and the fact that further priorities will be defined in later years of the Programme period.

The Health Programme aims to promote synergies with other Community Programmes without duplicating work carried out under these. The 7th Research Framework Programme under the third pillar of the Health Theme entitled: 'Optimising the delivery of health care to European Citizens', is complementary to Community actions in the field of health under all objectives of the second Health Programme. Efforts will be made to identify and avoid overlap/duplication between health programme successful proposals and FP7 projects selected for funding under the calls to date.

([1]) Commission Decision 2008/721/EC (OJ L 241, 10.9.2008, p. 21).
([2]) Commission Decision of 15 March 2005 on the internal rules on the implementation of the general budget of the European Communities (Commission section).
([3]) See http://ec.europa.eu/health/ph_projects/project_en.htm

Proposals to the Health Programme must fully comply with the aims, objectives and methods set out in the Programme Decision. In particular proposals should not contain significant elements which relate to research. All proposals must demonstrate, where relevant, that synergies can be identified with relevant current research activities funded under the Scientific Support to Policies' activities of the 6th Framework Programme [1] as well as projects to be funded under the health and related themes of the 7th Research Framework Programme. In particular proposals should demonstrate that overlap/duplication with FP7 will be avoided in presenting proposals to the 2009 Work Plan.

### 3.1. Issues of strategic importance

In line with the actions referred to in Article 2(2) of the Programme Decision, and the commitment in the EU health strategy [2] to work across sectors for improving health, high preference will be given to actions that have significant European added value in the following areas:

— Contribution to:

  — improving the health of European citizens, as measured where possible by appropriate indictors, including the healthy life years indicator,

  — reducing health inequalities in and between EU Member States and regions,

  — building capacity for development and implementation of effective public health policies particularly in areas of high need;

— Involvement of new (non-traditional) actors for health in sustained, cooperative and ethically sound actions, both at regional or local level and across participating countries. This includes the public sector, the private sector and stakeholders among wider civil society whose primary aims are not limited to public health (for example among the youth, ethnic groups and other public interest spheres such as environment and sport).

Proposals should also demonstrate the evidence base and ability to provide measurable results where possible.

Proposals which meet the above mentioned criteria can be considered of exceptional utility. Applicants must be able to demonstrate how the proposed action will contribute to the abovementioned criteria.

Priorities are listed in sections corresponding to the strands referred to in the Programme Decision.

### 3.2. Priority actions for the first objective 'Improve citizens' health security'

#### 3.2.1. *Protect citizens against health threats*

1. Activities of the programme of Community action in the field of health 2008-2013 regarding protection of citizens against health threats contribute to the implementation of EU policies and initiatives relevant to health threats regarding the Decision creating a Community surveillance network [3]. The aim is to develop strategies and mechanisms to respond to health threats and emergencies, and also support the management of risks linked to communicable diseases (CDs) on the basis of risk assessment carried out by European Centre for Disease Control (ECDC) [4].

2. The programme covers as well identification of additional health threats, such as those posed by physical and chemical agents. Activities to coordinate and support the health security preparedness, response capacity and planning of the Member States against biological, chemical and radiological agent attacks are being developed by the Health Security Committee (HSC) [5].

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[1] Council Decision 2002/834/EC of 30 September 2002 adopting a specific programme for research, technological development and demonstration: 'Integrating and strengthening the European Research Area' (2002 to 2006) (OJ L 294, 29.10.2002, p. 1). FP6 public health related projects under scientific support to policies — Cordis web page: http://www.cordis.lu/lifescihealth/ssp.htm

[2] See http://ec.europa.eu/health/ph_overview/strategy/health_strategy_en.htm COM(2007) 630 final of 23.10.2007.

[3] Decision No 2119/98/EC of the European Parliament and of the Council (OJ L 268, 3.10.1998, p. 1).

[4] Proposals received under Health Programme calls should not overlap those falling under the remit of the ECDC. The ECDC Strategic multiannual programme 2007-2013 can be found at http://www.ecdc.europa.eu/en/About_us/Key_documents/Documents/ECDC_MAS_.pdf

[5] The HSC priorities for 2008-2013 can be found at http://ec.europa.eu/health/ph_threats/Bioterrorisme/docs/keydo_bio_05_en.pdf

3. The WHO considers pandemic influenza one of the most serious threats for public health. A pandemic virus could evolve from avian viruses that currently circulate in poultry and wild birds in many parts of the world. The Commission is among the major donors contributing to the global response to avian influenza and is supportive of the 'One World One Health' approach that seeks to integrate public and animal health ([1]).

In the field of health security, proposals should consider the following:

— take into account the European Neighbourhood policy to increase consistency and partnership,

— support the participation of candidate countries as associated partners where possible and as collaborating partners in general,

— address interoperability between mechanisms, health systems, plans and strategies with a particular focus on cross sectoral activities, including those targeting health risks and diseases at the interface between public health, animal health and ecosystems,

— projects should also identify economic and social impact of the activities pursued in quantifiable terms as well as address further possible positive and negative impacts (externalities) of public health actions.

3.2.1.1. Develop prevention (Annex — points 1.1.1-1.1.2)

*Exchange practices on promotion of vaccination in Member States (MS), in particular regarding hard to reach populations*

Support for policy initiatives on vaccination (Proposal for a Council Recommendation for MS to reach 75 % seasonal flu vaccination coverage in risk groups, proposal for a Council Recommendation to improve/maintain high vaccination coverage against certain childhood diseases). Specific activities should focus on measles and rubella ([2]), seasonal influenza ([3]), HPV, tetanus and new vaccines against pneumococcal disease.

Ways to promote vaccination should consider the following elements:

— existing knowledge deficits on vaccines and vaccination issues ([4]) in selected and broader population groups,

— evidence-based ways to reduce barriers to implement vaccination and improve public perception of benefits of vaccination ([5]),

— evidence-based and highly effective health promotion actions in support of vaccination,

— results and current activities of vaccine projects, in particular those financed by the Community under the Public Health Programme ([6]), and the proceedings of the 'meeting on vaccination strategy' ([7]) on 13-14 February 2008 organised in collaboration between the Commission and the Public Health Executive Agency should be taken into consideration.

[Call for proposals for projects]

*Identifying existing modelling tools and their use to face existing and emerging threats*

Expanding the knowledge on how to use existing modelling tools in MS is an important issue to address at the European level for the purpose of:

— effectively measuring cost-effectiveness of policies such as their implementation and the impact assessment of new vaccines and other preventative measures,

— impact assessment of diseases,

([1]) Further information can be found at: http://www.undg.org/docs/9517/GoE-final-SeS-statement.pdf
([2]) See WHO plan for measles and rubella elimination: http://www.euro.who.int/Document/E87772.pdf
([3]) See WHO resolution on seasonal flu vaccination: http://www.who.int/gb/ebwha/pdf_files/WHA56/ea56r19.pdf
([4]) See scientific advice ECDC seasonal flu vaccination in children: http://ecdc.europa.eu/documents/pdf/Flu_vacc_18_Jan.pdf. Scientific advice on HPV: http://ecdc.europa.eu/pdf/HPV_report.pdf. Scientific advice on risk groups for seasonal flu: http://ecdc.europa.eu/en/files/pdf/Publications/priority_risk_groups_forinfluenza_vaccination.pdf
([5]) See 'meeting on vaccination strategy' below.
([6]) See Europa website: http://ec.europa.eu/health/ph_projects/action2_en.htm
([7]) http://ec.europa.eu/health-eu/doc/vaccination_workshop.pdf, http://ec.europa.eu/phea/technical_meetings/technical_meetings_en.html

— consequences of climate change in the health sector,

— supporting decision-making (potential impact of specific measures such as social distancing).

[Tender through administrative agreement with the Joint Research Centre (JRC) [1]]

3.2.1.2. Support preparedness (Annex — points 1.1.1-1.1.2-1.1.3-1.1.5)

*Information exchange on health threats and on preparedness plans*

Information exchange on preparedness plans refers to generic preparedness and specific preparedness (biological, chemical, radio-nuclear and climate change aspects). The information can concern mechanisms of implementation, evaluation of impact, cross-sectoral aspects and communication towards professionals and public.

The activities concerning the information exchange could consist of the following:

— identification of best practices on crisis management and analysis of the conditions of their transfer in various areas, such as management of the information; communication towards professionals, media and public; reference guidelines on how to manage a crisis; logistic aspects for a crisis, such as how to set up a crisis team, mechanisms of coordination; training of staff and support staff to deal with the unexpected or training curricula (nature of training, target, content),

— information exchange between experts and policymakers and communication with the public and media,

— dissemination to EU Member States of key actions identified within the global health security initiative (GHSI) such as media communication activities and pandemic influenza, laboratory relevant issues or medical countermeasures by a workshop in the remit of the EU communicators' network [2].

[Call for tender]

— monitoring information exchange mechanisms for crisis management and linking with international exchange tools, including enhanced cooperation with Joint Research Centre (JRC) activities in this field and at Global Health Security Action Group (GHSAG) [3] level.

[Tender through administrative agreement with the JRC]

*Underpinning rapid development of pharmaceutical countermeasures including vaccines, for new and emerging threats*

The likelihood of new pathogens emerging in previously uninfected areas is increasing, capable of causing widespread disease, led by factors such as expanding travel, climate and other environmental change, and evolution of the pathogen/vector/reservoir relationship. The challenge is to enable the rapid development, production and licensing of vaccines for new and emerging diseases to protect the population of Europe and beyond.

The activity to be developed is the following:

— development of a process to accelerate production release of vaccines in case of emergency needs,

[1] The Joint Research Centre is a research-based policy support organisation and in integral part of the European Commission. The JRC is providing the scientific advice and technical know-how to support a wide range of EU policies including health threats. http://ec.europa.eu/dgs/jrc/index.cfm

[2] The EU communicators' network works under the umbrella of the HSC. Its mandate focuses on crisis communication, including communication preparedness aspects, on issues related to health threats. The network also communicates about risk management which includes the reactive communication in a crisis e.g. preparing contributions for publication on the Internet during an event or harmonising messages which can be used in the event.

[3] In November 2001, the first ministerial meeting of the Global Health Security Initiative (GHSI) was held in Ottawa, to discuss global health security. The World Health Organisation is a technical adviser to the GHSI and the European Commission a Member. A Global Health Security Action Group (GHSAG) of experts was tasked with developing proposals and concrete actions to improve global health security. The GHSAG also serves as a network of rapid communication/reaction in the event of a crisis. http://www.ghsi.ca/english/background.asp

— strengthening network of clinical centres to support extensive vaccine development,

— developing broadly applicable platforms for vaccines.

[Call for proposals for projects]

*Health sector's adaptation to consequences of climate change*

Europe is taking measures to address global warming and to prevent possibly catastrophic changes to the climate [1] [2]. All the sectors of healt-hcare systems will be concerned by adaptation to consequences of climate change (health care, prevention and health education, health threats field including consequences of climate change on communicable diseases, as well as other health problems such as respiratory disorders).

— The actions under this point could address information sharing, comparison and analysis of transferability of measures and activities on early adaptation on consequences of climate change on health.

[Call for proposals for projects],

3.2.1.3. Improve early detection and control for health threats including communicable diseases

*Capacity building and training in high burden countries on tuberculosis control (evidence-based standards) and at risk populations*

The European Commission called on the European Centre for Disease Prevention and Control (ECDC) in March 2007 to develop a proposal for an action plan to fight tuberculosis (TB) in the EU [3]. Many EU Member States show a positive evolution in TB trends and will likely move towards a pre-eradication situation. However, there are still very diverse situations between countries [4], and control efforts are challenged by problems such as drug resistant TB and high level of transmission within vulnerable groups.

— Support to Member States in the fight against tuberculosis, in particular in the high burden countries. Capacity building and training would contribute to building up of national plans. There is also a need to develop and adapt methods for control in low prevalence countries, when TB is focused in specific hard to reach risk groups.

— The development of tools to evaluate control programmes performance based on cohort analysis.

[Call for proposals for projects]

*Support awareness, early diagnosis, prevention and control of viral hepatitis*

Different types of viral hepatitis are important communicable diseases with high medical, social and economic consequences and potential serious longer term sequelae. ECDC is responsible for surveillance of such diseases [5]. Population and professionals must be aware of available measures for prevention, mitigation and control.

— Training of professionals, specific information towards the public and professionals are examples of relevant activities.

[Call for proposals for projects]

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[1] Green paper on 'adapting to climate change in Europe — option for EU actions' of 29 June 2007 (see page 16 on health aspects): http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri = COM:2007:0354:FIN:EN:PDF

[2] Information on White Paper on adaptation to climate change can be found on the following links:
http://ec.europa.eu/research/environment/newsanddoc/article_4059_en.htm
http://ec.europa.eu/environment/climat/adaptation/stakeholder_consultation.htm

[3] The document of reference is the TB action plan of ECDC:
http://ecdc.europa.eu/pdf/080317_TB_Action_plan.pdf
See also the Berlin declaration on TB: http://www.euro.who.int/document/e90833.pdf

[4] Plan to stop TB in 18 high-priority countries of the WHO European region: http://www.euro.who.int/document/E91049.pdf

[5] See pages 107-115 in the ECDC report on the status of communicable diseases in the EU and EEA/EFTA countries:
http://ecdc.europa.eu/pdf/ECDC_epi_report_2007.pdf

*Early detection of health threats and health impact assessment of events*

There is a renewed interest in syndromic surveillance methods. Several European countries have already developed broad syndromic surveillance under different themes (infectious diseases, environmental health, veterinary), with different sources of data (emergency departments, mortality, telephone help lines) and use different methods (retrospective or prospective studies).

— A review of European syndromic surveillance could be developed including more Member States and defining a common approach taking into account existing projects.

[Call for proposal for projects]

3.2.1.4. Enhance capacity building (Annex — points 1.1.1-1.1.4)

*Support implementation of International Health Regulations (IHR) in MS*

The International Health Regulations (IHR) ([1]) (2005) have been implemented since 15 June 2007. At European level, Commission Decision 2000/57/EC ([2]) has been amended by Commission Decision 2008/351/EC ([3]) in order to transmit notifications through the EWRS at the same time as through the IHR.

The activities supporting the implementation of IHR in MS have been identified:

— survey and comparison of national legislation of MS dealing with security or health measures in relation to a public health emergency (crisis situation),

— impact of health emergency measures on other policies such as mobility, immigration or protection of human rights,

— current policies and practices in implementing the core capacities under IHR among MS and relationships to EU legal provisions.

[Call for proposals for projects]

*Support network of chemical, radiological, and nuclear reference laboratories and rapid assessment of toxic industrial chemicals and radioactive threats and development of scientifically validated public health counter-measures*

The activities to be developed will support the HSC priorities on chemical and radionuclear issues. In 2009, priority should be given to:

— inventory and audit of 'national reference laboratories' for chemicals and radioactive substances including a workshop on sharing capabilities and capacities,

— updating assessment of toxic industrial chemicals — development of protocols on rapid threat and risk analysis,

— updating assessment of radioactive agents — development of protocols on rapid threat and risk analysis.

[Call for tender]

([1]) International Health Regulation 2005: http://www.who.int/csr/ihr/en/
([2]) OJ L 21, 26.1.2000, p. 32.
([3]) OJ L 117, 1.5.2008, p. 40.

3.2.2. *Improve citizens' safety (Annex — point 1.2)*

3.2.2.1. Improve rational use of antibiotics and fighting antimicrobial and antiviral resistance [1] (Annex — points 1.2.3)

*Further development of protocols and monitoring of rational use of antibiotics*

The activities to be developed are the following:

— use of antibiotics in ambulatory care and in hospitals: analysis and report, including assessment of the burden of costs of treatment of drug resistant cases, including interfaces between hospitals, Community care, animals, food. This should also cover health effects and cost-benefit analysis of reduction in use of antibiotics in treating human illness.

[Call for proposals for projects]

3.2.2.2. Improving patient safety through high-quality and safe health care (Annex — point 1.2.3)

— Exchange of best practice between MS, as well as research on epidemiology of health care associated infections and on cost-effectiveness of infection prevention and control.

[Call for proposals for projects]

— Providing tools for measuring and improving quality and safety of health care: develop guidelines or tools aiming at assessing the quality of health care provided by different health-care settings and to promote best practice; develop measurement systems to enable increasing compliance with treatment protocols.

[Call for proposals for projects]

— Implementation of the action set out in COM(2008) 689 on telemedicine for the benefit of patients, health-care systems and society to foster collaboration between health professionals and patients in key areas for greater application of telemedicine as set out in that Communication, in order to develop specific recommendations on how to improve confidence in and acceptance of telemedicine, also taking into account ethical and privacy related aspects.

[Call for proposals for projects]

3.2.2.3. Safety of nanomaterials (Annex — point 1.2.1)

— Joint Action on the safety of nanomaterials: (i) to strengthen, expand, and share the knowledge required for the assessment of the hazard, exposure, and overall risk of nanomaterials; (ii) to accelerate the exploitation of existing data and the exchange of best practices in risk assessment and management; and (iii) to promote the establishment of robust methodologies throughout the EU.

[Joint action]

3.2.2.4. Safety of blood, tissues, cells, organs (Annex — point 1.2.2)

— Promote the accessibility and training on specific methodology to increase organ donation in particular on Quality Improvement Programmes on organ donation.

[Call for proposals for projects]

— Design procedures and IT tools for exchange of human organs between Member States with the purpose of offering surplus organs to other countries and with special reference to the exchange of organs for urgent and difficult to treat patients.

[Call for tenders]

[1] Council Recommendation 2002/77/EC of 15 November 2001 on the prudent use of antimicrobial agents in human medicine (OJ L 34, 5.2.2002, p. 13).
The report from the Commission to the Council on the basis of Member States' reports on the implementation of Recommendation 2002/77/EC on the prudent use of antimicrobial agents in human medicine (22 December 2005):
http://ec.europa.eu/health/ph_threats/com/mic_res/com684_en.pdf

— Ad hoc cooperation with the Council of Europe on specific matters related to human substances (blood, tissues, cells, organs).

[Direct grant agreement with the Council of Europe]

— On blood and tissues and cells specific questions remain on the reporting systems and rapid response to serious adverse events and reactions and coding. Projects will be prioritised to help developing methodologies in this area.

[Call for proposals for projects]

— Principle of unpaid donation of tissues/cells/blood/plasma: analysis of daily practices.

[Call for tenders]

3.3. **Priority actions for the second objective 'Promote health'**

Activities under this section are designed to prevent major diseases and reduce health inequalities across the EU, by tackling key health determinants such as nutrition and physical activity, alcohol, tobacco and drug consumption as well as social and environmental health determinants.

In 2009, priority actions under this objective will aim to contribute to reducing health inequalities within and between the EU Member States and regions; promoting the Health in All Policies approach as well as assessing and promoting sustainable health investment at national and regional level, therefore supporting the strategic themes outlined in the EU health strategy. Following the adoption of the Commission proposal for a Directive on patients' rights in cross-border health care [1], underlying issues raised by the proposal will be addressed. As regards health determinants, the focus will be in particular on determinants and settings affecting the health of children and young people.

3.3.1. *Foster healthier ways of life and the reduction of health inequalities (Annex — point 2.1)*

3.3.1.1. Promoting Health in All Policies approach (Annex — point 2.1.1)

— Promotion of health impact assessment: set up actions to encourage the use of health impact assessment as a tool for health oriented policy making at European, national and regional (local) level, taking into account equity aspects.

[Call for proposals for projects]

— Developing methodologies for implementing Health in All Policies approach in policy development and implementation.

[Call for proposals for projects]

— Mapping of health-related projects and actions co-financed by the European Institutions and relevant International Organisations in the period of 2003 onwards.

[Call for tenders]

— Study on the impact of the EU policies on health and the health systems.

[Call for tenders]

[1] See http://ec.europa.eu/health/ph_overview/co_operation/healthcare/cross-border_healthcare_en.htm

3.3.1.2. Public health capacity building (Annex — point 2.1.1)

— Developing tools, procedures and pilot work to improve interaction between public health researchers and policy development at EU level.

[Call for proposals for projects]

— Developing handbooks to support the integration of mental health promotion and mental disorder prevention into the training and work practice of professionals in youth, social, school, workplace environments, taking account of the activities under the European Pact for mental health and well-being [1].

[Call for proposals for projects]

— Promotion of the uptake of injury prevention in vocational training in public health: development of modular curricula for application in the health sector.

[Call for proposals for projects]

— Supporting implementation of EU strategies on key health determinants (nutrition and networking of stakeholders health forum).

[Call for tenders]

— Improving communication skills of health professionals in order to better address the needs of patients, taking into consideration gender, age and other socioeconomic and cultural variables: establish a mapping of communication training given to health professionals with the aim of including communication in public health education programmes, and possibly setting up a programme leading to master study.

[Call for proposals for projects]

— Developing public health capacity: based on an inventory of public health delivery capacity across Member States to identify gaps, needs and proposals for development, including consideration of networking needs at EU level.

[Call for tenders]

3.3.1.3. Investment in health (Annex — points 2.1.1 and 2.1.2)

— Analytical study to assess the correlation between the investment for better health (including health systems) and the economic growth and development (Annex — point 2.1.1).

[Call for tenders]

— Promoting health investments in the EU Member States and regions through exchange of good practices and cooperation with EU institutions and bodies (e.g. the European Investment Bank), international organisations, private companies and NGOs (Annex — point 2.1.2).

[Call for proposals for projects]

— Initiatives to identify best practices to improve effectiveness and sustainability of regional health investment (Annex — point 2.1.2).

[Call for proposals for projects]

[1] http://ec.europa.eu/health/ph_determinants/life_style/mental/mental_health_en.htm

3.3.1.4. Reduction of health inequalities (Annex — Point 2.1.2)

— Development and dissemination of good practice regarding strategies to tackle inequalities in health between and within Member States and regions of countries participating in the programme.

[Call for proposals for projects]

— Develop and share health systems' good practice in addressing health inequalities.

[Call for proposals for projects]

— Study on the dimension and implications of inequalities in health status and health provision between the Member States.

— Organisational and technical support for EU networking to tackle health inequalities.

[Call for tender]

3.3.1.5. Supporting cooperation on issues of cross-border care (Annex — point 2.1.2)

— Measure the equivalence of treatments in the health care systems in the EU: measure comparability of national criteria and decision making processes adopted for the reimbursement/accreditation of medical interventions.

[Call for tender/Direct grant agreement with the European Observatory on Health Policies and Health Systems]

3.3.2. *Promote healthier ways of life and reduce major diseases and injuries by tackling health determinants (Annex — point 2.2)*

3.3.2.1. Children and young people (Annex — point 2.2.1)

— Implementation of the Commission youth health initiative: provide support for Member States and stakeholder cooperation as well as for networking.

— Survey of self regulatory approaches in the field of responsible advertising, with particular focus on protection of young people.

[Call for tender]

— Healthy lifestyles media campaign targeting young people, aiming at empowering them in choosing healthy lifestyle options.

[Joint action]

— Development of the role of youth organisations, youth workers, schools and educational institutions and vocational training organisations in promoting health of young people.

[Call for proposals for projects]

— Promotion of health and prevention of injuries and illness in young people at work.

[Call for proposals for projects]

— Health promotion activities addressing the needs of young people (aged 15-25) who are neither in work nor in education.

[Call for proposals for projects]

3.3.2.2. Ageing (Annex — point 2.2.1)

— Study on the implications of ageing on citizens' health-care needs i.e. on how European Health systems need to adapt in order to meet the health-care needs of an ageing society (building on existing data and analysis).

[Call for tender]

3.3.2.3. Health at workplace (Annex — point 2.2.1)

— Improving health at work, in particular by promoting better work organisation and job control, taking into account economic aspects.

[Call for proposals for projects]

3.3.2.4. Nutrition and physical activity (Annex — point 2.2.1)

In line with the White Paper on nutrition and physical activity [1] and the work of the EU Platform for action on diet, physical activity and health:

— Implementation and exchange of good practice on comprehensive initiatives to address the reduction of the levels of saturated and trans-fats, salt and sugar in manufactured foods.

[Call for proposals for projects]

— Promoting physical activity through infrastructure and healthy lifestyles, urban/regional planning and better use of the physical environment, with a particular focus on children and young people: promoting and sharing good practice at local/regional level.

[Call for proposals for projects]

— Creating an EU-wide overview of the different types of local community approaches to reduce child obesity, including school-based initiatives.

— Evaluation of the EU Platform on Diet, Physical Activity and Health as a model for effective cooperation in the fight against obesity at EU level.

[Call for tenders]

— Promote European networking in the field of Physical Activity.

[Direct grant agreement with WHO]

3.3.2.5. Sexual health and HIV-AIDS (Annex — point 2.2.1)

In line with the Commission communication on combating HIV/AIDS [2] and in line with development towards policy initiatives on young people and sexual health, and encouraging cooperation with third countries in eastern Europe according to Article 12 of Decision No 1350/2007/EC on the Health Programme 2008-2013, a particular priority will be given to:

*Sexual health (Annex — point 2.2.1)*

— Contributing towards an increased knowledge base on sexual behaviour of young people across Europe.

[Call for proposals for projects]

[1] http://ec.europa.eu/health/ph_determinants/life_style/nutrition/documents/nutrition_wp_en.pdf
[2] Communication from the Commission to the Council and the European Parliament (COM(2005) 654 final of 15.12.2005).

— Developing activities promoting and strengthening comprehensive sexual education.

[Operating grant]

— Contributing towards the development and promotion of sexual health policies.

[Call for proposals for projects]

— Contributing towards the prevention of sexually transmitted infections.

[Call for proposals for projects]

*HIV/AIDS*

— Activities focusing on the implementation of issues set out in the HIV/AIDS action plan 2005-2009, in particular on access to testing, treatment and care, on activities towards improving the situation in eastern Europe, including with regards to injecting drug users (IDUs), and on health promotion for young people and risk groups.

[Call for proposals for projects]

— Dissemination and exchange of good practices, to intensify awareness-raising initiatives and to contribute to future European policy developments (with a particular focus on strategies to sensitise risk groups for HIV testing).

[Call for proposals for projects]

— Improving the overall situation in eastern Europe in terms of policy development and implementation. Improving the situation of people living with HIV/ADS, with a focus on prevention and projects targeting the accessibility to affordable antiretrovirals.

[Call for proposals for projects]

— Supporting networks and groups combating HIV/AIDS, concentrating in particular on risk groups and the situation in the eastern Europe.

[Operating grant]

— Awareness raising on HIV/AIDS with a particular focus on eastern Europe: Support to the World AIDS conference 2010 in Vienna.

[Direct grant agreement with UNAIDS]

3.3.2.6. Mental health (Annex — point 2.2.1)

In line with the overall strategic approach on mental health [1], as also reflected in the European Pact for Mental Health and Well-being [2],

— Developing partnerships for action to use the media and the Internet for promoting mental health, preventing mental disorders and to combating stigma, with a specific focus on young people and at the workplace, and for addressing the related challenges, such as suicidal and self-destructive behaviour as well as eating disorders.

[Call for proposals for projects]

[1] Green paper 'Promoting the mental health of the population. Towards a strategy on mental health for the EU' (COM(2005) 484 final of 14.10.2005).

[2] http://ec.europa.eu/health/ph_determinants/life_style/mental/mental_health_en.htm

— Supporting implementation of EU strategies on mental health.

— Summarising the economic, social and health benefits of action on mental health for the EU, with a focus on the priority themes of the European Pact for mental health and well-being.

[Call for tenders]

3.3.2.7. Addiction prevention (Annex — point 2.2.1)

*Tobacco*

Actions are developed in line with the overall EU approach on tobacco control as well as the Framework Convention on Tobacco Control.

— Study on tobacco and product liability: economic means to strengthen product liability and its implementation and enforcement mechanisms need to be reviewed in detail to improve the internalisation of external costs of smoking.

— Study on tobacco sales legislation in order to protect young people.

[Call for tenders]

— Capacity building on tobacco control strategies across all policies, mainly in the areas of taxation and illicit trade.

[Call for proposals for projects]

— Development of innovative strategies and best practices, including health professionals and teachers' training programmes, concerning all types of tobacco products consumption prevention and cessation methods and services. Gender perspective, health inequalities, key settings and target groups must be considered when developing such strategies and programmes as appropriate.

[Call for proposals for projects]

— Support in implementation of tobacco directives, in particular regarding tobacco ingredients and pictorial warnings: After the adoption of the new textual warnings also the pictorial warnings should be updated for a full implementation of Tobacco Products Directive.

[Tender through administrative agreement with JRC and call for tenders]

*Alcohol (Annex — point 2.2.1)*

In line with the Commission's Communication on an EU strategy to support Member States in reducing alcohol-related harm [1], and in order to further develop policies to reduce alcohol-related harm, a particular priority will be given to projects focusing on the following:

— Alcohol and workplaces: identify and bring together good practice for effective actions in this area, involving employers (and their organisations), trade unions and health professionals. This should include developing possibilities of how to implement good practice on a wider scale and identifying gaps in current approaches.

[Call for proposals for projects]

— Curbing under-age drinking: identify and bring together good practice concerning issues such as education directed at children, their parents and retail employees. Of particular importance is the enforcement of the legal age limits for selling alcohol.

[Call for proposals for projects]

[1] COM(2006) 625 of 24.10.2006.

— Work on the impact of marketing communication on consumption, especially by young people, and on monitoring the effectiveness and transparency of self-regulatory mechanisms.

[Call for proposals for projects]

*Illicit drugs (Annex — point 2.2.1)*

In line with the EU Drugs Strategy and Action Plans [1], the Drug prevention and information programme [2] and Council Recommendation 2003/488/EC of 18 June 2003 on the prevention and reduction of health-related harm associated with drug dependence [3].

Developing, implementing and evaluating drug demand reduction activities, in particular:

— Prevention of first/experimental use among young people in different settings taking into account the interrelation to other health issues (including mental health) and social issues (e.g. social exclusion).

[Call for proposals for projects]

— Prevention of polydrug use, specifically the concomitant use with alcohol including the prevention of drink-drugs-driving taking into account previous work undertaken in this field, in the context of road safety actions.

[Call for proposals for projects]

— Selective and innovative prevention approaches using IT tools for users of drugs showing problematic behaviours.

[Call for proposals for projects]

3.3.2.8. Prevention of major and rare diseases (Annex — point 2.2.2)

*Cancer*

— Development of indicators or indexes specifically concerning cancer to better support action on cancer across the EU.

[Call for proposals for projects]

*Rare diseases*

— Developing European cooperation on rare diseases, in particular regarding their recognition, shared information on them, and cross-border cooperation in diagnosis and treatment through European reference networks.

[Call for proposals for projects]

— Implementing the Commission Communication COM(2008) 679 final on Rare Diseases: Europe's challenges:

  — evaluation of population newborn screening practices in Member States,

  — repertorying rare diseases information, diagnosis and treatment using existing European initiatives (in particular Orphanet).

[Call for tenders]

[1] http://register.consilium.europa.eu/pdf/en/04/st15/st15074.en04.pdf
[2] http://ec.europa.eu/justice_home/funding/drugs/funding_drugs_en.htm
[3] OJ L 165, 3.7.2003, p. 31.

— Support to pilot reference networks and networks of information.

[Call for proposals for projects/Operating grant]

3.3.2.9. Healthy environments (Annex — point 2.2.3)

In line with the European Environment and Health Action Plan [1]:

— Quantification of emission of key indoor air pollutants from consumer products such as personal care and cleansing products and environmental tobacco smoke (ETS), and information on the use pattern of these products in EU Member States.

[Call for proposals for projects]

— Studies on the expected impact of actions on indoor air quality, electromagnetic fields and training of professionals in the environment and health area.

[Call for tender]

— Developing European health-based ventilation guidelines for homes, offices and public places such as schools and nursery homes. These guidelines should help Member States in revising existing building codes and practices in the light of energy efficiency of buildings.

[Call for proposals for projects]

3.3.2.10. Injury prevention [2] (Annex — point 2.2.4)

Strengthening of networking of good practices in the seven priority areas highlighted in the Council Recommendation of 31 May 2007 on the prevention of injury and the promotion of safety [3] with a view to encouraging focused actions in all Member States.

[Call for proposals for projects]

3.4. **Priority actions for the third objective 'Generate and disseminate health information and knowledge'**

3.4.1. *Exchange knowledge and best practice (Annex — point 3.1.2)*

— Facilitate the exchange of knowledge, best practice and the provision of technical assistance (twinning, consultancy) between Member States and countries participating in the Programme.

[Call for tender]

— Building on the expertise already developed in the field of health technology assessment, ensure the continuation and development of Health Technology Assessment (HTA) in the EU, including work on relative effectiveness (RE) of drugs.

[Joint action]

3.4.2. *Collect, analyse and disseminate health information (Annex — point 3.2.1)*

— Collect data on the perception of health and well-being at the urban level in 75 cities in the EU, Croatia and Turkey through the Urban Audit Perception Survey.

[Sub-delegation to DG regional policy]

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[1] Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee: 'The European Environment and Health Action Plan 2004-2010' (COM(2004) 416 final of 9.6.2004).

[2] Activities implemented to reduce alcohol-related harm (see above), and especially those aimed at curbing drink-driving, will also contribute to injury prevention.

[3] OJ C 164, 18.7.2007, p. 1.

— Implementing DG Health and Consumers modules (tobacco, organs, antimicrobial resistance, vaccination, seasonal influenza vaccination) in the Commission survey tools (Eurobarometer).

[Call for tender]

3.4.2.1. European Health Information System (Annex — point 3.2.1)

— Joint Action for the implementation of the pilot European Health Examination Survey.

[Joint action]

— To improve or to create sustainable systems of information on major and chronic diseases and conditions such as in cardiovascular diseases, autism spectrum disorders, neuro-degenerative conditions/dementias and in oral health. Development of sentinel networks, coordination of registers and hospital discharge information and use of health surveys.

[Call for tender]

— Revision of the International Classification of Diseases.

[Direct agreement with WHO/Call for tender]

— Collecting, analysing and reporting on clinical data providing information on the prevalence and morbidity of contact dermatitis in Europe.

[Call for tender]

— Multiannual framework to further develop and improve data, indicators and analysis relating to health and in particular health care in cooperation with the OECD, in support of the work of the Health Committee of the OECD.

[Direct grant agreement with OECD]

— Multiannual framework to develop and improve information and analysis through the European Observatory on Health Policies and Health Systems.

[Direct grant agreement with the European Observatory on Health Policies and Health Systems]

— WHO Health Evidence Network direct grant agreement to support the Health Information and Knowledge System.

[Direct grant agreement with WHO]

— Establishing mechanisms to assemble 'state of the art' data, information, evidence and technical advice on specific health topics.

[Call for tender]

3.4.2.2. Dissemination and application of health information (Annex — point 3.2.2)

— Actions concerning dissemination and application of health information:

  — analysis of users of EU health information and their information needs,

  — piloting mechanisms to improve and monitor dissemination and application by different stakeholders of health-related information provided through the Commission,

— providing summaries of health information related to key objectives and priorities of the health strategy; Commission's key proposals and actions in health and the overall health situation of the Member States,

— development and management of the EU Public Health Portal and other ICT tools for the collection and dissemination of health information.

[Call for tenders]

— Communication activities in the field of Health, including:

— Health Programme (2008 to 2013): support for activities which aim to communicate the outputs of the activities financed through the Programme Decision,

— Public Health Programme (2003 to 2008): final report and promotion of results of the Programme,

— communication activities on the Commission's policy priorities for the implementation of the EU health strategy, including the Europe for Patients campaign in the form of a EU health journalism prize.

[Call for tenders]

3.4.3. *Analysis and reporting (Annex — point 3.2.3)*

— Actions:

— analysis of the relevance of health for other policies and issues, such as the Lisbon agenda, social issues, economic growth and sustainable development, consumers, regional development and cohesion, environment, transport and education,

— reporting on four key health issues: men's health, musculoskeletal conditions, cardiovascular diseases and children's health (1-12 years).

[Call for tenders]

*ANNEX II*

**General principles and selection, award and other criteria for financial contributions to the actions under the Second Community Programme in the field of health (2008 to 2013)**

**CALL FOR PROPOSALS FOR PROJECTS**

*(Decision No 1350/2007/EC of the European Parliament and of the Council of 23 October 2007, Article 4(1)(a))*

This document applies only to co-funding of individual actions under the second Health Programme through grants after calls for proposals for projects.

## 1. GENERAL PRINCIPLES

1. The Financial Regulation and its Implementing Rules are the reference documents for the implementation of the second Health Programme.

2. Grants must comply with the following principles:

   — co-financing rule: external co-financing from a source other than Community funds is required, either by way of the beneficiary's own resources or the financial resources of third parties. Contributions in kind from third parties may be considered as co-financing if considered necessary or appropriate (Article 113 of the Financial Regulation and Article 172 of the Implementing Rules),

   — no-profit rule: the grant may not have the purpose or effect of producing a profit for the beneficiary (Articles 109(2) of the Financial Regulation and 165 of the Implementing Rules),

   — no-retroactivity rule: expenditure eligible for financing must be incurred after the agreement is signed. In exceptional cases, it may be acceptable to consider expenditure that was incurred from the date of submission of the grant application, but not earlier (Article 112 of the Financial Regulation),

   — no-cumulation rule: only one grant may be awarded for a specific action carried out by a given beneficiary per financial year (Article 111 of the Financial Regulation) [1].

3. Proposals for actions (projects) will be evaluated on the basis of three categories of criteria:

   — exclusion and eligibility criteria, to assess the applicant's eligibility — Article 114 of the Financial Regulation,

   — selection criteria, to assess the applicant's financial and operational capacity to complete the proposed action — Article 115 of the Financial Regulation,

   — award criteria, to assess the quality of the proposal taking into account its cost.

   These three categories of criteria will be considered consecutively during the evaluation procedure. A project which fails to meet the requirements of one category will not be considered at the next evaluation stage and will be rejected.

4. In respect of the second Health Programme, priority will be given to projects which:

   — have an innovative character in relation to the existing situation and are not of a recurrent nature,

   — provide added value at European level in the field of public health: projects are to yield relevant economies of scale, involve an appropriate number of eligible countries in relation to the scope of the project and are capable of being replicated elsewhere,

   — contribute to and support the development of Community policies in the field of public health,

   — devote adequate attention to an efficient management structure, a clear evaluation process and a precise description of the expected results,

   — include a plan for using and disseminating the results at European level to appropriate target audiences.

[1] This means that a specific action, submitted by one applicant for a grant, can be approved for co-financing by the Commission only once a year, regardless of the length of this action.

## 2. EXCLUSION AND ELIGIBILITY CRITERIA

1. Applicants will be excluded from participation in an award procedure of the second Health Programme if they:

   (a) are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

   (b) have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*;

   (c) have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;

   (d) have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the Authorising Officer or those of the country where the contract is to be performed;

   (e) have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;

   (f) are currently subject to an administrative penalty referred to in Article 96(1) of the Financial Regulation;

   (g) have received unlawful aid, on which the Commission has adopted a negative decision involving a recovery order, and the aid has not been recovered in accordance with Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [1].

   Evidence: Candidates shall provide a declaration on their honour, duly signed and dated, stating that they are not in one of the situations listed above.

2. Any proposals received after the deadline for receipt, any incomplete proposals or failing to meet the formal requirements laid down in the call for proposals will be excluded from participation in the 'second Health Programme', with the exception of obvious clerical errors within the meaning of Article 178(2) of the Implementing Rules.

   Each application must be complete and contain at least the following documents:

   — administrative data on the main partner and associated partners,

   — technical description of the project,

   — global budget of the project and the requested level of Community co-financing.

   Evidence: Application content.

3. Actions which have already commenced by the date on which the grant application is registered will be excluded from participation in the Public Health Programme.

   Evidence: The scheduled commencement date and duration of the action must be specified in the grant application.

## 3. SELECTION CRITERIA

Only proposals which have satisfied the requirements of the exclusion criteria will be eligible to be evaluated. All the following selection criteria have to be fulfilled.

1. Financial capacity

   Applicants must have stable and sufficient sources of funding to maintain their activity throughout the period during which the activity is being carried out and to participate in its co-funding.

[1] OJ L 83, 27.3.1999, p. 1.

Evidence: Applicants must supply the profit and loss account and the balance sheets for the past two complete financial years.

The verification of financial capacity will not apply to public bodies, or to international public organisations created by intergovernmental agreements or to specialist agencies created by the latter.

2. Operational capacity

The applicant must have the professional resources, competences and qualifications required to complete the proposed action.

Evidence: Applicants must supply the organisation's most recent annual activity report including operational, financial and technical details and the curricula vitae of all relevant professional staff in all the organisations involved in the project.

3. Additional documents to be supplied at the request of the Commission

If so requested, applicants must supply an external audit report produced by an approved auditor, certifying the accounts for the last financial year available and giving an assessment of the applicant's financial viability.

## 4. **AWARD CRITERIA**

Only projects which have satisfied the requirements of the exclusion and the selection criteria will be eligible for further evaluation on the basis of the following award criteria.

1. **Policy and contextual relevance of the project** (40 points, threshold: 20 points)

(a) Project's contribution to the second Community Programme in the field of Health and its annual work plan in terms of meeting the objectives and priorities (8 points).

(b) Strategic relevance in terms of relevance to the EU health strategy ([1]) and in terms of expected contributions to the existing knowledge and implications for health (8 points).

(c) Added value at European level in the field of public health (8 points):

— impact on target groups, long-term effect and potential multiplier effects such as replicable, transferable and sustainable activities,

— contribution to, complementarity, synergy and compatibility with EU relevant policies and other programmes.

(d) Pertinence of the geographical coverage (8 points)

Applicants must ensure that a geographical coverage of the project is appropriate with regard to its objectives, explaining the role of the eligible countries as partners and the relevance of the project resources or target populations they represent.

Proposals at national or sub-national dimension (i.e. which involve only one eligible country or a region of a country) will be rejected.

(e) Adequacy of the project with social, cultural and political context (8 points)

Applicants must relate the project with the situation of the countries or specific areas involved, ensuring the compatibility of the envisaged actions with culture and views of the target groups.

2. **Technical quality of the project** (30 points, threshold: 15 points)

(a) Evidence base (6 points)

Applicants must include the problem analysis and clearly describe the factors, the impact, the effectiveness and applicability of measures proposed.

([1]) COM(2007) 630 final; http://ec.europa.eu/health/ph_overview/strategy/health_strategy_en.htm

(b) Content specification (6 points)

Applicants must clearly describe the aims and objectives, target groups including relevant geographical factors, methods, anticipated effects and outcomes.

(c) Innovative nature, technical complementarity and avoidance of duplication of other existing actions at EU level (6 points)

Applicants must clearly identify the progress the project intends to accomplish within the field in relation with the state of the art and ensure that there will be neither inappropriate duplication nor overlap, whether partial or total, between projects and activities already carried out at European and international level.

(d) Evaluation strategy (6 points)

Applicants must clearly explain the kind and adequacy of methods proposed and indicators chosen.

(e) Dissemination strategy (6 points)

Applicants must clearly illustrate the adequacy of envisaged strategy and methodology proposed to ensure transferability of results and sustainability of the dissemination.

3. **Management quality of the project and budget** (30 points, threshold: 15 points)

(a) Planning and organisation of the project (5 points)

Applicants must describe the activities to be undertaken, timetable and milestones, deliverables, nature and distribution of tasks, risk analysis.

(b) Organisational capacity (5 points)

Applicants must describe the management structure, competency of staff, responsibilities, internal communication, decision making, monitoring and supervision.

(c) Quality of partnership (5 points)

Applicants must describe the partnerships envisaged in terms of extensiveness, roles and responsibilities, relationships among the different partners, synergy and complementarity of the various project partners and network structure.

(d) Communication strategy (5 points)

Applicants must describe the communication strategy in terms of planning, target groups, adequacy of channels used, visibility of EU co-funding.

(e) Overall and detailed budget including financial management (10 points, threshold: 5 points)

Applicants must ensure that budget be relevant, appropriate, balanced and consistent in itself, between partners and with the specific objectives of the project. Budget should be distributed within partners at a minimum reasonable level, avoiding excessive fragmentation.

Applicants must describe financial circuits, responsibilities, reporting procedures and controls.

Any project failing to achieve the threshold marks will be rejected.

Following the evaluation, proposals recommended for funding are drawn up in a list, ranked according to the total marks awarded. Depending on budget availability, the highest ranked proposals will be awarded for co-funding. The remaining proposals recommended for co-funding will be placed on a reserve list.

*ANNEX III*

**Eligibility of travel and subsistence expenses**

These guidelines apply to the reimbursement of travel and subsistence expenses:

— of staff employed by the beneficiary (main and associated beneficiaries) of grants and experts invited by the beneficiary to participate in working groups,

— when explicitly provided for in service contracts.

1. Flat-rate subsistence allowances cover all subsistence expenses during missions, including hotels, restaurants and local transport (taxis and/or public transport). They apply in respect of each day of a mission at a minimum distance of 100 km from the normal place of work. The subsistence allowance varies depending on the country in which the mission is carried out. The daily rates correspond to the sum of the daily allowance and the maximum hotel price set out in Commission Decision C(2004) 1313 ([1]) as amended.

2. Missions in countries other than EU 27, acceding and applicant countries and EFTA-EEA countries will be subject to the prior agreement of the Commission. This agreement will relate to the objectives of the mission, its costs and the reasons therefor.

3. Travel expenses are eligible under the following conditions:

   — travel by the most direct and most economic route,

   — distance of at least 100 km between the place of the meeting and the normal place of work,

   — travel by rail: first class,

   — travel by air: economy class, unless a cheaper fare can be used (e.g. Apex); air travel is allowed only for return journeys of more than 800 km,

   — travel by car: reimbursed on the basis of the equivalent first class rail fare.

([1]) Commission Decision of 7 April 2004 concerning general implementing provisions adopting the Guide to missions for officials and other servants of the European Commission.

*ANNEX IV*

**Criteria for financial contributions to joint actions under the second Community Programme in the field of health (2008 to 2013)**

*(Decision No 1350/2007/EC of the European Parliament and of the Council of 23 October 2007, Article 4(3))*

1. **EXCLUSION AND ELIGIBILITY CRITERIA**

Joint actions may be implemented with public bodies or non-governmental bodies:

— which are non-profit making and independent of industry, commercial and business or other conflicting interests,

— which pursue as their primary goal one or more objectives of the programme,

— which are designated by a transparent procedures by the participating country in the second Community Programme of health,

— which do not pursue general objectives directly or indirectly contrary to the policies of the European Union or associated with an inadequate image,

— which have provided to the Commission satisfactory accounts of their membership, internal rules and sources of funding,

— which are not in any of the situations of exclusion listed in Articles 93 and 94 of the Financial Regulation.

2. **SELECTION CRITERIA**

The selection criteria make it possible to assess the applicant's financial standing and operational capability to complete the proposed work programme.

Applicants must have the professional resources, competences and qualifications required to complete the proposed action.

Applicants must have adequate financial resources to maintain their activity throughout the period during which the activity is being carried out and to participate in its co-funding.

Each applicant must provide:

— a clear, exhaustive and well detailed estimated budget of the expenses in relation to the corresponding activities carried out by each body taking part to the joint project,

— a declaration concerning both the availability of sufficient financial own resources that will cover those expenses not supported by the Community's contribution and a decision to commit its own sources in the case of a lack of financial support awarded by the Community,

— a copy of the annual accounts for the last financial year for which the accounts have been closed preceding the submission of the application (for non-profit bodies other than public bodies).

The joint action participants must be bodies to which Member States have attributed tasks concerning public health activities, as appropriate to the area covered in the call for proposals.

3. **AWARD CRITERIA**

— Action's contribution to the second Community Programme in the field of health and its annual work plan in terms of meeting the objectives and priorities.

— Potential benefits of the cooperation activities in terms of expected contributions to the existing knowledge or increased effectiveness in the area covered.

— Adequate number of Member States participating ensuring that a geographical coverage of the action is appropriate with regard to its objectives, explaining the role of the eligible countries as partners and the relevance of the project resources or target populations they represent.

— Clarity and quality of the objectives, work plan, organisation and description of the results and benefits expected as well as communication and dissemination strategies.

— Balanced participation of proponents in the activities planned.

*ANNEX V*

**Criteria for financial contributions to the functioning of a non-governmental body or a specialised network**

*(Decision No 1350/2007/EC of the European Parliament and of the Council of 23 October 2007, Article 4(1)(b))*

1. **EXCLUSION AND ELIGIBILITY CRITERIA**

Financial contributions by the Community may be awarded for the functioning of a non-governmental body or specialised network (hereinafter referred to as organisation) which:

— is non-profit-making and independent of industry, commercial and business or other conflicting interests,

— has members in at least half of the Member States,

— has a balanced geographical coverage,

— pursues as its primary goal one or more objectives of the programme,

— does not pursue general objectives directly or indirectly contrary to the policies of the European Union or associated with an inadequate image,

— has provided to the Commission satisfactory accounts of their membership, internal rules and sources of funding,

— has provided to the Commission their annual work plan for the financial year and the most recent annual activity report and, if available the most recent evaluation report,

— is not in any of the situations of exclusion listed in Articles 93 and 94 of the Financial Regulation.

The criterion 'independent from industry, commercial and business or other conflicting interest' refers to three aspects which all have to be fulfilled by the applicant organisation:

**Legal independence**

Two legal entities shall be regarded as independent of each other where neither is under the direct or indirect control of the other or under the same direct or indirect control of a third entity as the other.

Control may in particular take either of the following forms:

(a) the direct or indirect holding of more than 50 % of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that entity;

(b) the direct or indirect holding of decision-making powers, in fact or in law, in the legal entity concerned.

However, the following relationships between legal entities shall not in themselves be deemed to constitute controlling relationships:

(a) the direct or indirect holding of more than 50 % of the nominal value of the issued share capital of the applicant organisation or a majority of voting rights of the shareholders or associates of the legal entities is held by the same public body;

(b) the legal entities concerned are owned or supervised by the same public body.

**Financial independence**

As a general rule, applicant organisations receiving more than 20 % funding from the private sector [1], for their functioning (core funding) shall be considered as financially dependent.

[1] The term 'private sector' covers 'for-profit' companies/enterprises/corporations, business organisations or other entities irrespective of their legal nature (registered/not registered), ownership (wholly or partially privately owned/state owned) or size (large/small), if they are not controlled by the public.

**Transparency of the applicant's activities and funding**

(a) all activities should be published in the applicant's annual report [1]. Applicants working with private sector actors regarded ineligible for example by the nature of their activity which is incompatible with the basic principles of the European Union as stated in Article 2 and 3 of the Treaty establishing the European Community, can be considered unacceptable;

(b) all information on funding is to be made available to the public via the applicant's website, broken down by type (core and project funding, contribution in kind) and by funding entity;

(c) existing position statements of applicants regarding their requirement on transparency are to be publicly available.

## 2. **SELECTION CRITERIA**

The selection criteria make it possible to assess the applicant organisation's financial and operational capacity to complete the proposed work programme.

Only organisations with the resources necessary to ensure their functioning can be awarded a grant. As evidence of this they must:

— attach a copy of the organisation's annual accounts for the last financial year for which the accounts have been closed preceding the submission of the application. If the grant application is from a new European organisation the applicant must produce the annual accounts (including balance sheet and profit-and-loss statement) of the member organisations of the new body for the last financial year for which the accounts have been closed preceding the submission of the application,

— present a detailed forward budget for the organisation, balanced in terms of income and expenditure,

— attach an external audit report produced by an approved auditor in case of operating grant applications in excess of EUR 100 000, certifying the accounts for the last financial year available and giving an assessment of the applicant organisation's financial viability.

Only organisations with the necessary operational resources, skills and professional experience may be awarded a grant. To this end, the following information must be enclosed in support of the application:

— the organisation's most recent annual activity report, or, in the case of a newly constituted organisation, the curricula vitae of the members of the management board and other staff and the annual activity reports of the new body's member organisation,

— any references relating to participation in or applications for actions financed by the European Commission, conclusion of grant agreements and conclusion of contracts from the Community budget.

## 3. **AWARD CRITERIA**

The award criteria make it possible to select work programmes that can guarantee compliance with the Commission's objectives and priorities and can guarantee proper dissemination and communication including visibility of the Community financing.

To this end, the annual work programme presented with a view to obtaining Community funding must fulfil the following criteria:

(a) Policy and contextual relevance

The annual work programme must be consistent with the objectives of the second Community Programme in the field of health as regards the annual work plan for 2009.

[1] Collaborators in a position that could lead to a conflict of interest (Article 52 of the Financial Regulation and Article 34 of the Implementing Rules) shall be listed.

(b) Technical quality of the proposed work programme

The work programme must be clear, realistic and well detailed, in particular as regards the following aspects:

— clarity of the objectives and their suitability for achieving the expected results,

— description of the activities planned, tasks and responsibilities and timetables, including actions on communication and dissemination,

— description of the internal and external evaluation of the actions and of the indicators to be used in order to verify that the objectives of the work programme have been achieved.

The work programme must be cost-effective and thus demonstrate that the budget is commensurate with the resources to be used.

(c) Management quality

The organisation applying for funding must:

— guarantee an appropriate governing structure, management processes, human and financial resources and administration, and good working relationships with relevant partners and stakeholders,

— be able to demonstrate the level of achievement of its organisational objectives and its capacity to achieve result.

# COMMISSION DECISION

## of 25 February 2009

## granting a derogation to Austria pursuant to Decision 2008/671/EC on the harmonised use of radio spectrum in the 5 875-5 905 MHz frequency band for safety-related applications of Intelligent Transport Systems (ITS)

*(notified under document number C(2009) 1136)*

**(Only the German text is authentic)**

(2009/159/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) [1], and in particular Article 4(5) thereof,

Having regard to Commission Decision 2008/671/EC of 5 August 2008 on the harmonised use of radio spectrum in the 5 875-5 905 MHz frequency band for safety-related applications of Intelligent Transport Systems (ITS) [2], and in particular Article 3(2) thereof,

Having regard to request of Austria of 25 November 2008,

Whereas:

(1) Under Decision 2008/671/EC, Member States have to designate and make available, on a non-exclusive basis, the 5 875-5 905 MHz frequency band for intelligent transport systems (ITS) subject to specific parameters, no later than 6 February 2009.

(2) Article 3(2) of Decision 2008/671/EC states that, by way of derogation, Member States may request transitional periods and/or radio spectrum sharing arrangements, pursuant to Article 4(5) of Decision No 676/2002/EC.

(3) Austria has informed the Commission that, since this band is currently assigned on an exclusive basis to point-to-point radio systems for electronic news gathering (ENG), it is not in a position to implement the requirements set out in Decision 2008/671/EC on time.

(4) Authorisation to install and operate ENG point-to-point systems has been granted by the Austrian authorities to the Austrian Broadcasting Corporation in 1989 and is valid without geographical or time limits throughout Austria. Austria has stated that the Austrian Broadcasting Corporation will adopt new ENG point-to-point transmission equipment so as to operate in a different band and has agreed to abandon its authorisation regarding the use of the 5 875-5 905 MHz frequency band by 31 December 2011. As from 1 January 2012, the 5 875-5 905 MHz band will become fully available for safety-related ITS applications, in accordance with Decision 2008/671/EC.

(5) Austria has formally requested, by letter to the Commission of 25 November a transitional period during which ITS can be used in Austria only within time and regional limits to be set after coordination by the authorities responsible in Austria for spectrum management with the ENG point-to-point systems operated by the Austrian Broadcasting Corporation.

(6) Austria has provided sufficient information and technical justification in support of its request, based in particular on conclusions by the CEPT that harmful interference may occur between point-to-point systems and safety-related ITS systems, unless measures are taken at national level to ensure coexistence between these systems. Such harmful interference could potentially cause major traffic accidents.

(7) A total ban on the use of the 5 875-5 905 MHz band by ITS would be limited to small sections of Austria and to short periods of time. The use of this band by ITS would continue to be permitted in the rest of Austria subject to coordination by the authorities responsible in Austria for spectrum management. The derogation would therefore not significantly impact on the deployment of ITS technology in Austria, especially as the commercial availability of such systems is expected to be rather limited until 2011.

(8) Given the exceptional nature of the derogation, a report on the evolution of the situation in Austria for ITS and ENG would be beneficial for the smooth handling of the transitional period.

[1] OJ L 108, 24.4.2002, p. 1.
[2] OJ L 220, 15.8.2008, p. 24.

(9) The members of the Radio Spectrum Committee stated at their meeting on 17 December 2008 that they do not object to this transitional derogation.

(10) The requested derogation would not unduly defer implementation of Decision 2008/671/EC or create undue differences in the competitive or regulatory situations between Member States. There is sufficient justification for this in view of the particular situation of Austria, and full implementation of Decision 2008/671/EC needs to be facilitated in Austria,

HAS ADOPTED THIS DECISION:

*Article 1*

Austria is authorised to derogate from its obligations under Decision 2008/671/EC on the harmonised use of radio spectrum in the 5 875-5 905 MHz frequency band for safety-related applications of intelligent transport systems (ITS), subject to the conditions laid down in this Decision.

*Article 2*

Until 31 December 2011, Austria may impose time and geographical limits on the use of the 5 875-5 905 MHz frequency band for safety-related applications of ITS in order to ensure coordination with the point-to-point systems operated by the Austrian Broadcasting Corporation in that band.

*Article 3*

Austria shall submit a report to the Commission by 30 June 2011 on the implementation of this Decision.

*Article 4*

This Decision is addressed to the Republic of Austria.

Done at Brussels, 25 February 2009.

*For the Commission*

Viviane REDING

*Member of the Commission*

GUIDELINES

# EUROPEAN CENTRAL BANK

## GUIDELINE OF THE EUROPEAN CENTRAL BANK

**of 19 December 2008**

**amending Guideline ECB/2007/9 on monetary, financial institutions and markets statistics (recast)**

***(ECB/2008/31)***

(2009/160/EC)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Articles 5.1, 12.1 and 14.3 thereof,

Having regard to Regulation (EC) No 25/2009 of the European Central Bank of 19 December 2008 concerning the balance sheet of the monetary financial institutions sector (recast) (ECB/2008/32) [1],

Having regard to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank [2],

Having regard to Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions [3],

Having regard to Guideline ECB/2006/16 of 10 November 2006 on the legal framework for accounting and financial reporting in the European System of Central Banks [4],

Having regard to Annex A to Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community [5],

Having regard to Regulation (EC) No 24/2009 of the European Central Bank of 19 December 2008 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions (ECB/2008/30) [6],

Whereas:

(1) Regulation (EC) No 24/2009 (ECB/2008/30) concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions (hereinafter the 'FVCs') establishes that under certain conditions FVCs may be exempt from some or all reporting requirements set out in Regulation (EC) No 24/2009 (ECB/2008/30) and national central banks (NCBs) may instead derive the required data from other statistical, public or supervisory data sources.

(2) Data on FVC issued securities and/or FVCs' holdings of securities may be derived from a centralised securities database (CSDB); therefore, a functioning CSDB is considered essential to enable the derivation of data on FVC issued securities and/or FVCs' holdings of securities,

HAS ADOPTED THIS GUIDELINE:

*Article 1*

Guideline ECB/2007/9 [7] is amended as follows:

1. the following Article 18a is inserted:

'*Article 18a*

**Statistics on the assets and liabilities of FVCs**

[1] OJ L 15, 20.1.2009, p. 14.
[2] OJ L 318, 27.11.1998, p. 8.
[3] OJ L 372, 31.12.1986, p. 1.
[4] OJ L 348, 11.12.2006, p. 1.
[5] OJ L 310, 30.11.1996, p. 1.
[6] OJ L 15, 20.1.2009, p. 1.
[7] OJ L 341, 27.12.2007, p. 1.

1. ***Scope of reporting***

NCBs shall compile and report separate aggregated statistical information on assets and liabilities of FVCs in accordance with Part 15 of Annex III to this Guideline. Data shall be submitted for the following three sub-categories: (i) FVCs engaged in traditional securitisation; (ii) FVCs engaged in synthetic securitisation; and (iii) other FVCs.

For the purpose of FVC statistics traditional securitisation refers to securitisations where the transfer of risk is achieved by the economic transfer of the assets being securitised to the FVC. This shall be accomplished by the transfer of ownership of the securitised assets from the originator or through sub-participation.

Synthetic securitisation refers to securitisations where the transfer of risk is achieved by the use of credit derivatives, guarantees or any similar mechanism.

These requirements shall cover data on end-of-quarter outstanding amounts, financial transactions and write-offs/write-downs provided on a quarterly basis.

NCBs may submit to the ECB the required data on write-offs/write-downs on a best effort basis.

2. ***Reporting frequency and deadline***

NCBs shall report to the ECB the data on FVCs' outstanding amounts, financial transactions and write-offs/write-downs on a quarterly basis by close of business on the 28th working day following the end of the quarter to which the data relate.

3. ***Revision policy***

The following general rules shall apply to the revision of quarterly data:

(a) during the regular production periods, i.e. from the 28th working day following the end of the reference quarter to the day preceding the day the data are disseminated back to the NCBs, NCBs may revise the data referring to the previous reference quarter;

(b) outside the regular production periods, NCBs may also revise data referring to reference periods prior to the previous reference quarter, *inter alia*, in case of mistakes, reclassifications or improved reporting procedures;

(c) revisions to data reported under Regulation (EC) No 25/2009 of the European Central Bank (ECB/2008/32) (*) on loans originated and serviced by euro area MFIs shall be included, where relevant, in the FVC statistics according to paragraphs (a) and (b).

4. ***Reporting approaches***

In order to meet the statistical reporting requirements from which FVCs are exempt under Article 5(1)(c) of Regulation (EC) No 24/2009 or the European Central Bank (ECB/2008/30) (**), the NCBs after consulting the ECB, shall decide on the most appropriate approach to compiling data on assets and liabilities of FVCs, depending on the organisation of the relevant markets and the availability of other relevant statistical, public or supervisory information in the Member State.

5. ***Data sources and data quality standards***

If NCBs derive data on FVC issued securities and/or FVCs' holdings of securities from the CSDB or another securities database and/or data on assets and liabilities of FVCs from other statistical data sources, from public sources such as pre-sale reports or investor reports, or from supervisory data sources, the data quality standards described below shall apply.

As identified in Part 15 of Annex III to this Guideline, a distinction is made between anchor series, which are subject to high quality standards, comparable to data directly reported by FVCs in accordance with Annex III to Regulation (EC) No 24/2009 (ECB/2008/30) and which are verifiable ex-post as outlined in paragraph 9 and non-anchor series which may be estimated according to less stringent quality standards (***).

If NCBs derive data on assets and liabilities of FVCs from supervisory data sources, the NCBs shall ensure that these sources are sufficiently aligned with the statistical concepts and definitions under the FVC reporting requirements. The same shall apply to data which are derived from other statistical data sources.

If data are not directly reported by FVCs in accordance with Article 5(1)(c) of Regulation (EC) No 24/2009 (ECB/2008/30), the quality of the data shall be monitored by the NCBs on the basis of the information that is available from the annual financial statements, as outlined in paragraph 9. If the cross-checks between the data derived on a quarterly basis and the annual financial statements show that high quality standards are not met, NCBs shall take the necessary measures to ensure that the data meet the required quality standards, including the possible direct collection of data under Regulation (EC) No 24/2009 (ECB/2008/30).

If data on outstanding amounts and new issues of FVC debt securities and/or FVCs' holdings of securities are compiled from the CSDB or another securities database, the NCBs shall ensure extensive coverage of FVC issued debt securities and/or FVC's holdings of securities and shall monitor such data on a regular basis as outlined in paragraph 10. If the coverage and quality indicators for the relevant set of securities in the CSDB or other securities database show that high quality standards are not met, NCBs shall take the necessary measures to meet the required quality standards, including the possible direct collection of data under Regulation (EC) No 24/2009 (ECB/2008/30).

6. ***Loans originated and serviced by euro area MFIs and exchange of cross-border information***

In accordance with Article 5 of Regulation (EC) No 25/2009 (ECB/2008/32), NCBs collect data on loans purchased by FVCs that originated from and are serviced by euro area MFIs and broken down by maturity, sector and residency of debtors, as identified in Part 15 of Annex III to this Guideline.

If the originators of the securitised loans are MFIs resident in the same country as the FVC, and these domestic MFIs continue to service the securitised assets, the NCB may compile this part of the data on the FVCs' loan portfolio, relating to outstanding amounts and financial transactions, from data collected from domestic MFIs as specified in Article 5 of Regulation (EC) No 25/2009 (ECB/2008/32), instead of directly collecting these data from FVCs.

If the originators of the securitised loans are MFIs resident in another euro area Member State, and these MFIs continue to service the securitised assets, NCBs shall exchange the information collected from these MFIs in accordance with Article 5 of Regulation (EC) No 25/2009 (ECB/2008/32). Each NCB shall collect information in accordance with Article 5 of Regulation (EC) No 25/2009 (ECB/2008/32) on loans that originate from and are serviced by domestic MFIs and have been securitised with an FVC resident in another euro area Member State.

For the purpose of exchanging cross-border information, each NCB shall transmit information on loans originated and serviced by domestic MFIs under Article 5 of Regulation (EC) No 25/2009 (ECB/2008/32) to the ECB in accordance with Part 15 of Annex III to this Guideline.

NCBs shall report these data to the ECB by the 23rd working day following the end of the quarter to which the data relate.

The ECB shall provide, in line with the applicable legal acts protecting confidential data, the technical gateway for this exchange of cross-border information. The ECB shall redistribute the data to the NCBs concerned on the 24th working day following the end of the quarter to which the data relate.

NCBs that are involved in the exchange of data for existing securitisations shall clarify any outstanding queries and coordination issues on a bilateral basis and, if required, exchange relevant information. If there are new securitisations, the relevant NCBs may request the ECB to act as coordinator.

7. ***Derogations and grossing-up***

If NCBs compile data on assets and liabilities of FVCs directly from FVCs, and where relevant, based on data reported by MFIs under Regulation (EC) No 25/2009 (ECB/2008/32), and where NCBs grant derogations to FVCs in accordance with Article 5(1)(b) of Regulation (EC) No 24/2009 (ECB/2008/30), NCBs shall gross up to 100 % coverage for all FVCs when compiling the quarterly assets and liabilities of FVCs data reported to the ECB for outstanding amounts, financial transactions and write-offs/write-downs.

If NCBs compile data on assets and liabilities of FVCs from other statistical, public and/or supervisory sources they may base their compilation on a sample of FVCs as long as these FVCs account for at least 95 % of the total outstanding amount of assets of the FVC reference reporting population in a relevant Member State as represented in the list of FVCs. NCBs shall gross up to 100 % coverage when compiling the quarterly data on assets and liabilities of FVCs reported to the ECB for outstanding amounts, financial transactions and write-offs/write-downs.

8. ***Explanatory notes***

NCBs shall submit explanatory notes to the ECB setting out the reasons for significant revisions as well as for any revisions made pursuant to Article 18a(3)(b) of this Guideline.

9. ***Monitoring the quality of data not directly reported by FVCs or MFIs***

NCBs shall check the quality of the quarterly data which are not directly reported by FVCs or MFIs in accordance with Article 5(3) of Regulation (EC) No 24/2009 (ECB/2008/30), on the basis of information available from annual financial statements.

The outcome of the quality checks shall be transmitted to the ECB by the end of September each year or at the earliest point in time thereafter, in accordance with the applicable national legal practices in the FVC's Member State of residence.

10. ***Monitoring the quality of the CSDB or other securities database in the context of FVC issued securities***

If the CSDB or another securities database is used as a data source for FVC statistics in accordance with paragraph 5, NCBs shall provide the ECB, on an annual basis, with indicators on the coverage and quality of the relevant set of securities in the CSDB or the other securities database, in accordance with the methodology to be separately communicated to the NCBs.

The above information shall be transmitted to the ECB by the end of February each year by taking as a reference the end-December data of the preceding year.

(*) OJ L 15, 20.1.2009, p. 14.
(**) OJ L 15, 20.1.2009, p. 1.
(***) For example, estimations, e.g. interpolations and extrapolations, may be necessary when data are collected from public or supervisory sources at a frequency lower than quarterly and with a timeliness longer than the 28th working day following the reference period.';

2. the following Article 20a is inserted:

'*Article 20a*

**List of FVCs for statistical purposes**

1. ***Scope of reporting***

The variables collected to establish and maintain the list of FVCs for statistical purposes provided for in Article 3 of Regulation (EC) No 24/2009 (ECB/2008/30) are specified in Annex VIII to this Guideline.

NCBs shall report updates of the variables specified in Part 1 of Annex VIII to this Guideline either when there are changes in the FVC sector, i.e. an institution joins the FVC sector or an FVC leaves the FVC sector, or when there is a change in an FVC's attributes.

NCBs shall derive updates by comparing their national list of FVCs at the end of two successive end-of-quarters, i.e. they shall not take into account intra-quarter movements.

When reporting a new institution or an institution to be modified, NCBs shall complete all mandatory variables.

When reporting an institution leaving the FVC sector, NCBs shall report the following information as a minimum: the type of request, i.e. deletion, and the identification code of the FVC, i.e. the "fvc_id" variable.

Where possible, NCBs shall not reallocate FVC identification codes of deleted FVCs to new or modified FVCs.

When reporting updates, NCBs may use their national character set, provided they use the Roman alphabet. NCBs shall use Unicode to correctly display all special character sets when receiving information from the ECB via the RIAD Data Exchange System.

Prior to transmitting updates to the ECB, NCBs shall carry out the validation checks set out in Part 2 of Annex VIII to this Guideline.

2. ***Reporting frequency and deadline***

NCBs shall transmit to the ECB updates of the variables specified in Part 1 of Annex VIII to this Guideline, at least on a quarterly basis, within 14 working days following the reference date.

3. ***Transmission standards***

NCBs shall transmit updates in XML file format. The ECB shall then process the data via the RIAD Data Exchange System. In the event of failure of the EXDI and/or the RIAD Data Exchange System, updates shall be transmitted in XML format via the N13 Cebamail account. If the Cebamail system is not operational for the file transfer of FVC updates or corrections, NCBs shall transfer these files by e-mail using the XML format to the following e-mail address: birs@ecb.europa.eu

NCBs that use manual input procedures shall have in place an adequate set of controls to minimise operational errors and ensure the accuracy and consistency of the FVC updates reported via the RIAD Data Exchange System.

4. ***Acquisition and error acknowledgements***

On receipt of the updates, i.e. the latest available information, the ECB shall immediately carry out the validation checks as set out in Part 2 of Annex VIII to this Guideline.

The ECB shall immediately return to the NCBs: (i) an acquisition acknowledgement containing summary information of the FVC updates that have been processed and successfully implemented in the ECB's FVC dataset; and/or (ii) an error acknowledgement containing detailed information on the FVC updates and the validation checks which have failed. In accordance with Part 1 of Annex VIII to this Guideline, the ECB shall implement, in whole or in part, an incomplete, incorrect or missing "object_request" variable or shall reject it.

On receipt of an error acknowledgement, NCBs shall take immediate action to transmit corrected information. If immediate action is not feasible, they shall have a maximum of two working days, i.e. until 17.59 Central European Time (CET) on the second working day, to report corrected information, following the deadline for reporting set out in paragraph 2.

5. ***Dissemination of the list of FVCs***

The ECB shall take a copy of the FVC dataset, excluding values marked as confidential, at 18.00 CET on the second working day following the deadline for reporting referred to in paragraph 2. The updated information shall become available by 12.00 CET the next day.

The ECB shall not publish values which have been marked as confidential.

At the same time as releasing the list of FVCs on its website, the ECB shall send it to the NCBs via the RIAD Data Exchange System.';

3. Annex III is amended and Annex VIII is added in accordance with the Annex to this Guideline;

4. in the Glossary, the definition of financial vehicle corporations is replaced with the following:

'**Financial vehicle corporations engaged in securitisation transactions** are defined in Article 1(1) of Regulation (EC) No 24/2009 (ECB/2008/30).'

*Article 2*

**Entry into force**

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

*Article 3*

**Addressees**

This Guideline is addressed to all Eurosystem central banks.

Done at Frankfurt am Main, 19 December 2008.

*For the Governing Council of the ECB*
*The President of the ECB*
Jean-Claude TRICHET

*ANNEX*

1. The following Part 15 is added to Annex III:

'PART 15

**FVC Reporting table**

*Table 1*

**Outstanding amounts and financial transactions**

Data required to be provided on a quarterly basis

| | A. Domestic | | | | | | | | | | B. Other participating Member States | | | | | | | | | | C. RoW | D. Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Total | MFIs | Non-MFIs — Total | | | | | | | | Total | MFIs | Non-MFIs — Total | | | | | | | | | |
| | | | | | | Other residents | | | | | | | | | | Other residents | | | | | | |
| | | | | General Gov't | Total | Other financial intermediaries + financial auxiliaries (S.123 + S.124) | o/w FVCs | Insurance corporations and pension funds (S.125) | Non-financial corporations (S.11) | Households + non-profit institutions serving households (S.14 + S.15) | | | | General Gov't | Total | Other financial intermediaries + financial auxiliaries (S.123 + S.124) | o/w FVCs | Insurance corporations and pension funds (S.125) | Non-financial corporations (S.11) | Households + non-profit institutions serving households (S.14 + S.15) | | |
| **ASSETS** | | | | | | | | | | | | | | | | | | | | | | |
| 1. **Deposit and loan claims** | | ANC | | | | | ANC | | | | | ANC | | | | | ANC | | | | | ANC |
| 2. **Securitised loans** | | | | | | | | | | | | | | | | | | | | | | ANC |
| 2a euro area MFI as originator (total maturity) | | | | ANC/ MFI | | ANC/ MFI | | ANC/ MFI | | ANC/ MFI | | | | ANC/ MFI | | ANC/ MFI | | ANC/ MFI | | ANC/ MFI | | ANC/ MFI |
| up to 1 year | | | | | | | | | ANC/ MFI | | | | | | | | | | ANC/ MFI | | | |
| over 1 year and up to 5 years | | | | | | | | | ANC/ MFI | | | | | | | | | | ANC/ MFI | | | |
| over 5 years | | | | | | | | | ANC/ MFI | | | | | | | | | | ANC/ MFI | | | |
| 2b euro area General Government as originator | | | | | | | | | | | | | | | | | | | | | | ANC |
| 2c euro area OFI and ICPF as originator | | | | | | | | | | | | | | | | | | | | | | ANC |
| 2d euro area NFC as originator | | | | | | | | | | | | | | | | | | | | | | ANC |
| 2e non-euro area originator | | | | | | | | | | | | | | | | | | | | | | ANC |

| | A. Domestic | | | | | | | | | | B. Other participating Member States | | | | | | | | | | C. RoW | D. Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Non-MFIs — Total | | | | | | | | | | Non-MFIs — Total | | | | | | | | | |
| | | | | | Other residents | | | | | | | | | | Other residents | | | | | | | |
| | Total | MFIs | | General Gov't | Total | Other financial intermediaries + financial auxiliaries (S.123 + S.124) | o/w FVCs | Insurance corporations and pension funds (S.125) | Non-financial corporations (S.11) | Households + non-profit institutions serving households (S.14 + S.15) | Total | MFIs | | General Gov't | Total | Other financial intermediaries + financial auxiliaries (S.123 + S.124) | o/w FVCs | Insurance corporations and pension funds (S.125) | Non-financial corporations (S.11) | Households + non-profit institutions serving households (S.14 + S.15) | | |
| 3. **Securities other than shares** | | | | | | | | | | | | | | | | | | | | | | ANC |
| up to 1 year | | NON-ANC | NON-ANC | | | | NON-ANC | | | | | NON-ANC | NON-ANC | | | | NON-ANC | | | | NON-ANC | |
| over 1 year and up to 2 years | | NON-ANC | NON-ANC | | | | NON-ANC | | | | | NON-ANC | NON-ANC | | | | NON-ANC | | | | NON-ANC | |
| over 2 years | | NON-ANC | NON-ANC | | | | NON-ANC | | | | | NON-ANC | NON-ANC | | | | NON-ANC | | | | NON-ANC | |
| 4. **Other securitised assets** | | | | | | | | | | | | | | | | | | | | | | ANC |
| 4a of which euro area General Government as originator | | | | | | | | | | | | | | | | | | | | | | ANC |
| 4b of which euro area NFC as originator | | | | | | | | | | | | | | | | | | | | | | ANC |
| 5. **Shares and other equity** | | | | | | | NON-ANC | | | | | | | | | | NON-ANC | | | | | NON-ANC |
| 6. **Financial derivatives** | | | | | | | | | | | | | | | | | | | | | | ANC |
| 7. **Fixed assets** | | | | | | | | | | | | | | | | | | | | | | NON-ANC |
| 8. **Remaining assets** | | | | | | | | | | | | | | | | | | | | | | NON-ANC |

| | A. Domestic | | | | | | | | | | B. Other participating Member States | | | | | | | | | | C. RoW | D. Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Total | MFIs | Non-MFIs — Total | | | | | | | | Total | MFIs | Non-MFIs — Total | | | | | | | | | |
| | | | | | Other residents | | | | | | | | | | Other residents | | | | | | | |
| | | | | General Gov't | Total | Other financial intermediaries + financial auxiliaries (S.123 + S.124) | o/w FVCs | Insurance corporations and pension funds (S.125) | Non-financial corporations (S.11) | Households + non-profit institutions serving households (S.14 + S.15) | | | | General Gov't | Total | Other financial intermediaries + financial auxiliaries (S.123 + S.124) | o/w FVCs | Insurance corporations and pension funds (S.125) | Non-financial corporations (S.11) | Households + non-profit institutions serving households (S.14 + S.15) | | |
| **LIABILITIES** | | | | | | | | | | | | | | | | | | | | | | |
| 9. **Loans and deposits received** | | | | | | | ANC | | | | | | | | | | ANC | | | | | ANC |
| 10. **Debt securities issued** | | | | | | | | | | | | | | | | | | | | | | |
| up to 1 year | | | | | | | | | | | | | | | | | | | | | | ANC |
| over 1 year and up to 2 years | | | | | | | | | | | | | | | | | | | | | | ANC |
| over 2 years | | | | | | | | | | | | | | | | | | | | | | ANC |
| 11. **Capital and Reserves** | | | | | | | | | | | | | | | | | | | | | | ANC |
| 12. **Financial derivatives** | | | | | | | | | | | | | | | | | | | | | | ANC |
| 13. **Remaining liabilities** | | | | | | | | | | | | | | | | | | | | | | NON-ANC |

ANC: Anchor serie
NON-ANC: Non-anchor serie
ANC/MFI: Anchor series, which are partly derived from data directly collected from MFIs via Regulation (EC) No 24/2009 (ECB/2008/30) when euro area MFIs are the originators and servicers of the loans.

*Table 2*

**Write-offs/write-downs**

Data required to be provided on a quarterly basis

| | D. Total |
|---|---|
| **ASSETS** | |
| 2 **Securitised loans** | |

*Table 3*

**Outstanding amounts to be exchanged between NCBs**

| Balance sheet items | Total [1] | A. Domestic | | | | | | B. Other participating Member States | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Gen. Gov't (S. 13) | Other resident sectors | | | | | Gen. Gov't (S. 13) | Other resident sectors | | | | |
| | | Total | Total | OFIs & financial auxil. (S.123 + S.124) | Ins. corp. & pension funds (S.125) | NFC (S.11) | Households (S.14 + S.15) | Total | Total | OFIs & financial auxil. (S.123 + S.124) | Ins. corp. & pension funds (S.125) | NFC (S.11) | Households (S.14 + S.15) |
| **ASSETS** | | | | | | | | | | | | | |
| **Securitised loans** | | | | | | | | | | | | | |
| FVCs located in euro area country A | | | | | | | | | | | | | |
| FVCs located in euro area country B | | | | | | | | | | | | | |
| FVCs located in euro area country C | | | | | | | | | | | | | |
| etc. | | | | | | | | | | | | | |
| **up to 1 year** | | | | | | | | | | | | | |
| FVCs located in euro area country A | | | | | | | | | | | | | |
| FVCs located in euro area country B | | | | | | | | | | | | | |
| FVCs located in euro area country C | | | | | | | | | | | | | |
| etc. | | | | | | | | | | | | | |
| **over 1 year and up to 5 yrs** | | | | | | | | | | | | | |
| FVCs located in euro area country A | | | | | | | | | | | | | |
| FVCs located in euro area country B | | | | | | | | | | | | | |
| FVCs located in euro area country C | | | | | | | | | | | | | |
| etc. | | | | | | | | | | | | | |
| **over 5 years** | | | | | | | | | | | | | |
| FVCs located in euro area country A | | | | | | | | | | | | | |
| FVCs located in euro area country B | | | | | | | | | | | | | |
| FVCs located in euro area country C | | | | | | | | | | | | | |
| etc. | | | | | | | | | | | | | |

[1] Includes domestic area, other euro area participating Member States and rest of the world.'

2. The following Annex VIII is added:

*'ANNEX VIII*

**LIST OF FVCs FOR STATISTICAL PURPOSES**

PART 1

**Variables for reporting the list of financial vehicle corporations (FVCs) for statistical purposes**

| Variable name | Variable description | Status |
|---|---|---|
| object_request | This variable specifies the type of FVC update sent and may have one of six predefined values:<br>"fvc_req_new": request for addition of a new FVC<br>"fvc_req_mod": request for modifications to an FVC<br>"fvc_req_del": request for an FVC to be deleted<br>"fvc_req_realloc": request for reallocation of the identification code of a deleted FVC to a new FVC<br>"fvc_req_mod_id_realloc": request for reallocation of the identification code of a deleted FVC to another FVC<br>"fvc_req_mod_id": request for a change of the identification code (fvc_id) of an FVC to a different identification code | Mandatory |
| fvc_confidentiality_flag | This variable indicates the confidentiality status of the entire record. One of three predefined values should be selected: "F" (free, not confidential), "N" (confidential; may be released for European System of Central Banks (ESCB) use only; not for external release) or "C" (confidential; not for release to the ESCB or the public)<br>If partial confidentiality of any one particular variable is required, the value "F" must be used | Mandatory |
| fvc_id | The primary key for the FVC dataset is the unique identification code (hereinafter the "id code") for each FVC<br>It is comprised of two parts: "host" and "id"<br>The values for the two parts combined ensure that the "fvc_id" is unique to that FVC | Mandatory |
| host | The two-character country ISO code for the FVC's country of registration, one of two parts of the "fvc_id" variable (see above) | Mandatory when part of id code |
| id | The FVC's id code, one of two parts of the "fvc_id" variable (see above) | Mandatory when part of id code |
| name | The FVC's full registration name, including the company designation, e.g. plc, Ltd, SpA, etc. | Mandatory |
| address | The FVC's location details or its management company where applicable, composed of four parts: "postal_address", "postal_box", "postal_code" and "city" | Mandatory for "new" and "mod" requests |
| postal_address | The street name and the number of the building | Mandatory for "new" and "mod" requests |

| Variable name | Variable description | Status |
|---|---|---|
| postal_box | The post office box number, using national box convention systems | Mandatory for "new" and "mod" requests |
| postal_code | The postcode, using the national postal system conventions | Mandatory for "new" and "mod" requests |
| city | The city of location | Mandatory for "new" and "mod" requests |
| management company name | The full, registered name of the FVC's management company<br>If this information is missing, the value "not available" (where the FVC has a management company) or "not applicable" (where the FVC does not have a management company) must be reported | Mandatory |
| management company name_confidentiality _flag | This variable indicates the confidentiality status of the information on the management company name<br>One of three predefined values should be selected: "F" (free, not confidential), "N" (confidential; may be released for ESCB use only; not for external release) or "C" (confidential; not for release to the ESCB or to the public) | Mandatory |
| nature of securitisation | This variable specifies the type of securitisation undertaken by the FVC<br>One out of four predefined values should be selected: "traditional", "synthetic", "other" or "not available" | Mandatory |
| nature of securitisation _confidentiality_flag | This variable indicates the confidentiality status of the information on the nature of securitisation<br>One of three predefined values should be selected: "F" (free, not confidential), "N" (confidential; may be released for ESCB use only; not for external release) or "C" (confidential; not for release to the ESCB or the public) | Mandatory |
| ISIN codes | This variable specifies the ISIN [1] codes for each class of security per single securitisation, issued by the FVC<br>The variable is composed of several parts including reference to: "ISIN_1", "ISIN_2", "ISIN_3", "ISIN_4" and "ISIN_n"<br>As a minimum requirement, at least one ISIN code (ISIN_1) must be reported<br>If reporting an FVC for which ISIN codes are not applicable, or not available, the 12 characters term "XXXXXXXXXXXX" must be reported for "ISIN_1" | Mandatory |
| free_text | Explanatory information on the FVC | |

[1] International Securities Identification Number: a code uniquely identifying a securities issue, composed of 12 alphanumeric characters.

PART 2

**Validation checks**

1. *General checks*

It will be checked that:

— all mandatory variables are completed,

— the value for the variable "object_request" is one of the six predefined types as set out in Part 1 of this Annex ("fvc_req_new", "fvc_req_mod", "fvc_req_del", "fvc_req_realloc", "fvc_req_mod_id_realloc", "fvc_req_mod_id") depending on the kind of information transmitted, and

— NCBs use the Roman alphabet when reporting updates to the European Central Bank (ECB).

2. *Id code checks*

It will be checked that:

— the variable "fvc_id" is comprised of two separate parts, a "host" variable and an "id" variable, and the values for the two parts combined ensure that the "fvc_id" is unique to an FVC,

— the value for the variable "host" for an FVC is a two-character country ISO code,

— a previously used id code is not allocated to a new FVC. If such an action is unavoidable, NCBs must send an "fvc_req_realloc" request to the ECB,

— when reporting an id code change for an existing FVC, a specific "fvc_req_mod_id" request is used, and

— when reporting an id code change to a previously deleted id code, a specific "fvc_req_mod_id_realloc" request is used.

If the identification code has already been used (either for an existing FVC or an FVC which has been previously deleted) and the request is not an "fvc_req_mod_id_realloc", or the new FVC identification code is in the current list, the ECB rejects the request.

If the variable "fvc_id" is incomplete, incorrect or missing, the ECB rejects the entire request.

3. *Name*

It will be checked that:

— this variable specifies the FVC's name,

— the FVC's name, including its designation is consistently reported for all names where this is applicable,

— the lower case convention is followed to allow for accents, and

— lower case is used where applicable.

If the variable "name" is missing, the ECB rejects the entire request.

4. *Address*

It will be checked that:

— at least one of the address variables "postal_address", "postal_box" or "postal_code" is completed,

— the “postal_address” variable indicates the street name and street number of the FVC (or its management company, as applicable),

— the “postal_box” variable uses national box convention systems, and that no post office box text references are placed in front of “postal_box” numbers, and

— the “postal_code” variable uses national postal system conventions and specifies the relevant postcode.

If at least one of the “address” variables is missing, the ECB rejects the entire request.

5. *City*

It will be checked that the variable “city” specifies the city where the FVC is located.

If the variable “city” is missing, the ECB rejects the entire request.

6. *Management company name and associated confidentiality flag*

A management company is an institution which provides management or administration services to the FVC.

It will be checked that:

— the variable “management company name” is completed either with a company name or as “not available” or “not applicable”,

— if the variable “management company name” is given as “not available”, an accompanying reason has also been provided in the “free_text” field; otherwise, the ECB will send a warning,

— the variable “management company name_confidentiality_flag” is completed either with an “F”, “N” or “C”.

If the variable “management company name” is missing, the ECB rejects the entire request.

7. *Nature of securitisation and associated confidentiality flag*

It will be checked that:

— the variable “nature of securitisation” is completed with one of the four predefined values: “traditional”, “synthetic”, “other” or “not available”,

— if the variable “nature of securitisation” is given as “not available”, an accompanying reason has also been provided in the “free_text” field; otherwise, the ECB will send a warning,

— the variable “nature of securitisation_confidentiality_flag” is completed either with an “F”, “N” or “C”.

If the variable “nature of securitisation” is missing, the ECB rejects the entire request.

8. *ISIN codes*

It will be checked that:

— under the variable “ISIN codes”, at least the variable “ISIN_1” is completed for each FVC, and that the value for “ISIN_1” is either the actual code or the 12 characters term “XXXXXXXXXXXX”,

— ISIN codes per FVC are not duplicated,

— ISIN codes across FVCs are not duplicated.

If the variables “ISIN codes” and “ISIN_1” are missing, i.e. neither the actual code, nor the term “XXXXXXXXXXXX” is provided, the ECB rejects the entire request.

9. *Confidentiality checks*

NCBs may mark certain values or the entire record as confidential with the specified confidentiality flag variables, when reporting an update to an FVC to the ECB.

In such cases, accompanying information on the reason for confidentiality should be provided in the "free_text" field.

The ECB does not publish such values on its website or disseminate them back to NCBs. The confidentiality flags are described in detail below:

| | |
|---|---|
| "F" | Free: this value is non-confidential and may be published |
| "N" | Confidential statistical information: this value may be disseminated within the ESCB, but not published |
| "C" | Confidential statistical information: this value may not be disseminated within the ESCB nor published; it remains within the ECB's statistical production environment |

It will be checked that:

— the "fvc_confidentiality_flag", "management company name_confidentiality_flag" and "nature of securitisation_confidentiality_flag", are completed with one of the following predefined values: "F", "N" or "C",

— if "management company name_confidentiality_flag" and/or "nature of securitisation_confidentiality_flag" are "N" or "C", then "fvc_confidentiality_flag" should be "F".'

**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.