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Contents

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

REGULATIONS

Commission Regulation (EC) No 361/2009 of 4 May 2009 establishing the standard import values for determining the entry price of certain fruit and vegetables 1

Commission Regulation (EC) No 362/2009 of 4 May 2009 amending the representative prices and additional import duties for certain products in the sugar sector fixed by Regulation (EC) No 945/2008 for the 2008/2009 marketing year 3

★ **Commission Regulation (EC) No 363/2009 of 4 May 2009 amending Regulation (EC) No 1974/2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) 5**

Commission Regulation (EC) No 364/2009 of 4 May 2009 amending Regulation (EC) No 360/2009 fixing the import duties in the cereals sector applicable from 1 May 2009 13

DIRECTIVES

★ **Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (Codified version) ⁽¹⁾ 16**

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

DECISIONS

Commission

2009/364/EC:

- ★ **Commission Decision of 8 October 2008 on the measure (C 33/07 (ex N 339/06 and N 729/06)) which Germany is planning to implement through the IBG Beteiligungsgesellschaft Sachsen-Anhalt mbH (notified under document number C(2008) 5581) ⁽¹⁾.....** 23

2009/365/EC:

- ★ **Commission Decision of 28 April 2009 authorising the placing on the market of lycopene from *Blakeslea trispora* as a novel food ingredient under Regulation (EC) No 258/97 of the European Parliament and of the Council (notified under document number C(2009) 3039).....** 31

2009/366/EC:

- ★ **Commission Decision of 29 April 2009 on the clearance of the accounts of the paying agencies of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia concerning expenditure in the field of rural development measures financed by the European Agricultural Guarantee Fund (EAGF) for the 2008 financial year (notified under document number C(2009) 3199).....** 35

2009/367/EC:

- ★ **Commission Decision of 29 April 2009 on the clearance of the accounts of the paying agencies of Member States concerning expenditure financed by the European Agricultural Guarantee Fund (EAGF) for the 2008 financial year (notified under document number C(2009) 3217)** 44

2009/368/EC:

- ★ **Commission Decision of 4 May 2009 fixing for the marketing year 2009/2010 the amounts of the aid for diversification and the additional aid for diversification to be granted under the temporary scheme for the restructuring of the sugar industry of the Community (notified under document number C(2009) 3158).....** 50

Corrigenda

- ★ **Corrigendum to Commission Directive 2008/113/EC of 8 December 2008 amending Council Directive 91/414/EEC to include several micro-organisms as active substances (OJ L 330, 9.12.2008)** 51



⁽¹⁾ Text with EEA relevance

I

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

REGULATIONS

COMMISSION REGULATION (EC) No 361/2009**of 4 May 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 5 May 2009.

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

Done at Brussels, 4 May 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	JO	88,9
	MA	82,7
	TN	139,0
	TR	132,5
	ZZ	110,8
0707 00 05	JO	155,5
	MA	32,7
	TR	129,1
	ZZ	105,8
0709 90 70	JO	216,7
	TR	114,9
	ZZ	165,8
0805 10 20	EG	44,2
	IL	55,7
	MA	51,6
	TN	64,9
	TR	55,0
	US	51,9
	ZZ	53,9
0805 50 10	TR	47,0
	ZA	52,3
	ZZ	49,7
0808 10 80	AR	83,4
	BR	72,6
	CA	114,7
	CL	78,1
	CN	89,0
	MK	33,9
	NZ	107,6
	US	124,6
	UY	70,5
	ZA	79,5
	ZZ	85,4

⁽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 362/2009**of 4 May 2009****amending the representative prices and additional import duties for certain products in the sugar sector fixed by Regulation (EC) No 945/2008 for the 2008/2009 marketing year**

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 951/2006 of 30 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 318/2006 as regards trade with third countries in the sugar sector ⁽²⁾, and in particular Article 36(2), second subparagraph, second sentence thereof,

Whereas:

- (1) The representative prices and additional duties applicable to imports of white sugar, raw sugar and certain syrups

for the 2008/2009 marketing year are fixed by Commission Regulation (EC) No 945/2008 ⁽³⁾. These prices and duties have been last amended by Commission Regulation (EC) No 348/2009 ⁽⁴⁾.

- (2) The data currently available to the Commission indicate that those amounts should be amended in accordance with the rules and procedures laid down in Regulation (EC) No 951/2006,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties applicable to imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EC) No 945/2008 for the 2008/2009, marketing year, are hereby amended as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 5 May 2009.

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

Done at Brussels, 4 May 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 178, 1.7.2006, p. 24.

⁽³⁾ OJ L 258, 26.9.2008, p. 56.

⁽⁴⁾ OJ L 106, 28.4.2009, p. 3.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 5 May 2009

(EUR)

CN code	Representative price per 100 kg net of the product concerned	Additional duty per 100 kg net of the product concerned
1701 11 10 ⁽¹⁾	28,95	2,60
1701 11 90 ⁽¹⁾	28,95	7,06
1701 12 10 ⁽¹⁾	28,95	2,47
1701 12 90 ⁽¹⁾	28,95	6,63
1701 91 00 ⁽²⁾	31,29	9,59
1701 99 10 ⁽²⁾	31,29	5,07
1701 99 90 ⁽²⁾	31,29	5,07
1702 90 95 ⁽³⁾	0,31	0,34

⁽¹⁾ For the standard quality defined in point III of Annex IV to Regulation (EC) No 1234/2007.⁽²⁾ For the standard quality defined in point II of Annex IV to Regulation (EC) No 1234/2007.⁽³⁾ Per 1 % sucrose content.

COMMISSION REGULATION (EC) No 363/2009**of 4 May 2009****amending Regulation (EC) No 1974/2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

of Regulation (EC) No 1698/2005 and be made subject to a Commission decision.

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) ⁽¹⁾, and in particular Article 91 thereof,

Whereas:

- (1) Regulation (EC) No 1698/2005, which establishes the legal framework for the EAFRD support for rural development throughout the Community, has been amended by Council Regulation (EC) No 74/2009 of 19 January 2009 amending Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) ⁽²⁾. Consequently, Commission Regulation (EC) No 1974/2006 ⁽³⁾ should be complemented by additional detailed implementing rules.
- (2) The expiry of the dairy quota regime under Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common market organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽⁴⁾ requires specific efforts from dairy farmers. Therefore, it is appropriate to withdraw, with effect from the beginning of the programming period, the limitation of investment support for dairy farms to stay within the limits of the production quotas allocated to the individual farm.
- (3) Regulation (EC) No 74/2009 introduced the requirement of revision of the national strategy plans. The minimum content of this revision should be defined.
- (4) Because of the importance of the priorities laid down in Article 16a of Regulation (EC) No 1698/2005, the revisions of the rural development programmes following the first implementation of that Article should be considered as revisions under Article 19(1)

- (5) Regulation (EC) No 74/2009 has identified a list of potential effects which the operations linked to the priorities referred to in Article 16a of Regulation (EC) No 1698/2005 are aimed to achieve. This list not being exhaustive, additional potential effects can be proposed by Member States, which the abovementioned operations are aimed to achieve. However, in order to ensure consistency with the potential effects already identified and with the general purpose of strengthening the operations related to the new challenges, the option for Member States to propose such additional potential effects should be subject to review by the Commission and to the opinion of the Rural Development Committee. Therefore, modifications introducing a new potential effect should be subject to a Commission decision.
- (6) Given the high number of cases in which revisions concern an exception of lower importance from demarcation principles between common market organisations and rural development and in order to limit the administrative burden, the Commission should no longer adopt decisions on revisions concerning changes relating to the exception referred to in Article 5(6) of Regulation (EC) No 1698/2005. Accordingly, such a category of revision should be deleted from the list of Article 7 of Regulation (EC) No 1974/2006.
- (7) Content and criteria of the business plans concerning support for holdings undergoing restructuring due to a reform of a common market organisation should be specified.
- (8) Following the abolition of the 'set-aside measure' pursuant to Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 ⁽⁵⁾, provisions referring to this measure have to be adapted.

⁽¹⁾ OJ L 277, 21.10.2005, p. 1.

⁽²⁾ OJ L 30, 31.1.2009, p. 100.

⁽³⁾ OJ L 368, 23.12.2006, p. 15.

⁽⁴⁾ OJ L 299, 16.11.2007, p. 1.

⁽⁵⁾ OJ L 30, 31.1.2009, p. 16.

- (9) In order to ease the realisation of investment projects in the context of the ongoing economic and financial crisis, the maximum ceiling for advance payments should be raised in 2009 and 2010.
- (10) It is appropriate to adapt the provisions on State aid for certain co-financed measures by the EAFRD and for additional national financing in order to clarify their scope of application and to take into account the new measure on holdings undergoing restructuring due to a reform of a common market organisation introduced by Regulation (EC) No 74/2009.
- (11) There is a need to define the term 'substantial changes' in Article 78(f) of Regulation (EC) No 1698/2005.
- (12) In order to allow monitoring of the actions related to the priorities laid down in Article 16a of Regulation (EC) No 1698/2005, output indicators, and related targets, making part of the Common Monitoring and Evaluation Framework referred to in Article 80 of that Regulation should be specified by type of operations.
- (13) Member States have to provide in their revised programmes information on the types of operations related to the priorities mentioned in Article 16a of Regulation (EC) No 1698/2005 indicating which of these operations are based on new measures, i.e. measures which have not been approved with the rural development programme yet. Additionally, the indicative EAFRD contribution for 2010-2013 has to be shown. For this purpose the Annexes to Regulation (EC) No 1974/2006 should be amended.
- (14) In order to be consistent with the date of application of Regulation (EC) No 74/2009, to which the provisions of this Regulation are complementary, this Regulation should apply as of 1 January 2009. Such retroactive application should not infringe the principle of legal certainty of the beneficiaries concerned.
- (15) Regulation (EC) No 1974/2006 should therefore be amended accordingly.
- (16) The measures provided for in this Regulation are in accordance with the opinion of the Rural Development Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1974/2006 is amended as follows:

1. in Article 2, paragraph 3 is replaced by the following:

'3. With the exception of the dairy sector, where a common market organisation, including direct support schemes financed by the European Agricultural Guarantee Fund (EAGF) places restrictions on production or limitations on Community support at the level of individual farmers, holdings or processing plants, no investment shall be supported under Regulation (EC) No 1698/2005 which would increase production beyond those restrictions or limitations.';

2. the following Article 3a is inserted:

'Article 3a

Revisions of national strategy plans in accordance with Article 12a of Regulation (EC) No 1698/2005 shall include a revision of the relevant elements set out in Article 11(3) of that Regulation which are related to the priorities foreseen in Article 16a(1) of that Regulation, and, in particular, of the main quantified objectives.

The National Strategy shall identify the approximate and indicative EAFRD contribution referred to in Article 69(5a) of Regulation (EC) No 1698/2005 allocated to each of the priorities referred to in Article 16a(1) of that Regulation in the Member State and shall contain the appropriate explanations related to the allocation.';

3. in Article 5, paragraph 1, the first subparagraph is replaced by the following:

'The content of rural development programmes as referred to in Articles 16 and 16a of Regulation (EC) No 1698/2005 shall be established in accordance with Annex II to this Regulation.';

4. in Article 7, paragraph 1 is amended as follows:

- (a) point (d) is replaced by the following:

'(d) the revision relates to the first implementation of Article 16a of Regulation (EC) No 1698/2005.';

- (b) the following point is added:

'(e) the revision introduces an additional potential effect, not listed in Annex II to Regulation (EC) No 1698/2005, related to the priorities mentioned in Article 16a of the same Regulation.';

5. in Article 9, paragraph 1 is replaced by the following:

‘1. Changes in programmes by Member States as referred to in Article 6(1)(c) may involve changes of financial breakdowns by measure within an axis as well as non-financial changes concerning the introduction of new measures and types of operations, the withdrawal of existing measures and types of operations, the changes relating to the exception referred to in Article 5(6) of Regulation (EC) No 1698/2005 or information on and description of existing measures in the programme.’;

6. the following Article 24a is inserted:

‘Article 24a

The business plan referred to in Article 35a of Regulation (EC) No 1698/2005 shall:

- (a) describe the main aspects of the restructuring envisaged including diversification outside agricultural activities;
- (b) identify specific objectives.’;

7. in Article 27(6) the first subparagraph is deleted;

8. in Article 46, the following paragraph is added:

‘This Article shall also apply to the commitments concerned by the abolition of the set-aside following the entering into force of Regulation (EC) No 73/2009. On request of the beneficiary, adjustments of such commitments can be allowed also in case no revision clause is provided.’;

9. in the first subparagraph of Article 56(2), the following sentence is added:

‘In the case of investments for which the individual decision to grant support is taken in 2009 or in 2010, the amount of the advances may be increased up to 50 % of the public aid related to that investment.’;

10. in Article 57, paragraph 2 is replaced by the following:

‘2. Rural development programmes may cover payments made by Member States for rural development, falling

outside the scope of Article 36 of the Treaty, in favour of measures pursuant to Articles 25, 43 to 49 and 52 of Regulation (EC) No 1698/2005 and of operations under measures pursuant to Articles 21, 24, 28, 29, 30 and 35a of that Regulation or additional national funding, falling outside the scope of Article 36 of the Treaty, in favour of the measures pursuant to Articles 25, 27, 43 to 49 and 52 of Regulation (EC) No 1698/2005 and of operations under measures pursuant to Articles 21, 24, 28, 29, 30 and 35a of that Regulation only if the State aid is identified in accordance with point 9.B of Annex II to this Regulation.’;

11. in Section 4 ‘Monitoring and Evaluation’, the following Article 59a is inserted:

‘Article 59a

For the purposes of Article 78, point (f) of Regulation (EC) No 1698/2005, “substantial proposals for changes” shall include the changes for which a decision of the Commission is compulsory and changes referred to in Article 9(1) of this Regulation except the changes relating to the exception referred to in Article 5(6) of Regulation (EC) No 1698/2005 and the information on and description of existing measures in the programme.’;

12. in Article 62, paragraph 1, the following subparagraph is added:

‘For measures containing types of operations as specified under Article 16a of Regulation (EC) No 1698/2005 output indicators and indicative targets for output indicators shall be broken down by types of operations.’;

13. in Article 63, paragraph 8, the first subparagraph is replaced by the following:

‘In cases of *force majeure* or exceptional circumstances, and in particular of malfunctioning of the system or a lack of a lasting connection, the Member State may submit the documents to the Commission in hard copy or by other appropriate electronic means. Such submission of hard copies or by other electronic means shall require prior notice to the Commission.’;

14. Annexes I, II, VII and VIII are amended in accordance with the Annex to this Regulation.

Article 2

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

It shall apply from 1 January 2009. However, Article 1(1) shall apply as of 1 January 2007.

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

Done at Brussels, 4 May 2009.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

ANNEX

The Annexes to Regulation (EC) No 1974/2006 are amended as follows:

1. Annex I is replaced by the following:

‘ANNEX I

Support schemes referred to in Article 2(2)

- Fruit and vegetables (Part II, Title I, Chapter IV, Section IVa of Council Regulation (EC) No 1234/2007 (*))
- Wine (Title II, Chapter I of Council Regulation (EC) No 479/2008 (**))
- Tobacco (Part II, Title I, Chapter IV, Section V of Regulation (EC) No 1234/2007)
- Olive oil (Part II, Title I, Chapter IV, Section IV of Regulation (EC) No 1234/2007)
- Hops (Article 68a of Regulation (EC) No 1782/2003)
- Sheep and goats (Article 102(1) of Council Regulation (EC) No 73/2009 (**))
- Bee keeping (Title I, Chapter IV, Section VI of Regulation (EC) No 1234/2007)
- Sugar (Council Regulation (EC) No 320/2006 (****))
- Specific measures for agriculture in the outermost regions (Title III of Council Regulation (EC) No 247/2006 (****)) and the smaller Aegean islands (Chapter III of Council Regulation (EC) No 1405/2006 (****))
- Direct payments (Article 41(3) and 68 of Regulation (EC) No 73/2009)

(*) OJ L 299, 2.10.2007, p. 1.

(**) OJ L 148, 6.6.2008, p. 1.

(***) OJ L 30, 31.1.2009, p. 16.

(****) OJ L 58, 28.2.2006, p. 42.

(*****) OJ L 42, 14.2.2006, p. 1.

(*****) OJ L 265, 26.9.2006, p. 1;.

2. Annex II is amended as follows:

(a) in point 5.2, the second indent is replaced by the following

- ‘— Confirmation that for the measures pursuant to Articles 25, 43 to 49 and 52 of Regulation (EC) No 1698/2005 and for operations under the measures pursuant to Articles 21, 24, 28, 29, 30 and 35a of that Regulation which fall outside the scope of Article 36 of the Treaty, respect of the State aid procedures and material compatibility criteria, in particular aid ceiling of total public support under Articles 87 to 89 of the Treaty, is ensured;’

(b) point 5.3 is replaced by the following:

‘5.3. *Information required for Axes and measures*

The following specific information, including information on the specific types of operations referred to in Article 16a(1) of Regulation (EC) No 1698/2005, is required for measures;:

(c) point 5.3.1.4 is replaced by the following:

‘5.3.1.4. **Transitional measures**;’

(d) the following point 5.3.1.4.4 is inserted:

‘5.3.1.4.4. **Holdings undergoing restructuring due to a reform of a common market organisation**

- designation of the reforms of common market organisation involved,
- summary of the requirements of the business plan,
- amount and duration of support;.

(e) the following point 5.3.6 is inserted:

‘5.3.6. List of types of operations referred to in Article 16a(3)(a) of Regulation (EC) No 1698/2005 up to the amounts referred to in Article 69(5a) of that Regulation

Axis/measure	Type of operation	Potential effects	“Existing” or “new” type of operation	Reference to the description of the type of operation in the RDP	Output indicator – target
Axis 1 Measure 111			
Measure			
Axis 2 Measure 211			
Measure			
Axis 3 Measure 311			
Measure ...					
Axis 4 Measure 411			
Measure ...					

NB: The column “existing or new type of operation” shall indicate whether or not the type of operation related to the priorities referred to in Article 16a of Regulation (EC) No 1698/2005 was already included in the version of the RDP applicable on 31 December 2008. In this context modifications of existing types of operations are also considered to be “new types of operations.”

(f) Table 6.1 is replaced by the following:

‘6.1. Annual contributions from the EAFRD (in EUR)

	2007	2008	2009	2010	2011	2012	2013
Non-convergence regions							
Convergence regions (*)							
Outermost regions and smaller Aegean Islands (**)							
Voluntary modulation (***)							
Additional contribution to Portugal							
Additional funds from Article 69(5a) of Regulation (EC) No 1698/2005 – non-convergence region							
Additional funds from Article 69(5a) of Regulation (EC) No 1698/2005 – convergence region (****)							
Total							

(*) For Member States with convergence regions.

(**) For Member States with outermost regions or smaller Aegean Islands.

(***) For Member States applying voluntary modulation pursuant to Regulation (EC) No 378/2007.

(****) For Member States receiving additional funds as referred to in Article 69(5a) of Regulation (EC) No 1698/2005 with convergence regions.’

(g) footnote (1) the reference of which is set at the end of the title for Table 6.2 is replaced by the following:

‘⁽¹⁾ Table 6.2 needs to be replicated for each sub-amount of the EAFRD contribution shown in one row in Table 6.1.’;

(h) the following point is inserted:

‘6.3. *Indicative budget related to operations referred to in Article 16a of Regulation (EC) No 1698/2005 between 1 January 2010 and 31 December 2013 (Article 16a(3)(b) up to the amounts specified in Article 69(5a) of Regulation (EC) No 1698/2005)*

Axis/measure	EAFRD contribution for 2010-2013
Axis 1 Measure 111	...
Measure
Axis 2 Measure 211	...
Measure
Axis 3 Measure 311	...
Measure ...	
Axis 4 Measure 411	...
Measure ...	
Axis 1, 2, 3 and 4, total	...’

(i) in point 7, the following code 144 is inserted:

‘(144) Holdings undergoing restructuring due to a reform of a common market organisation’;

(j) in point 9(B), the introductory words of the first subparagraph are replaced by the following:

‘For the measures pursuant to Articles 25, 27 (for the latter only for additional national funding referred to in Article 89 of Regulation (EC) No 1698/2005), 43 to 49 and 52 of Regulation (EC) No 1698/2005 and operations under the measures pursuant to Articles 21, 24, 28, 29, 30 and 35a of that Regulation which fall outside the scope of Article 36 of the Treaty, either’;

3. Annex VII is amended as follows:

(a) in point 2, the following paragraphs are added:

‘Each Member State receiving in accordance with Council Regulation (EC) No 74/2009 (*), additional financial resources resulting from modulation under that Regulation together with, as of 2011, the amounts of unused funds should include as of 2011 a separate chapter containing at least the same analysis as mentioned in the previous paragraph as regards the operations related to the priorities mentioned in Article 16a(1) of Regulation (EC) No 1698/2005. For new Member States except Bulgaria and Romania this obligation would be effective as of 2014.

Member States applying the new measure “144 Holdings undergoing restructuring” should report about the achievements made in view of the measure's objectives.

(*) OJ L 30, 31.1.2009, p. 100.’;

(b) the following point 3a is inserted:

- ‘3a. The financial implementation of the programme as regards the new challenges related operations, giving, for each measure, a statement of expenditures paid to beneficiaries after 1 January 2010 for types of operations referred to in Article 16a(1) of Regulation (EC) No 1698/2005 and the amounts referred to in Article 69(5a) of that Regulation.

The table summarising the financial implementation of these types of operations shall have at least the following information:

Axis/measure	Annual payment-year N	Cumulative payments from year 2010 to year N
Measure 111
Measure ...		
Total Axis 1
Measure 211
Measure ...		
Total Axis 2
Measure 311
Measure ...		
Total Axis 3
Measure 411
Measure ...		
Total Axis 4
Total programme’

4. in Annex VIII, the following row is inserted under point II. COMMON OUTPUT INDICATORS at the end of the list concerning Axis 1:

Code	Measure	Output indicators (*)
‘144	Holdings undergoing restructuring due to a reform of a common market organisation	Number of holdings that received support’

COMMISSION REGULATION (EC) No 364/2009**of 4 May 2009****amending Regulation (EC) No 360/2009 fixing the import duties in the cereals sector applicable from 1 May 2009**

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 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 in respect of import duties in the cereals sector ⁽²⁾, and in particular Article 2(1) thereof,

Whereas:

- (1) The import duties in the cereals sector applicable from 1 May 2009 were fixed by Commission Regulation (EC) No 360/2009 ⁽³⁾.

- (2) As the average of the import duties calculated differs by more than EUR 5/tonne from that fixed, a corresponding adjustment must be made to the import duties fixed by Regulation (EC) No 360/2009.

- (3) Regulation (EC) No 360/2009 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 360/2009 are hereby replaced by the text in the Annex to this Regulation.

Article 2

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

It shall apply from 5 May 2009.

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

Done at Brussels, 4 May 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 161, 29.6.1996, p. 125.

⁽³⁾ OJ L 110, 1.5.2009, p. 27.

ANNEX I

Import duties on the products referred to in Article 136(1) of Regulation (EC) No 1234/2007 applicable from 5 May 2009

CN code	Description	Import duties ⁽¹⁾ (EUR/t)
1001 10 00	Durum wheat, high quality	0,00
	medium quality	0,00
	low quality	0,00
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	High quality common wheat, other than for sowing	0,00
1002 00 00	Rye	37,15
1005 10 90	Maize seed other than hybrid	12,61
1005 90 00	Maize, other than seed ⁽²⁾	12,61
1007 00 90	Grain sorghum other than hybrids for sowing	37,15

⁽¹⁾ For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal the importer may benefit, under Article 2(4) of Regulation (EC) No 1249/96, from a reduction in the duty of:

- 3 EUR/t, where the port of unloading is on the Mediterranean Sea, or
- 2 EUR/t, where the port of unloading is in Denmark, Estonia, Ireland, Latvia, Lithuania, Poland, Finland, Sweden, the United Kingdom or the Atlantic coast of the Iberian peninsula.

⁽²⁾ The importer may benefit from a flatrate reduction of EUR 24 per tonne where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating the duties laid down in Annex I

1.5.2009

1. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

(EUR/t)

	Common wheat ⁽¹⁾	Maize	Durum wheat, high quality	Durum wheat, medium quality ⁽²⁾	Durum wheat, low quality ⁽³⁾	Barley
Exchange	Minneapolis	Chicago	—	—	—	—
Quotation	197,12	122,70	—	—	—	—
Fob price USA	—	—	207,54	197,54	177,54	108,89
Gulf of Mexico premium	—	11,64	—	—	—	—
Great Lakes premium	12,66	—	—	—	—	—

⁽¹⁾ Premium of 14 EUR/t incorporated (Article 4(3) of Regulation (EC) No 1249/96).⁽²⁾ Discount of 10 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).⁽³⁾ Discount of 30 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

2. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

Freight costs: Gulf of Mexico–Rotterdam: 15,07 EUR/t

Freight costs: Great Lakes–Rotterdam: 16,57 EUR/t

DIRECTIVES

DIRECTIVE 2009/24/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 23 April 2009

on the legal protection of computer programs

(Codified version)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

computer program technology can accordingly be considered as being of fundamental importance for the Community's industrial development.

Having regard to the Treaty establishing the European Community and in particular Article 95 thereof,

- (4) Certain differences in the legal protection of computer programs offered by the laws of the Member States have direct and negative effects on the functioning of the internal market as regards computer programs.

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

- (5) Existing differences having such effects need to be removed and new ones prevented from arising, while differences not adversely affecting the functioning of the internal market to a substantial degree need not be removed or prevented from arising.

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (6) The Community's legal framework on the protection of computer programs can accordingly in the first instance be limited to establishing that Member States should accord protection to computer programs under copyright law as literary works and, further, to establishing who and what should be protected, the exclusive rights on which protected persons should be able to rely in order to authorise or prohibit certain acts and for how long the protection should apply.

- (1) The content of Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs ⁽³⁾ has been amended ⁽⁴⁾. In the interests of clarity and rationality the said Directive should be codified.

- (2) The development of computer programs requires the investment of considerable human, technical and financial resources while computer programs can be copied at a fraction of the cost needed to develop them independently.

- (7) For the purpose of this Directive, the term 'computer program' shall include programs in any form, including those which are incorporated into hardware. This term also includes preparatory design work leading to the development of a computer program provided that the nature of the preparatory work is such that a computer program can result from it at a later stage.

- (3) Computer programs are playing an increasingly important role in a broad range of industries and

- (8) In respect of the criteria to be applied in determining whether or not a computer program is an original work, no tests as to the qualitative or aesthetic merits of the program should be applied.

⁽¹⁾ OJ C 204, 9.8.2008, p. 24.

⁽²⁾ Opinion of the European Parliament of 17 June 2008 (not yet published in the Official Journal) and Council Decision of 23 March 2009.

⁽³⁾ OJ L 122, 17.5.1991, p. 42.

⁽⁴⁾ See Annex I, Part A.

- (9) The Community is fully committed to the promotion of international standardisation.
- (10) The function of a computer program is to communicate and work together with other components of a computer system and with users and, for this purpose, a logical and, where appropriate, physical interconnection and interaction is required to permit all elements of software and hardware to work with other software and hardware and with users in all the ways in which they are intended to function. The parts of the program which provide for such interconnection and interaction between elements of software and hardware are generally known as 'interfaces'. This functional interconnection and interaction is generally known as 'interoperability'; such interoperability can be defined as the ability to exchange information and mutually to use the information which has been exchanged.
- (11) For the avoidance of doubt, it has to be made clear that only the expression of a computer program is protected and that ideas and principles which underlie any element of a program, including those which underlie its interfaces, are not protected by copyright under this Directive. In accordance with this principle of copyright, to the extent that logic, algorithms and programming languages comprise ideas and principles, those ideas and principles are not protected under this Directive. In accordance with the legislation and case-law of the Member States and the international copyright conventions, the expression of those ideas and principles is to be protected by copyright.
- (12) For the purposes of this Directive, the term 'rental' means the making available for use, for a limited period of time and for profit-making purposes, of a computer program or a copy thereof. This term does not include public lending, which, accordingly, remains outside the scope of this Directive.
- (13) The exclusive rights of the author to prevent the unauthorised reproduction of his work should be subject to a limited exception in the case of a computer program to allow the reproduction technically necessary for the use of that program by the lawful acquirer. This means that the acts of loading and running necessary for the use of a copy of a program which has been lawfully acquired, and the act of correction of its errors, may not be prohibited by contract. In the absence of specific contractual provisions, including when a copy of the program has been sold, any other act necessary for the use of the copy of a program may be performed in accordance with its intended purpose by a lawful acquirer of that copy.
- (14) A person having a right to use a computer program should not be prevented from performing acts necessary to observe, study or test the functioning of the program, provided that those acts do not infringe the copyright in the program.
- (15) The unauthorised reproduction, translation, adaptation or transformation of the form of the code in which a copy of a computer program has been made available constitutes an infringement of the exclusive rights of the author. Nevertheless, circumstances may exist when such a reproduction of the code and translation of its form are indispensable to obtain the necessary information to achieve the interoperability of an independently created program with other programs. It has therefore to be considered that, in these limited circumstances only, performance of the acts of reproduction and translation by or on behalf of a person having a right to use a copy of the program is legitimate and compatible with fair practice and must therefore be deemed not to require the authorisation of the right-holder. An objective of this exception is to make it possible to connect all components of a computer system, including those of different manufacturers, so that they can work together. Such an exception to the author's exclusive rights may not be used in a way which prejudices the legitimate interests of the rightholder or which conflicts with a normal exploitation of the program.
- (16) Protection of computer programs under copyright laws should be without prejudice to the application, in appropriate cases, of other forms of protection. However, any contractual provisions contrary to the provisions of this Directive laid down in respect of decompilation or to the exceptions provided for by this Directive with regard to the making of a back-up copy or to observation, study or testing of the functioning of a program should be null and void.
- (17) The provisions of this Directive are without prejudice to the application of the competition rules under Articles 81 and 82 of the Treaty if a dominant supplier refuses to make information available which is necessary for interoperability as defined in this Directive.
- (18) The provisions of this Directive should be without prejudice to specific requirements of Community law already enacted in respect of the publication of interfaces in the telecommunications sector or Council Decisions relating to standardisation in the field of information technology and telecommunication.

- (19) This Directive does not affect derogations provided for under national legislation in accordance with the Berne Convention on points not covered by this Directive.
- (20) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex I, Part B,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Object of protection

1. In accordance with the provisions of this Directive, Member States shall protect computer programs, by copyright, as literary works within the meaning of the Berne Convention for the Protection of Literary and Artistic Works. For the purposes of this Directive, the term 'computer programs' shall include their preparatory design material.
2. Protection in accordance with this Directive shall apply to the expression in any form of a computer program. Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, are not protected by copyright under this Directive.
3. A computer program shall be protected if it is original in the sense that it is the author's own intellectual creation. No other criteria shall be applied to determine its eligibility for protection.
4. The provisions of this Directive shall apply also to programs created before 1 January 1993, without prejudice to any acts concluded and rights acquired before that date.

Article 2

Authorship of computer programs

1. The author of a computer program shall be the natural person or group of natural persons who has created the program or, where the legislation of the Member State permits, the legal person designated as the rightholder by that legislation.

Where collective works are recognised by the legislation of a Member State, the person considered by the legislation of the Member State to have created the work shall be deemed to be its author.

2. In respect of a computer program created by a group of natural persons jointly, the exclusive rights shall be owned jointly.

3. Where a computer program is created by an employee in the execution of his duties or following the instructions given by his employer, the employer exclusively shall be entitled to exercise all economic rights in the program so created, unless otherwise provided by contract.

Article 3

Beneficiaries of protection

Protection shall be granted to all natural or legal persons eligible under national copyright legislation as applied to literary works.

Article 4

Restricted acts

1. Subject to the provisions of Articles 5 and 6, the exclusive rights of the rightholder within the meaning of Article 2 shall include the right to do or to authorise:
 - (a) the permanent or temporary reproduction of a computer program by any means and in any form, in part or in whole; in so far as loading, displaying, running, transmission or storage of the computer program necessitate such reproduction, such acts shall be subject to authorisation by the rightholder;
 - (b) the translation, adaptation, arrangement and any other alteration of a computer program and the reproduction of the results thereof, without prejudice to the rights of the person who alters the program;
 - (c) any form of distribution to the public, including the rental, of the original computer program or of copies thereof.
2. The first sale in the Community of a copy of a program by the rightholder or with his consent shall exhaust the distribution right within the Community of that copy, with the exception of the right to control further rental of the program or a copy thereof.

Article 5

Exceptions to the restricted acts

1. In the absence of specific contractual provisions, the acts referred to in points (a) and (b) of Article 4(1) shall not require authorisation by the rightholder where they are necessary for the use of the computer program by the lawful acquirer in accordance with its intended purpose, including for error correction.
2. The making of a back-up copy by a person having a right to use the computer program may not be prevented by contract in so far as it is necessary for that use.

3. The person having a right to use a copy of a computer program shall be entitled, without the authorisation of the right-holder, to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.

Article 6

Decompilation

1. The authorisation of the rightholder shall not be required where reproduction of the code and translation of its form within the meaning of points (a) and (b) of Article 4(1) are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that the following conditions are met:

- (a) those acts are performed by the licensee or by another person having a right to use a copy of a program, or on their behalf by a person authorised to do so;
- (b) the information necessary to achieve interoperability has not previously been readily available to the persons referred to in point (a); and
- (c) those acts are confined to the parts of the original program which are necessary in order to achieve interoperability.

2. The provisions of paragraph 1 shall not permit the information obtained through its application:

- (a) to be used for goals other than to achieve the interoperability of the independently created computer program;
- (b) to be given to others, except when necessary for the interoperability of the independently created computer program; or
- (c) to be used for the development, production or marketing of a computer program substantially similar in its expression, or for any other act which infringes copyright.

3. In accordance with the provisions of the Berne Convention for the protection of Literary and Artistic Works, the provisions of this Article may not be interpreted in such a way as to allow its application to be used in a manner which unreasonably prejudices the rightholder's legitimate interests or conflicts with a normal exploitation of the computer program.

Article 7

Special measures of protection

1. Without prejudice to the provisions of Articles 4, 5 and 6, Member States shall provide, in accordance with their national legislation, appropriate remedies against a person committing any of the following acts:

- (a) any act of putting into circulation a copy of a computer program knowing, or having reason to believe, that it is an infringing copy;
- (b) the possession, for commercial purposes, of a copy of a computer program knowing, or having reason to believe, that it is an infringing copy;
- (c) any act of putting into circulation, or the possession for commercial purposes of, any means the sole intended purpose of which is to facilitate the unauthorised removal or circumvention of any technical device which may have been applied to protect a computer program.

2. Any infringing copy of a computer program shall be liable to seizure in accordance with the legislation of the Member State concerned.

3. Member States may provide for the seizure of any means referred to in point (c) of paragraph 1.

Article 8

Continued application of other legal provisions

The provisions of this Directive shall be without prejudice to any other legal provisions such as those concerning patent rights, trade-marks, unfair competition, trade secrets, protection of semi-conductor products or the law of contract.

Any contractual provisions contrary to Article 6 or to the exceptions provided for in Article 5(2) and (3) shall be null and void.

Article 9

Communication

Member States shall communicate to the Commission the provisions of national law adopted in the field governed by this Directive.

*Article 10***Repeal**

Directive 91/250/EEC, as amended by the Directive indicated in Annex I, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex I, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

*Article 11***Entry into force**

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

*Article 12***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 23 April 2009.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

P. NEČAS

ANNEX I

PART A

**Repealed Directive with its amendment
(referred to in Article 10)**

Council Directive 91/250/EEC
(OJ L 122, 17.5.1991, p. 42)

Council Directive 93/98/EEC
(OJ L 290, 24.11.1993, p. 9)

Article 11(1) only

PART B

**List of time-limits for transposition into national law
(referred to in Article 10)**

Directive	Time-limit for transposition
91/250/EEC	31 December 1992
93/98/EEC	30 June 1995

ANNEX II

Correlation table

Directive 91/250/EEC	This Directive
Article 1(1), (2) and (3)	Article 1(1), (2) and (3)
Article 2(1), first sentence	Article 2(1), first subparagraph
Article 2(1), second sentence	Article 2(1), second subparagraph
Article 2(2) and (3)	Article 2(2) and (3)
Article 3	Article 3
Article 4, introductory words	Article 4(1), introductory words
Article 4(a)	Article 4(1), point (a)
Article 4(b)	Article 4(1), point (b)
Article 4(c), first sentence	Article 4(1), point (c)
Article 4(c), second sentence	Article 4(2)
Articles 5, 6 and 7	Articles 5, 6 and 7
Article 9(1), first sentence	Article 8, first paragraph
Article 9(1), second sentence	Article 8, second paragraph
Article 9(2)	Article 1(4)
Article 10(1)	—
Article 10(2)	Article 9
—	Article 10
—	Article 11
Article 11	Article 12
—	Annex I
—	Annex II

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 8 October 2008

on the measure (C 33/07 (ex N 339/06 and N 729/06)) which Germany is planning to implement through the IBG Beteiligungsgesellschaft Sachsen-Anhalt mbH

(notified under document number C(2008) 5581)

(Only the German text is authentic)

(Text with EEA relevance)

(2009/364/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on interested parties to submit their comments pursuant to those provisions ⁽¹⁾,

Having regard to those comments,

Whereas:

(2) By letter dated 22 June 2006, the Commission requested additional information. The German authorities replied by letter dated 13 July 2006. The Commission requested supplementary information by letter dated 31 August 2006 and the German authorities replied by letter dated 22 September 2006. The Commission asked for further information on 11 October 2006 and the German authorities replied by letter dated 6 November 2006.

(3) By letter dated 9 November 2006, received by the Commission on the same day, the German authorities notified the second part of the measure, which the Commission registered as State aid case N 729/06. Owing to the overlap between the two notifications (N 339/06 and N 729/06), in a letter dated 6 December 2006 the Commission proposed to merge the cases and treat all correspondence as being relating to both, and also asked for additional information relating to both cases. The German authorities replied by letter dated 23 January 2007.

1. PROCEDURE

(1) By letter dated 30 May 2006, received by the Commission on the same day, the German authorities notified the Commission under Article 88(3) of the EC Treaty of the first part of the measure, which the Commission registered as State aid case N 339/06.

(4) The Commission requested further information on 28 February 2007. Following an extension of the deadline, the German authorities replied by letter dated 11 April 2007. The Commission requested additional information on 4 May 2007. Following an extension of the deadline, the German authorities replied by letter dated 29 June 2007.

⁽¹⁾ OJ C 246, 20.10.2007, p. 20.

- (5) By letter dated 30 August 2007, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid (hereinafter the opening decision). The opening decision was published in the *Official Journal of the European Union* ⁽²⁾. The Commission called on the German authorities and interested parties to submit their comments.
- (6) The German authorities submitted comments on the opening decision by letter dated 19 October 2007. Following an extension of the deadline, the Commission received observations from an interested party, namely IBG Beteiligungsgesellschaft Sachsen-Anhalt mbH (hereinafter the IBG Fund) by letter dated 10 December 2007. By letter dated 21 January 2008, the Commission forwarded these observations to the German authorities. In response to the observations, the German authorities replied by letter dated 14 February 2008.
- (7) The Commission requested further information by letter dated 18 April 2008 and by e-mails dated 28 April 2008 and 11 June 2008. The German authorities submitted additional information by letter dated 5 June 2008 and e-mail dated 13 June 2008.

2. DESCRIPTION OF THE MEASURE

- (8) The IBG Fund is a public venture capital fund, established and funded by the *Land* of Saxony-Anhalt. The objective of the IBG Fund is to provide risk capital to technology-oriented innovative SMEs in Saxony-Anhalt in their early and growth stages of development. Saxony-Anhalt is a region eligible for assistance under Article 87(3)(a) EC Treaty ⁽³⁾.
- (9) Since 1 July 2007, the IBG Fund has been managed by the management company Goodvent Beteiligungsmanagement GmbH & Co. KG (hereinafter the Fund manager), selected in an open and non-discriminatory public tender procedure. The total size of the public funding is approximately EUR 130 million. The measure is applicable until 31 December 2013.
- (10) The IBG Fund provides the following investments:
- (a) ordinary equity holdings of up to EUR 1,5 million per SME per 12-month period, with at least 30 % of the funding being provided by private independent investors on the same terms as the IBG Fund;
 - (b) ordinary equity holdings (*offene Beteiligungen*) of up to EUR 10 million per SME, including conversion options, such as convertible bonds (*Wandelanleihen*) and bonds with warrants (*Optionsanleihen*), effected with private investors in equal amounts, on the same terms and with the same risks (*pari passu*);
 - (c) silent participations (*stille Beteiligungen*) (hereinafter IBG Fund silent participations) of up to EUR 5 million per enterprise, effected by the IBG Fund on its own, independently of private investors, and held for up to 10 years;
 - (d) conversion of existing IBG Fund silent participations into ordinary equity holdings effected *pari passu* with private investors.
- (11) In respect of the ordinary equity holdings and the conversion measures, the Commission concluded in the opening decision that there was no State aid within the meaning of Article 87(1) of the EC Treaty either to the investors ⁽⁴⁾ or to the IBG Fund management ⁽⁵⁾. There might be State aid within the meaning of Article 87(1) of the EC Treaty to the IBG Fund ⁽⁶⁾ or to the target enterprises. However, the Commission found the measure to be in line with the Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises ⁽⁷⁾ (hereinafter the guidelines) and compatible with the common market under Article 87(3)(c) of the EC Treaty.
- (12) In the opening decision, the IBG Fund silent participations were assessed separately, because the German authorities considered them to be debt instruments in line with market conditions, which thus did not constitute State aid within the meaning of Article 87(1) of the EC Treaty, while the Commission had doubts as to whether in economic terms they should be classified as debt instruments or as equity instruments.

⁽²⁾ See footnote 1.

⁽³⁾ N 459/06 — Guidelines on national regional aid for 2007-2013 — National regional State aid map: Germany (OJ C 295, 5.12.2006, p. 6).

⁽⁴⁾ The Commission explained that this was because the IBG Fund and private investors share the same upside and downside risks and rewards and hold the same level of subordination; in the case of a conversion into ordinary equity, the IBG equity holdings would be properly valued by converting the total remuneration (the nominal value, the fixed and variable interest due and the exit remuneration) into ordinary equity holdings.

⁽⁵⁾ The Commission explained that this was because a separate management company was selected through an open tender procedure.

⁽⁶⁾ The Commission considered the IBG Fund to be a State-owned undertaking, likely to raise its capital on terms that would not be available on the private market.

⁽⁷⁾ OJ C 194, 18.8.2006, p. 2.

3. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

(13) The Commission initiated the formal investigation procedure on the issue of whether the IBG Fund silent participations should, in economic terms, be classified as debt instruments, as claimed by the German authorities, or as equity instruments. If the IBG Fund silent participations did qualify as debt instruments, the Commission notice on the method for setting the reference and discount rates ⁽⁸⁾ (hereinafter the 1997 notice), which is to be used as an indicator of the market rate, would have to be applied to determine whether they entailed State aid to the target enterprises within the meaning of Article 87(1) of the EC Treaty ⁽⁹⁾.

(14) In its opening decision, the Commission considered that, if the IBG Fund silent participations were classifiable as debt instruments, they would not constitute an advantage to the recipient companies within the meaning of Article 87(1) of the EC Treaty as they would be in line with market conditions according to the 1997 notice. On the other hand, if the IBG Fund silent participations were classifiable as equity, State aid to the target enterprises could not be ruled out, as the measure might be addressing a market failure in the venture capital market.

(15) To establish whether the IBG Fund silent participations should be classified as debt instruments or equity instruments, the opening decision examined the economic substance of the instruments in line with point 4.3.3 of the guidelines, taking into account the degree of risk and potential losses borne by the investor, whether profit-dependant remuneration or fixed remuneration was predominant, the level of subordination in the event of bankruptcy and the treatment of the investment instrument under the applicable domestic legal, regulatory, financial, and accounting rules.

(16) Having examined the economic nature of the IBG Fund silent participations, the Commission identified the following possible differences between standard debt instruments and the IBG Fund silent participations:

(a) *Subordination*: In the case of bankruptcy of a target enterprise, the IBG Fund silent participations are senior to equity but subordinated to loans and other liabilities.

(b) *Security*: The IBG Fund silent participations are partly secured (minimum 10 %), although this security is far from the level which would be required for debt financing.

(c) *Repayment*: The IBG Fund silent participations are repaid twice a year, while on standard debt instruments the principal and the interest are normally repaid on a monthly basis.

(d) *Information and control rights*: There appeared to be differences between the IBG Fund silent participations and standard debt instruments in terms of information and control rights, although ownership and change-of-control clauses are sometimes included in standard credit contracts.

(e) *Termination of contract*: There appeared to be differences between the IBG Fund silent participations and standard debt instruments as concerns the termination of contracts.

(f) *Remuneration*: In view of the profit-linked one-off exit remuneration (*Exitvergütung*) component, it could not be established with 100 % certainty that the fixed remuneration was the predominant remuneration component.

(17) The Commission therefore had doubts as to whether the IBG Fund silent participations should be classified as debt instruments, and asked interested parties to provide comments on these points.

4. COMMENTS FROM INTERESTED PARTIES

(18) Pursuant to Article 20(2) 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 ⁽¹⁰⁾ and in response to the notice published in the Official Journal ⁽¹¹⁾, the Commission received comments from one interested party, namely the IBG Fund, which provided detailed arguments to demonstrate that the IBG Fund silent participations should be classified as debt instruments.

⁽⁸⁾ OJ C 273, 9.9.1997, p. 3.

⁽⁹⁾ This reasoning was also applied in previous Commission decisions: State aid N 344/06 — Germany (OJ C 157, 10.7.2007, p. 8); State aid N 104/05 — Germany: Regio MIT Risk Capital Fund Hessen (OJ C 295, 26.11.2005, p. 8); State aid N 212/04 — Germany: ERDF Risk Capital Fund Berlin (OJ C 95, 20.4.2005, p. 8); State aid N 213/04 — Germany: ERDF Risk Capital Fund Schleswig-Holstein (OJ C 72, 24.3.2006, p. 2); State aid N 266/04 — Germany: ERDF Risk Capital Fund Thüringen (OJ C 95, 20.4.2005, p. 9); State aid N 310/04 — Germany: ERDF Risk Capital Fund Brandenburg (OJ C 79, 1.4.2006, p. 25).

⁽¹⁰⁾ OJ L 83, 27.3.1999, p. 1.

⁽¹¹⁾ See footnote 1.

(a) Subordination

- (19) The IBG Fund explained the subordinated status of the silent participations. It said that subordination is agreed on a voluntary basis and is not legally required. It is not unusual to place debt instruments in different rankings. In the field of acquisition financing for example, it is virtually always the case that debts are grouped into senior debts and junior debts. In its comments, the IBG Fund emphasised that while the silent participations may be subordinated to other loans and liabilities, they are always senior to equity and never participate in the losses of the target enterprises.

(b) Security

- (20) The IBG Fund explained that between 10 % and 30 % of the value of the silent participations is secured by guarantees given by the shareholders of the target enterprises. The precise amount of collateral depends on the individual case, and in particular on the assets the shareholders have previously transferred to the enterprise, e.g. in the form of equity or intellectual property rights. According to the IBG Fund, debt instruments can take different forms, depending on the individual case. In practice, there is even 0 % collateral, and the loan is unsecured; and this does not automatically turn a debt instrument into an equity instrument.

(c) Repayment

- (21) According to the IBG Fund, the repayment procedures for its silent participations are similar to those of debt instruments. In the case of standard loans, depending on a company's liquidity position, the principal and interest are not necessarily (re)paid on a monthly basis. Repayments on a six-monthly or three-monthly basis are just as common as monthly payments. The German Civil Code provides for an interest payment at the end of each year, but other arrangements can be agreed.
- (22) As regards the repayment of the principal, the IBG Fund points out that the German Civil Code stipulates that the principal becomes due when the loan contract is terminated unless the contract provides otherwise. According to the IBG Fund, its silent participations are compatible with the provisions of the German Civil Code without the need for any contractual provision departing from the general rule.

(d) Information and control rights

- (23) The IBG Fund presents further arguments to demonstrate similarities between the information and ownership and change-of-control clauses of the IBG Fund silent parti-

pations and those of debt instruments. According to the IBG Fund, it is usual to agree on ownership and change-of-control clauses for debt instruments. Creditors insist on them particularly in the case of commercial loans and project and acquisition financing. These types of credit have in common with the IBG Fund silent participations that they are often long-term loans which become repayable only upon their termination. In return, the creditors request extensive covenants which entitle them to terminate the credit contract earlier in the case of breach of the covenant by the debtor.

- (24) As regards commercial loans, the umbrella organisation of German private banks, the Bundesverband Deutscher Banken, has designed a special model contract which contains an extensive ownership and change-of-control clause. As regards project and acquisition financing, the IBG Fund refers to several relevant German commentaries which discuss and acknowledge extensive control clauses for the benefit of the creditor.

(e) Termination of contract

- (25) The IBG Fund provides further arguments to demonstrate similarities between its silent participations and loans as regards the conditions for terminating the contract. In the case of breach of contract, non-compliance with agreed conditions, incorrect information or change of control, both the target enterprise and the IBG Fund are entitled to terminate the contract. Where the specific contract termination terminology of the IBG Fund silent participations is different from that for standard loans, it only reflects the specific nature of the instrument as compared to a standard loan.

(f) Remuneration

- (26) The IBG Fund explains the remuneration structure of its silent participations, in order to demonstrate that fixed remuneration is the dominant component of the total annual remuneration of 13 %. The total remuneration is composed of the fixed interest rate component, determined on the basis of the credit-risk rating of each target enterprise and payable irrespective of the profitability of the investment, and the profit-linked component, payable if certain profitability benchmarks are exceeded. According to the IBG Fund, the profit-linked component is always at least 250 basis points lower than the fixed interest rate. A fixed one-off exit remuneration is paid in addition to the total 13 % annual remuneration. This is calculated as a percentage of the nominal amount of the silent participation and does not depend on the profitability of the investment.

(g) *Accounting and tax treatment*

- (27) The IBG Fund provides detailed information to demonstrate that under German law (civil law, accounting law and tax law) and international accounting rules (IFRS and IAS) its silent participations are considered to be typical silent participations and thus debt instruments.

5. COMMENTS FROM GERMANY

5.1. Comments on the opening decision

- (28) Pursuant to Article 20(2) of Regulation (EC) No 659/1999 and in response to the notice published in the Official Journal⁽¹²⁾, the Commission received comments from the German authorities. The German authorities argued that the IBG Fund silent participations are typical silent participations and thus should be classified as debt instruments, for the following reasons:

- (a) Under civil law, accounting law and tax law, these investment instruments are treated as borrowed capital (*Fremdkapital*).
- (b) The information and control rights, as well as the provisions on termination of investments, are similar to those for debt instruments.
- (c) As in the case of debt instruments, full repayment of principal and interest is required at the end of the holding.
- (d) The fixed interest component is the predominant component of remuneration, which indicates that the IBG Fund silent participations should be treated as debt instruments.
- (e) The subordination of the IBG Fund silent participations to other loans and liabilities is necessary to avoid immediate accounting insolvency because of the weak credit position of the borrower.
- (f) Banks and credit institutions typically treat mezzanine capital as a debt instrument, even when it is unsecured.

5.2. Observations on the interested party's comments

- (29) In their observations on the interested party's comments, the German authorities expressed their agreement, and

reiterated the conclusions presented in their own original comments on the opening decision. Moreover, the German authorities emphasised that the IBG Fund silent participations are granted on market terms and do not entail State aid as they are in compliance with the communication from the Commission on the revision of the method for setting the reference and discount rates⁽¹³⁾ (hereinafter the 2008 communication).

- (30) In further correspondence with the Commission, the German authorities explained the IBG Fund credit rating system, which has been examined by Price Waterhouse Coopers and classifies the target enterprises between 'very good' (AAA) and 'bad/financial difficulties' (CCC); CCC companies are excluded from receiving financing. The low collateralisation and the ranking of the IBG Fund silent participations is taken into account when assessing the credit risk of the target enterprises.

- (31) The rating system provides the basis for establishing the risk-adjusted interest rates. The silent participations are always remunerated at a fixed interest rate composed of IBOR plus an appropriate margin. The latter can vary between 100 and 650 basis points, depending on the rating of the enterprise. In the case of target enterprises that can not be classified using the IBG Fund rating system, a margin of at least 400 basis points is applied, which can never be lower than the one which would be applicable to the parent company.

6. ASSESSMENT

6.1. Legality

- (32) The German authorities have fulfilled their obligation under Article 88(3) of the EC Treaty by notifying the measure before its implementation. The measure's entry into force is subject to the Commission's approval.

6.2. Legal basis for the assessment

6.2.1. Economic classification of the IBG Fund silent participations

- (33) To classify the IBG Fund silent participations as debt instruments or equity instruments in economic terms, they had to be assessed under the guidelines. Point 2.2 of the guidelines provides the following definitions of quasi-equity and debt investment instruments:

⁽¹²⁾ See footnote 1.

⁽¹³⁾ OJ C 14, 19.1.2008, p. 6.

— ‘quasi-equity investment instruments’ means instruments whose return for the holder (investor/lender) is predominantly based on the profits or losses of the underlying target company, and which are unsecured in the event of default. This definition is based on a substance over form approach,

— ‘debt investment instruments’ means loans and other funding instruments which provide the lender/investor with a predominant component of fixed minimum remuneration and are at least partly secured. This definition is based on a substance over form approach.

(34) Point 4.3.3 of the guidelines stipulates that ‘the Commission will have regard to the economic substance of the instrument rather than to its name and the qualification attributed to it by the investors ... [taking] into account the degree of risk in the target company’s venture borne by the investor, the potential losses borne by the investor, the predominance of profit-dependent remuneration versus fixed remuneration, and the level of subordination of the investor in the event of the company’s bankruptcy ... [and] the treatment applicable to the investment instrument under the prevalent domestic legal, regulatory, financial, and accounting rules, if these are consistent and relevant for the qualification.’

(35) After examination of the arguments from the German authorities and the information received from the interested party (the IBG Fund) in response to the opening decision, the following conclusions have been reached:

(a) Investor risk

(36) In line with the guidelines, the Commission assessed the degree of risk and potential losses borne by the IBG Fund. Account was taken of the fact that the IBG Fund silent participations, similarly to debt instruments, do not bear the full exit risk as do equity investors⁽¹⁴⁾. The IBG Fund silent participations never participate in the losses of the target enterprises, as happens with equity investments; this criterion for distinguishing between equity and debt is explicitly mentioned in point 4.3.3 of the guidelines. Similarly to debt instruments, the

contractual terms of the IBG Fund silent participations require the principal and interest, including the profit-linked component, to be repaid from the company’s cash flow. As regards the degree of risk and potential losses borne by the investor, the IBG Fund silent participations can therefore be classified as debt investment instruments.

(b) Subordination

(37) In accordance with the guidelines, the level of subordination in the event of bankruptcy had to be considered. The IBG Fund silent participations are subordinated to loans and other liabilities, but are senior to equity and never participate in the losses of the target enterprises; this is a typical feature of debt instruments. Subordination of unsecured or partially secured debt to the claims of senior creditors is standard practice. While the subordinated IBG Fund silent participations are indeed more risky than unsubordinated debt, this is reflected in the risk-adjusted interest rate. For these reasons the subordination to other creditors does not in itself lead to classification of the IBG Fund silent participations as quasi-equity instruments.

(c) Security

(38) The Guidelines require that a debt instrument, in order to qualify as such, must be at least partly secured. The fact that between 10 % and 30 % of the value of the IBG Fund silent participations is secured by guarantees given by the target enterprise shareholders must be taken into consideration. The low collateralisation requirements are largely explained by the fact that fast-growing technology SMEs do not have sufficient high-value collateral. Moreover, the partial security would seem to be adequate, considering the lower ranking of the IBG Fund silent participations. The subordinated and partially secured nature of the IBG Fund silent participations is appropriately reflected in the level of remuneration. It can therefore be concluded that the IBG Fund silent participations are partially secured, as required by the guidelines.

(d) Remuneration

(39) The Guidelines require that a debt instrument, in order to qualify as such, must have a predominant component of fixed remuneration. The profit-linked remuneration component of the IBG Fund silent participations is always at least 250 basis points lower than the fixed interest rate component. Besides, the fact that an additional fixed one-off exit remuneration can be added to the total remuneration of 13 % increases the predominance of the fixed remuneration in the total remuneration. The fixed interest rate component of the IBG Fund silent participations is thus the predominant remuneration component, as required by the guidelines.

⁽¹⁴⁾ Equity providers usually make capital available for the long term, with no right to repayment and no security. In return, they receive a share of the equity and obtain their return by exiting from the investment at the end of the investment period.

(e) Ownership change-of-control clauses

- (40) Having assessed the detailed information provided by the interested party, the Commission has concluded that the information and ownership and change-of-control clauses of the IBG Fund silent participations appear to be similar to those of unsecured or partially secured subordinated debt instruments, which usually require intensive monitoring and detailed and prompt information on the economic progress of the companies, and define specific financial indicators or covenants which the company must observe. In terms of the information and ownership and change-of-control clauses of the IBG Fund silent participations, therefore, these instruments can be classified as debt instruments.

(f) Termination of contract

- (41) In the opening decision, the Commission acknowledged that the IBG Fund conditions for terminating a silent participation contract seem to be similar to those of debt instruments in that the investments can be terminated in case of breach of contract, non-compliance with agreed conditions, incorrect information and change of control. The Commission has taken into consideration that the differences in the terminology merely reflect the specific nature of the IBG Fund silent participations as compared to standard debt instruments. Therefore, apart from the differences in terminology, the termination provisions of the IBG Fund silent participations are in principle similar to those of standard debt instruments.

(g) Legal, accounting and tax treatment

- (42) The Commission finds that the German authorities and the IBG Fund have demonstrated that the IBG Fund silent participations are typical silent participations and are therefore considered to be debt instruments under the relevant German legislation (civil law, accounting law and tax law) and under the International Accounting Standards (IAS).

(h) Conclusion

- (43) After examination of the economic nature of the IBG Fund silent participations, and taking account of the legal, accounting and tax treatment of these instruments, the Commission finds that in economic terms the IBG Fund silent participations can be classified as debt instruments.

in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market'. In order for a measure to fall within the scope of Article 87(1) of the EC Treaty, four criteria must be met:

- (a) the measure must involve the use of State resources;
- (b) the measure must distort or threaten to distort competition by conferring an advantage on the recipient;
- (c) the advantage must be selective in that it is limited to certain undertakings or sectors;
- (d) the measure must affect trade between Member States.

- (45) In its opening decision, the Commission concluded that, provided the IBG Fund silent participations could be classified as debt instruments, they would be considered debt instruments in line with market conditions under the 1997 notice. The instrument is also in line with market conditions under the 2008 communication, as the IBG Fund assesses the credit risks of each enterprise, including the level of subordination and collateralisation, and applies risk-adjusted interest rates.

- (46) It can therefore be concluded that the IBG Fund silent participations do not constitute State aid to the target enterprises within the meaning of Article 87(1) of the EC Treaty,

HAS ADOPTED THIS DECISION:

6.2.2. State aid status of the IBG Fund silent participations

- (44) The Commission has examined the IBG Fund silent participations in the light of Article 87 of the EC Treaty. Article 87(1) of the EC Treaty provides that 'any aid granted by a Member State or through State resources

Article 1

The measure which Germany is planning to implement through IBG Beteiligungsgesellschaft Sachsen-Anhalt mbH, is not, as regards the silent participations, aid within the meaning of Article 87(1) of the EC Treaty.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 8 October 2008.

For the Commission

Neelie KROES

Member of the Commission

COMMISSION DECISION

of 28 April 2009

authorising the placing on the market of lycopene from *Blakeslea trispora* as a novel food ingredient under Regulation (EC) No 258/97 of the European Parliament and of the Council

(notified under document number C(2009) 3039)

(Only the Spanish text is authentic)

(2009/365/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients ⁽¹⁾, and in particular Article 7 thereof,

Whereas:

(1) On 30 August 2007 the company Vitatene made a request to the competent authorities of the United Kingdom to place lycopene from *Blakeslea trispora* on the market as a novel food ingredient; on 17 October 2007 the competent food assessment body of the United Kingdom issued its initial assessment report. In that report it came to the conclusion that, in the light of other pending applications concerning lycopene, an additional assessment is required in order to assure that an authorisation for use of the different lycopenes as novel food ingredients is granted under the same terms.

(2) The Commission forwarded the initial assessment report to all Member States on 11 February 2008.

(3) The European Food Safety Authority was consulted and issued its opinion on 4 December 2008.

(4) In its opinion EFSA came to the conclusion, because lycopene may undergo oxidative changes, it needs to be formulated as suspensions in edible oils, directly compressible or water dispersible powders. Sufficient antioxidative protection has to be ascertained.

(5) EFSA also concluded that the consumption of lycopene by the average user will stay below the acceptable daily intake (ADI), but that some users of lycopene may exceed the ADI. Therefore, it also appears appropriate to collect intake data for a number of years following the authorisation in order to review this authorisation in the light

of any further information on the safety of lycopene and its consumption. Particular attention should be given to the collection of data regarding levels of lycopene in breakfast cereals. However, this requirement under the present Decision, applies to the use of lycopene as a novel food ingredient and not to the use of lycopene as a food colour, that falls within the scope of Council Directive 89/107/EEC of 21 December 1988 on the approximation of the laws of the Member States concerning food additives authorised for use in foodstuffs intended for human consumption ⁽²⁾.

(6) On the basis of the scientific assessment, it is established that the lycopene from *Blakeslea trispora* complies with the criteria laid down in Article 3(1) of Regulation (EC) No 258/97.

(7) The company Vitatene agreed that Commission Decision 2006/721/EC ⁽³⁾ will be repealed.

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

HAS ADOPTED THIS DECISION:

Article 1

Lycopene from *Blakeslea trispora* (hereinafter referred to as the product), as specified in Annex I, may be placed on the market in the Community as a novel food ingredient to be used in the foods listed in Annex II.

Article 2

The designation of the novel food ingredient authorised by this Decision on the labelling of the foodstuff containing it shall be 'lycopene'.

Article 3

The company Vitatene shall establish a monitoring programme accompanying the marketing of the product. This programme shall encompass information about use levels of lycopene in foods as specified in Annex III.

⁽¹⁾ OJ L 43, 14.2.1997, p. 1.

⁽²⁾ OJ L 40, 11.2.1989, p. 27.

⁽³⁾ OJ L 296, 26.10.2006, p. 13.

The data collected shall be made available to the Commission and Member States. In the light of new information and a report of EFSA, at the latest in the year 2014 the use of lycopene as an ingredient in foods shall be reviewed.

Article 4

Decision 2006/721/EC is herewith repealed.

Article 5

This Decision is addressed to Vitatene SAU, Avda. Antibióticos 59-61, 24009 León, Spain.

Done at Brussels, 28 April 2009.

For the Commission
Androulla VASSILIOU
Member of the Commission

ANNEX I

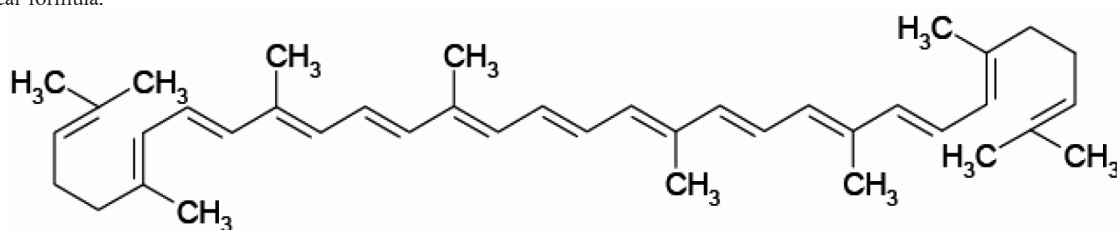
Specifications of lycopene from *Blakeslea trispora*

DESCRIPTION

The purified lycopene from *Blakeslea trispora* consists of ≥ 95 % lycopene and ≤ 5 % other carotenoids. It is presented either as a powder in a suitable matrix or an oily dispersion. The colour is dark red or red-violet. Antioxidative protection has to be assured.

SPECIFICATION

Chemical name: Lycopene
 CAS number: 502-65-8 (all trans-lycopene)
 Chemical formula: $C_{40}H_{56}$
 Chemical formula:



Formula weight: 536,85

ANNEX II

List of foods to which lycopene from *Blakeslea trispora* may be added

Food category	Maximum content of lycopene
Fruit/vegetable juice-based drinks (including concentrates)	2,5 mg/100 g
Drinks intended to meet the expenditure of intense muscular effort especially for sportsmen	2,5 mg/100 g
Foods intended for use in energy-restricted diets for weight reduction	8 mg/meal replacement
Breakfast cereals	5 mg/100 g
Fats and dressings	10 mg/100 g
Soups other than tomato soups	1 mg/100 g
Bread (including crispy breads)	3 mg/100 g
Dietary foods for special medical purposes	In accordance with the particular nutritional requirements
Food supplements	15 mg per daily dose as recommended by the manufacturer

ANNEX III

Post-launch monitoring of lycopene from *Blakeslea trispora*

INFORMATION TO BE COLLECTED

Quantities of lycopene from *Blakeslea trispora* provided by Vitatene to their customers for the production of final food products to be placed on the market in the European Union.

Results of data base searches on product launches of foods with added lycopene from *Blakeslea trispora*, including fortification levels and portion sizes per launched food by Member State.

REPORTING OF THE INFORMATION

The information above shall be reported to the European Commission annually for the years 2009 to 2012. For the first time on 31 October 2010 for the reporting period 1 July 2009 to 30 June 2010; and then with the same yearly reporting period for the following two years.

ADDITIONAL INFORMATION

Where appropriate and available to Vitatene also the same information on intakes of lycopene used as food colour should be reported.

Where available, Vitatene shall provide new scientific information for a reconsideration of the maximum safe intake levels of lycopene.

ASSESSMENT OF INTAKE LEVELS OF LYCOPENE

Based on the collected and reported information above, Vitatene shall carry out an updated intake assessment.

REVIEW

The Commission shall consult EFSA in 2013 to review the information provided by industry.

COMMISSION DECISION

of 29 April 2009

on the clearance of the accounts of the paying agencies of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia concerning expenditure in the field of rural development measures financed by the European Agricultural Guarantee Fund (EAGF) for the 2008 financial year

(notified under document number C(2009) 3199)

(Only the Czech, Estonian, Greek, English, Latvian, Lithuanian, Hungarian, Maltese, Polish, Slovak and Slovenian texts are authentic)

(2009/366/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy⁽¹⁾, and in particular Articles 30 and 39 thereof,

After consulting the Committee on the Agricultural Funds,

Whereas:

- (1) On the basis of the annual accounts submitted by the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia concerning expenditure in the field of rural development measures, accompanied by the information required, the accounts of the paying agencies referred to in Article 6(2) of Regulation (EC) No 1290/2005 are to be cleared. The clearance covers the completeness, accuracy and veracity of the accounts transmitted in the light of the reports established by the certification bodies.
- (2) The time limits granted to the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia referred to in Article 7(2) of Commission Regulation (EC) No 885/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD⁽²⁾ for the submission to the Commission of the documents referred to in Article 8(1)(c) of Regulation (EC) No 1290/2005 and in Article 7(1) of Regulation (EC) No 885/2006, have expired.
- (3) The Commission has checked the information submitted and communicated to the Czech Republic, Estonia,

Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia before 31 March 2009 the results of its verifications, along with the necessary amendments.

- (4) For the rural development expenditure covered by Article 7(2) of Commission Regulation (EC) No 27/2004 of 5 January 2004 laying down transitional detailed rules for the application of Council Regulation (EC) No 1257/1999 as regards the financing by the EAGF of rural development measures in the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia⁽³⁾ the outcome of the clearance decision is to be deducted from or added to subsequent payments made by the Commission.
- (5) In the light of the verifications made, the annual accounts and the accompanying documents permit the Commission to take, for certain paying agencies, a decision on the completeness, accuracy and veracity of the accounts submitted. The details of these amounts were described in the Summary Report that was presented to the Fund Committee at the same time as this Decision.
- (6) In the light of the verifications made, the information submitted by certain paying agencies requires additional inquiries and their accounts cannot be therefore cleared in this Decision.
- (7) For the rural development expenditure covered by Regulation (EC) No 27/2004, the amounts recoverable or payable under the clearance of accounts decision are to be deducted from or added to subsequent payments.
- (8) In accordance with Article 30(2) of Regulation (EC) No 1290/2005, this Decision does not prejudice decisions taken subsequently by the Commission excluding from Community financing expenditure not effected in accordance with Community rules,

⁽¹⁾ OJ L 209, 11.8.2005, p. 1.

⁽²⁾ OJ L 171, 23.6.2006, p. 90.

⁽³⁾ OJ L 5, 9.1.2004, p. 36.

HAS ADOPTED THIS DECISION:

Article 1

Without prejudice to Article 2, the accounts of the paying agencies of the Member States concerning expenditure in the field of rural development financed by the European Agricultural Guarantee Fund (EAGF) in respect of the 2008 financial year, are hereby cleared.

The amounts which are recoverable from, or payable to, each Member State pursuant to this Decision in the field of rural development measures applicable in the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia are set out in Annex I and Annex II.

Article 2

For the 2008 financial year, the accounts of the Member States' paying agencies in the field of rural development measures applicable in the Czech Republic, Estonia, Cyprus, Latvia,

Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, set out in Annex III, are disjoined from this Decision and shall be the subject of a future clearance Decision.

Article 3

This Decision is addressed to the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic.

Done at Brussels, 29 April 2009.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

CLEARANCE OF THE PAYING AGENCIES' ACCOUNTS
FINANCIAL YEAR 2008 — EAGF RURAL DEVELOPMENT EXPENDITURE IN NEW MEMBER STATES

Amount to be recovered from or paid to the Member State

MS		2008 — Expenditure for the paying agencies for which the accounts are		Total a + b	Reductions	Total	Interim payments reimbursed to the Member State for the financial year	Amount to be recovered from (-) or paid to (+) the Member State (*)
		cleared	disjoined					
		= expenditure declared in the annual declaration	= total of interim payments reimbursed to the Member State for the financial year					
		a	b	c = a + b	d	e = c + d	f	g = e - f
CZ	EUR	32 399 539,50		32 399 539,50	0,00	32 399 539,50	0,00	32 399 539,50
EE	EUR	24 148 768,74		24 148 768,74	0,00	24 148 768,74	0,00	24 148 768,74
CY	EUR	17 570 826,20		17 570 826,20	0,00	17 570 826,20	11 388 159,00	6 182 667,20
LV	EUR	46 986 857,87		46 986 857,87	0,00	46 986 857,87	0,00	46 986 857,87
LT	EUR	79 148 259,37		79 148 259,37	0,00	79 148 259,37	0,00	79 148 259,37
HU	EUR	90 290 537,46		90 290 537,46	0,00	90 290 537,46	0,00	90 290 537,46
MT	EUR	0,00	2 699 140,00	2 699 140,00	0,00	2 699 140,00	2 699 140,00	0,00
PL	EUR	121 595 191,28		121 595 191,28	0,00	121 595 191,28	0,00	121 595 191,28
SI	EUR	607 424,53		607 424,53	0,00	607 424,53	0,00	607 424,53
SK	EUR	39 259 760,34		39 259 760,34	0,00	39 259 760,34	0,00	39 259 760,34

MS	Advances paid but still to be cleared for the programme implementation (Article 32 of Regulation (EC) No 1260/1999)	
CZ	EUR	86 848 000,00
EE	EUR	24 080 000,00
CY	EUR	11 968 000,00
LV	EUR	52 496 000,00
LT	EUR	78 320 000,00
HU	EUR	96 368 000,00
MT	EUR	4 304 000,00
PL	EUR	458 624 000,00
SI	EUR	45 056 000,00
SK	EUR	63 536 000,00

(*) As payments have reached 95 % of the financial plan for all Member States, the balances will be settled during the closure of the programme.

Note: In respect of the Czech Republic, the amount cleared for financial year 2008 added to the amounts cleared in previous years; exceeds the maximum EAGGF contribution set out in the the Commission Decision approving the programme. The final EAGGF balance to be paid for the programme will be calculated in compliance with the total EAGGF contribution.

ANNEX II

CLEARED EXPENDITURE BY EAGF RURAL DEVELOPMENT MEASURE FOR EXERCISE 2008 IN NEW MEMBER STATES

Differences between annual accounts and declarations of expenditure

CZECH REPUBLIC

No	Measures	Expenditure 2008 Annex I column 'a'	Reductions Annex I column 'd'	Amount cleared for 2008 Annex I column 'e'
		i	ii	iii = i + ii
1	Early retirement	486 177,10		486 177,10
2	Less-favoured areas	- 62 324,19		- 62 324,19
3	Agri-environment	24 415 487,28		24 415 487,28
4	Forestry	768 151,81		768 151,81
5	Producer groups	6 792 047,50		6 792 047,50
6	Technical assistance	0,00		0,00
7	Sapard	0,00		0,00
700	Investments in agricultural holdings, Regulation (EC) No 1268/1999	0,00		0,00
701	Processing and marketing, Regulation (EC) No 1268/1999	0,00		0,00
702	Flood damage 1	0,00		0,00
703	Improving structures for quality	0,00		0,00
704	Land improvement and reparation	0,00		0,00
705	Renovation and development of villages	0,00		0,00
706	Flood damage 2	0,00		0,00
707	Development of rural infrastructure	0,00		0,00
708	Development and diversification of activities	0,00		0,00
709	Agricultural production methods to protect	0,00		0,00
710	Improvement of vocational training	0,00		0,00
711	Technical assistance Sapard	0,00		0,00
	Total	32 399 539,50	0,00	32 399 539,50

ESTONIA

No	Measures	Expenditure 2008 Annex I column 'a'	Reductions Annex I column 'd'	Amount cleared for 2008 Annex I column 'e'
		i	ii	iii = i + ii
1	Less-favoured areas	- 85 013,95		- 85 013,95
2	Agri-environment	20 416 942,68		20 416 942,68
3	Afforestation of agricultural land	125 877,94		125 877,94
4	Support for semi-subsistence farms	2 154 035,51		2 154 035,51
5	Meeting standards	1 373 830,87		1 373 830,87
6	Complements in direct payments	4 570,72		4 570,72

No	Measures	Expenditure 2008 Annex I column 'a'	Reductions Annex I column 'd'	Amount cleared for 2008 Annex I column 'e'
		i	ii	iii = i + ii
7	Technical assistance	155 007,67		155 007,67
8	Sapard	0,00		0,00
9	Support to areas with environmental restrictions	3 517,30		3 517,30
	Total	24 148 768,74	0,00	24 148 768,74

CYPRUS

No	Measures	Expenditure 2008 Annex I column 'a'	Reductions Annex I column 'd'	Amount cleared for 2008 Annex I column 'e'
		i	ii	iii = i + ii
1	Support of investments for management of animal waste	2 160 970,53		2 160 970,53
2	Encouragement of the improvement and the development	3 845 690,82		3 845 690,82
3	Encouragement of the set up of producer groups	391 894,08		391 894,08
4	Promotion of vocational training of farmers	0,00		0,00
5	Technical and advisory service to the farmers	58 475,17		58 475,17
6	Early retirement	500 463,80		500 463,80
7	Support for setting up of young farmers	710 000,00		710 000,00
8	Meeting EU standards	1 890 818,08		1 890 818,08
9	Adoption of agri-environmental measures	2 724 287,26		2 724 287,26
10	Agri-environmental actions for the protection of natural value	2 608 009,46		2 608 009,46
11	Afforestation	40 915,05		40 915,05
12	Improving of infrastructure for livestock development	490 532,61		490 532,61
13	Less-favoured areas	- 13 576,13		- 13 576,13
14	Support for quality schemes	673 718,97		673 718,97
15	Support of small scale, traditional processing	584 241,84		584 241,84
16	Protection of agricultural and traditional landscapes	282 638,86		282 638,86
17	Protection of forest fires and other natural disasters	123 163,39		123 163,39
18	Afforestation of non agricultural land	396 079,52		396 079,52
19	Improvement of harvesting process	0,00		0,00
20	Technical support of the implementation, monitoring	70 039,46		70 039,46
21	Technical support of collective initiatives at local level	32 463,43		32 463,43
	Total	17 570 826,20	0,00	17 570 826,20

LATVIA

No	Measures	Expenditure 2008 Annex I column 'a'	Reductions Annex I column 'd'	Amount cleared for 2008 Annex I column 'e'
		i	ii	iii = i + ii
1	Early retirement	3 250 393,40		3 250 393,40
2	Producer groups	1 589 329,59		1 589 329,59
3	Support for semi-substance farms	10 953 829,98		10 953 829,98
4	Meeting standards	7 050 638,64		7 050 638,64
5	Agri-environment	23 854 472,13		23 854 472,13
6	Less-favoured areas	34 948,53		34 948,53
7	Technical assistance	258 913,87		258 913,87
8	Obligations transferred from previous programming period	- 5 668,27		- 5 668,27
9	Allocations of resources for single area payments	0,00		0,00
	Total	46 986 857,87	0,00	46 986 857,87

LITHUANIA

No	Measures	Expenditure 2008 Annex I column 'a'	Reductions Annex I column 'd'	Amount cleared for 2008 Annex I column 'e'
		i	ii	iii = i + ii
1	Agri-environment	27 947 981,79		27 947 981,79
2	Less-favoured areas and areas with environmental restrictions	48 234,08		48 234,08
3	Meeting standards	26 055 356,07		26 055 356,07
4	Afforestation of agricultural land	1 734 572,99		1 734 572,99
5	Early retirement	19 490 903,99		19 490 903,99
6	Support for semi-subsistence farms undergoing restructuring	2 081 962,83		2 081 962,83
7	Other measures	447 848,76		447 848,76
8	Technical assistance	1 330 659,16		1 330 659,16
9	Complementary national direct payments	10 739,70		10 739,70
	Total	79 148 259,37	0,00	79 148 259,37

HUNGARY

No	Measures	Expenditure 2008 Annex I column 'a'	Reductions Annex I column 'd'	Amount cleared for 2008 Annex I column 'e'
		i	ii	iii = i + ii
1	Agri-environment	59 606 523,82		59 606 523,82
2	Meeting standards	13 784 071,07		13 784 071,07
3	Afforestation	15 357 233,59		15 357 233,59
4	Support for semi-substance farms	322 737,06		322 737,06

No	Measures	Expenditure 2008 Annex I column 'a'	Reductions Annex I column 'd'	Amount cleared for 2008 Annex I column 'e'
		i	ii	iii = i + ii
5	Producer groups	- 233,15		- 233,15
6	Early retirement	0,00		0,00
7	Less-favoured areas	- 25 011,06		- 25 011,06
8	Technical assistance	1 245 216,13		1 245 216,13
9	Projects approved under Regulation (EC) No 1268/1999	0,00		0,00
10	Complementary national direct payments	0,00		0,00
	Total	90 290 537,46	0,00	90 290 537,46

POLAND

No	Measures	Expenditure 2008 Annex I column 'a'	Reductions Annex I column 'd'	Amount cleared for 2008 Annex I column 'e'
		i	ii	iii = i + ii
1	Early retirement	25 431 473,58		25 431 473,58
2	Support for semi-subsistence farms	12 965 617,28		12 965 617,28
3	Less-favoured areas	- 1 487 716,01		- 1 487 716,01
4	Agri-environment undertakings and animal welfare	5 663 544,07		5 663 544,07
5	Afforestation	11 625 652,61		11 625 652,61
6	Meeting EU standards	62 703 110,98		62 703 110,98
7	Producer Groups	1 799 132,10		1 799 132,10
8	Technical assistance	2 763 199,78		2 763 199,78
9	Complements to direct payments	140 155,01		140 155,01
10	Projects approved under Regulation (EC) No 1268/1999	- 8 978,12		- 8 978,12
	Total	121 595 191,28	0,00	121 595 191,28

SLOVENIA

No	Measures	Expenditure 2008 Annex I column 'a'	Reductions Annex I column 'd'	Amount cleared for 2008 Annex I column 'e'
		i	ii	iii = i + ii
1	Less-favoured areas	78 615,04		78 615,04
2	Agri-environment	- 1 190 735,17		- 1 190 735,17
3	Early retirement	1 386 969,91		1 386 969,91
4	Meeting standards	199 761,17		199 761,17
5	Technical assistance	101 777,75		101 777,75
6	Sapard programme	34 856,75		34 856,75
7	Complements to direct payments	- 3 820,92		- 3 820,92
	Total	607 424,53	0,00	607 424,53

SLOVAKIA

No	Measures	Expenditure 2008 Annex I column 'a'	Reductions Annex I column 'd'	Amount cleared for 2008 Annex I column 'e'
		i	ii	iii = i + ii
1	Investments in agricultural holdings	1 650 413,98		1 650 413,98
2	Training	0,00		0,00
3	Less-favoured areas and areas with environmental restrictions	317 367,06		317 367,06
4	Meeting standards	3 982 447,52		3 982 447,52
5	Agri-environmental support	25 815 864,82		25 815 864,82
6	Improving processing and marketing of agricultural products	942 660,39		942 660,39
7	Forest management	4 564,40		4 564,40
8	Afforestation of agricultural land	106 689,23		106 689,23
9	Land consolidation	465 593,60		465 593,60
10	Diversification of agricultural activities	34 451,27		34 451,27
11	Support for semi-subsistence farms	414 691,29		414 691,29
12	Producer groups	2 387 788,82		2 387 788,82
13	Technical assistance including evaluation	3 137 462,36		3 137 462,36
14	Complements to direct payments	- 234,40		- 234,40
901	Investments in agricultural holdings, Regulation (EC) No 1268/1999	0,00		0,00
905	Agri-environmental support — projects approved under Regulation (EC) No 1268/1999	0,00		0,00
907	Forest management — projects approved under Regulation (EC) No 1268/1999	0,00		0,00
912	Producer groups — project approved under Regulation (EC) No 1268/1999	0,00		0,00
	Total	39 259 760,34	0,00	39 259 760,34

ANNEX III

CLEARANCE OF THE PAYING AGENCIES' ACCOUNTS

FINANCIAL YEAR 2008 — EAGF RURAL DEVELOPMENT EXPENDITURE IN NEW MEMBER STATES

List of the paying agencies for which the accounts are disjoined and are subject of a later clearance decision

Member State	Paying agency
Malta	MRRA

COMMISSION DECISION

of 29 April 2009

on the clearance of the accounts of the paying agencies of Member States concerning expenditure financed by the European Agricultural Guarantee Fund (EAGF) for the 2008 financial year

(notified under document number C(2009) 3217)

(2009/367/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy ⁽¹⁾, and in particular Articles 30 and 32 thereof,

After consulting the Committee on the Agricultural Funds,

Whereas:

- (1) Under Article 30 of Regulation (EC) No 1290/2005, the Commission, on the basis of the annual accounts submitted by the Member States, accompanied by the information required for the clearance of accounts and a certificate regarding the integrality, accuracy and veracity of the accounts and the reports established by the certification bodies, clears the accounts of the paying agencies referred to in Article 6 of the said Regulation.
- (2) Pursuant to the second subparagraph of Article 5(1) of Commission Regulation (EC) No 883/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the keeping of accounts by the paying agencies, declarations of expenditure and revenue and the conditions for reimbursing expenditure under the EAGF and the EAFRD ⁽²⁾, account is taken for the 2008 financial year of expenditure incurred by the Member States between 16 October 2007 and 15 October 2008.
- (3) The Commission has checked the information submitted by the Member States and it has communicated to the Member States before 31 March 2009 the results of its verifications, along with the necessary amendments.
- (4) The annual accounts and the accompanying documents permit the Commission to take, for certain paying agencies, a decision on the completeness, accuracy and veracity of the annual accounts submitted. Annex I lists the amounts cleared by Member State and the amounts to be recovered from or paid to the Member States.
- (5) The information submitted by certain other paying agencies requires additional inquiries and their accounts cannot be cleared in this Decision. Annex II lists the paying agencies concerned.
- (6) Under Article 9(4) of Regulation (EC) No 883/2006, any overrun of deadlines during August, September and October is to be taken into account in the clearance of accounts decision. Some of the expenditure declared by certain Member States during these months in the year 2008 was effected after the applicable deadlines. This Decision should therefore fix the relevant reductions.
- (7) The Commission, in accordance with Article 17 of Regulation (EC) No 1290/2005 and Article 9 of Regulation (EC) No 883/2006, has already reduced or suspended a number of monthly payments on entry into the accounts of expenditure for the 2008 financial year. In order to avoid any premature, or temporary, reimbursement of the amounts in question, they should not be recognised in this Decision and they should be further examined under the conformity clearance procedure pursuant to Article 31 of Regulation (EC) No 1290/2005.
- (8) Pursuant to Article 32(5) of Regulation (EC) No 1290/2005, 50 % of the financial consequences of non-recovery of irregularities shall be borne by the Member State concerned if the recovery of those irregularities has not taken place within four years of the primary administrative or judicial finding, or within eight years if the recovery is taken to the national courts. Article 32(3) of the said Regulation obliges Member States to submit to the Commission, together with the annual accounts, a summary report on the recovery procedures undertaken in response to irregularities. Detailed rules on the application of the Member States' reporting obligation of the amounts to be recovered are laid down in Commission Regulation (EC) No 885/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD ⁽³⁾. Annex III to the said Regulation provides the table that had to

⁽¹⁾ OJ L 209, 11.8.2005, p. 1.

⁽²⁾ OJ L 171, 23.6.2006, p. 1.

⁽³⁾ OJ L 171, 23.6.2006, p. 90.

be provided in 2009 by the Member States. On the basis of the tables completed by the Member States, the Commission should decide on the financial consequences of non-recovery of irregularities older than four or eight years respectively. This decision is without prejudice to future conformity decisions pursuant to Article 32(8) of Regulation (EC) No 1290/2005.

- (9) Pursuant to Article 32(6) of Regulation (EC) No 1290/2005, Member States may decide not to pursue recovery. Such a decision may only be taken if the costs already and likely to be incurred total more than the amount to be recovered or if the recovery proves impossible owing to the insolvency, recorded and recognised under national law, of the debtor or the persons legally responsible for the irregularity. If that decision has been taken within four years of the primary administrative or judicial finding or within eight years if the recovery is taken to the national courts, 100 % of the financial consequences of the non-recovery should be borne by the Community budget. In the summary report referred to in Article 32(3) of Regulation (EC) No 1290/2005, the amounts for which the Member State decided not to pursue recovery and the grounds for the decision are shown. These amounts are not charged to the Member States concerned and are consequently borne by the Community budget. This decision is without prejudice to future conformity decisions pursuant to Article 32(8) of the said Regulation.
- (10) In accordance with Article 30(2) of Regulation (EC) No 1290/2005, this Decision does not prejudice decisions taken subsequently by the Commission excluding from Community financing expenditure not effected in accordance with Community rules,

HAS ADOPTED THIS DECISION:

Article 1

With the exception of the paying agencies referred to in Article 2, the accounts of the paying agencies of the Member States concerning expenditure financed by the European Agricultural Guarantee Fund (EAGF) in respect of the 2008 financial year, are hereby cleared.

The amounts which are recoverable from or payable to each Member State pursuant to this Decision, including those resulting from the application of Article 32(5) of Regulation (EC) No 1290/2005, are set out in Annex I.

Article 2

For the 2008 financial year, the accounts of the Member States' paying agencies in respect of expenditure financed by the EAGF, set out in Annex II, are disjoined from this Decision and shall be the subject of a future clearance of accounts Decision.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 29 April 2009.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

CLEARANCE OF THE PAYING AGENCIES' ACCOUNTS

FINANCIAL YEAR 2008

Amount to be recovered from or paid to the Member State

MS		2008 — Expenditure/Assigned Revenue for the Paying Agencies for which the accounts are		Total a + b	Reductions and suspensions for the whole financial year ⁽¹⁾	Reductions according to Article 32 of Regulation (EC) No 1290/2005	Total including reductions and suspensions	Payments made to the Member State for the financial year	Amount to be recovered from (-) or paid to (+) the Member State ⁽²⁾
		cleared	disjoined						
		= expenditure/assigned revenue declared in the annual declaration	= total of the expen- diture/assigned revenue in the monthly declarations						
		a	b	c = a + b	d	e	f = c + d + e	g	h = f - g
BE	EUR	432 608 618,53	273 518 319,77	706 126 938,30	- 593,30	- 54 510,68	706 071 834,32	706 201 150,75	- 129 316,43
BG	EUR	173 261 850,21	0,00	173 261 850,21	- 10 969,94	0,00	173 250 880,27	173 262 003,11	- 11 122,84
CZ	EUR	382 633 310,43	0,00	382 633 310,43	0,00	0,00	382 633 310,43	382 638 179,78	- 4 869,35
DK	DKK	0,00	0,00	0,00	0,00	- 14 764,84	- 14 764,84	0,00	- 14 764,84
DK	EUR	981 148 146,05	0,00	981 148 146,05	- 334 916,53	0,00	980 813 229,52	980 605 638,09	207 591,43
DE	EUR	4 679 844 580,08	421 042 712,93	5 100 887 293,01	- 37 390,29	- 2 874 536,38	5 097 975 366,35	5 101 133 812,30	- 3 158 445,95
EE	EUR	41 604 457,53	0,00	41 604 457,53	- 30 242,24	0,00	41 574 215,29	41 537 242,47	36 972,82
IE	EUR	1 452 426 445,64	0,00	1 452 426 445,64	- 152 676,24	- 209 340,42	1 452 064 428,98	1 450 327 500,26	1 736 928,72
EL	EUR	0,00	2 460 745 905,37	2 460 745 905,37	0,00	0,00	2 460 745 905,37	2 460 745 905,37	0,00
ES	EUR	5 476 876 522,21	0,00	5 476 876 522,21	- 4 919 283,22	- 4 564 317,68	5 467 392 921,32	5 475 621 557,38	- 8 228 636,07
FR	EUR	8 323 180 801,10	0,00	8 323 180 801,10	- 1 302 798,28	- 18 942 379,66	8 302 935 623,16	8 324 404 948,60	- 21 469 325,44
IT	EUR	4 168 669 787,38	101 969 623,15	4 270 639 410,53	- 1 887 157,65	- 4 363 298,08	4 264 388 954,80	4 264 132 179,52	256 775,28
CY	EUR	27 774 540,54	0,00	27 774 540,54	0,00	0,00	27 774 540,54	27 774 540,54	0,00
LV	EUR	96 759 251,98	0,00	96 759 251,98	0,00	0,00	96 759 251,98	96 760 415,54	- 1 163,56
LT	EUR	155 733 024,94	0,00	155 733 024,94	0,00	0,00	155 733 024,94	155 996 896,19	- 263 871,25
LU	EUR	33 965 171,44	0,00	33 965 171,44	- 1 273,90	0,00	33 963 897,54	33 787 840,71	176 056,83
HU	EUR	486 553 484,46	0,00	486 553 484,46	- 11 055,36	0,00	486 542 429,10	492 387 580,59	- 5 845 151,49
MT	EUR	0,00	2 472 341,64	2 472 341,64	0,00	0,00	2 472 341,64	2 472 341,64	0,00
NL	EUR	854 800 814,16	0,00	854 800 814,16	- 91 807,12	- 65 076,30	854 643 930,74	856 242 767,86	- 1 598 837,12
AT	EUR	656 513 475,83	0,00	656 513 475,83	0,00	- 44 207,31	656 469 268,52	656 496 253,55	- 26 985,03
PL	EUR	1 172 220 664,21	0,00	1 172 220 664,21	0,00	0,00	1 172 220 664,21	1 172 232 662,17	- 11 997,96

MS		2008 — Expenditure/Assigned Revenue for the Paying Agencies for which the accounts are		Total a + b	Reductions and suspensions for the whole financial year ⁽¹⁾	Reductions according to Article 32 of Regulation (EC) No 1290/2005	Total including reductions and suspensions	Payments made to the Member State for the financial year	Amount to be recovered from (-) or paid to (+) the Member State ⁽²⁾
		cleared	disjoined						
		= expenditure/assigned revenue declared in the annual declaration	= total of the expen- diture/assigned revenue in the monthly declarations						
		a	b	c = a + b	d	e	f = c + d + e	g	h = f - g
PT	EUR	0,00	720 094 153,57	720 094 153,57	0,00	0,00	720 094 153,57	720 094 153,57	0,00
RO	EUR	0,00	461 870 850,36	461 870 850,36	0,00	0,00	461 870 850,36	461 870 850,36	0,00
SI	EUR	93 014 996,23	0,00	93 014 996,23	0,00	0,00	93 014 996,23	93 152 578,75	- 137 582,52
SK	EUR	169 701 265,50	0,00	169 701 265,50	0,00	0,00	169 701 265,50	169 768 426,79	- 67 161,29
FI	EUR	565 626 400,21	0,00	565 626 400,21	- 2 432,42	- 7 736,10	565 616 231,70	567 200 798,71	- 1 584 567,01
SE	SEK	0,00	0,00	0,00	0,00	- 65 415,38	- 65 415,38	0,00	- 65 415,38
SE	EUR	713 833 441,95	0,00	713 833 441,95	- 35 629,22	0,00	713 797 812,73	713 869 554,32	- 71 741,59
UK	GBP	0,00	0,00	0,00	0,00	- 58 909,25	- 58 909,25	0,00	- 58 909,25
UK	EUR	3 158 349 336,06	0,00	3 158 349 336,06	- 14 574 228,18	0,00	3 143 775 107,88	3 223 172 099,30	- 79 396 991,42

MS		Expenditure ⁽³⁾	Assigned revenue ⁽³⁾	Sugar Fund		Article 32 (=e)	Total (=h)
				Expenditure ⁽⁴⁾	Assigned revenue ⁽⁴⁾		
		05 07 01 06	6701	05 02 16 02	6803	6702	
		i	j	k	l	m	n = i + j + k + l + m
BE	EUR	- 74 805,75	0,00	0,00	0,00	- 54 510,68	- 129 316,43
BG	EUR	- 11 122,84	0,00	0,00	0,00	0,00	- 11 122,84
CZ	EUR	- 4 869,35	0,00	0,00	0,00	0,00	- 4 869,35
DK	DKK	0,00	0,00	0,00	0,00	- 14 764,84	- 14 764,84
DK	EUR	207 591,43	0,00	0,00	0,00	0,00	207 591,43
DE	EUR	- 209 002,65	- 74 906,93	0,00	0,00	- 2 874 536,38	- 3 158 445,95
EE	EUR	36 972,82	0,00	0,00	0,00	0,00	36 972,82
IE	EUR	1 946 269,14	0,00	0,00	0,00	- 209 340,42	1 736 928,72
EL	EUR	0,00	0,00	0,00	0,00	0,00	0,00
ES	EUR	- 3 664 318,39	0,00	0,00	0,00	- 4 564 317,68	- 8 228 636,07
FR	EUR	- 2 526 945,78	0,00	0,00	0,00	- 18 942 379,66	- 21 469 325,44

MS		Expenditure ⁽³⁾	Assigned revenue ⁽³⁾	Sugar Fund		Article 32 (=e)	Total (=h)
				Expenditure ⁽⁴⁾	Assigned revenue ⁽⁴⁾		
		05 07 01 06	6701	05 02 16 02	6803	6702	
		i	j	k	l	m	n = i + j + k + l + m
IT	EUR	4 620 073,36	0,00	0,00	0,00	- 4 363 298,08	256 775,28
CY	EUR	0,00	0,00	0,00	0,00	0,00	0,00
LV	EUR	- 1 035,93	- 127,63	0,00	0,00	0,00	- 1 163,56
LT	EUR	- 263 563,31	- 307,94	0,00	0,00	0,00	- 263 871,25
LU	EUR	176 056,83	0,00	0,00	0,00	0,00	176 056,83
HU	EUR	- 5 845 151,49	0,00	0,00	0,00	0,00	- 5 845 151,49
MT	EUR	0,00	0,00	0,00	0,00	0,00	0,00
NL	EUR	- 1 444 785,70	- 88 975,12	0,00	0,00	- 65 076,30	- 1 598 837,12
AT	EUR	17 222,28	0,00	0,00	0,00	- 44 207,31	- 26 985,03
PL	EUR	- 11 997,96	0,00	0,00	0,00	0,00	- 11 997,96
PT	EUR	0,00	0,00	0,00	0,00	0,00	0,00
RO	EUR	0,00	0,00	0,00	0,00	0,00	0,00
SI	EUR	- 137 582,52	0,00	0,00	0,00	0,00	- 137 582,52
SK	EUR	3 555,47	- 70 716,76	0,00	0,00	0,00	- 67 161,29
FI	EUR	- 1 521 889,93	- 54 940,99	0,00	0,00	- 7 736,10	- 1 584 567,01
SE	SEK	0,00	0,00	0,00	0,00	- 65 415,38	- 65 415,38
SE	EUR	- 71 741,59	0,00	0,00	0,00	0,00	- 71 741,59
UK	GBP	0,00	0,00	0,00	0,00	- 58 909,25	- 58 909,25
UK	EUR	- 79 396 991,42	0,00	0,00	0,00	0,00	- 79 396 991,42

⁽¹⁾ The reductions and suspensions are those taken into account in the payment system, to which are added in particular the corrections for the non-respect of payment deadlines established in August, September and October 2008.

⁽²⁾ For the calculation of the amount to be recovered from or paid to the Member State the amount taken into account is, the total of the annual declaration for the expenditure cleared (col.a) or, the total of the monthly declarations for the expenditure disjoined (col.b).

Applicable exchange rate: Article 7(2) of the Regulation (EC) No 883/2006.

⁽³⁾ If the Assigned revenue part would be in advantage of Member State, it has to be declared under 05 07 01 06.

⁽⁴⁾ If the Assigned revenue part of the Sugar Fund, would be in the advantage of the Member State, it has to be declared under 05 02 16 02.

NB: Nomenclature 2009: 05 07 01 06, 05 02 16 02, 6701, 6702, 6803.

ANNEX II

CLEARANCE OF THE PAYING AGENCIES' ACCOUNTS

FINANCIAL YEAR 2008 — EAGF

List of the paying agencies for which the accounts are disjoined and are subject of a later clearance decision

Member State	Paying agency
Belgium	ALV
Germany	Baden-Württemberg
Greece	OPEKEPE
Italy	ARBEA
Malta	MRRA
Portugal	IFAP
Romania	PIAA

COMMISSION DECISION

of 4 May 2009

fixing for the marketing year 2009/2010 the amounts of the aid for diversification and the additional aid for diversification to be granted under the temporary scheme for the restructuring of the sugar industry of the Community

*(notified under document number C(2009) 3158)***(Only the Spanish text is authentic)**

(2009/368/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 320/2006 of 20 February 2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community and amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy ⁽¹⁾,Having regard to Commission Regulation (EC) No 968/2006 of 27 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 320/2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community ⁽²⁾, and in particular Article 13(1) thereof,

Whereas:

- (1) The Commission has to fix the amounts attributed to each Member State concerned for the aid for diversification provided for in Article 6 of Regulation (EC) No 320/2006 and the additional aid for diversification provided for in Article 7 of that Regulation.
- (2) The amounts of the aid for diversification and additional aid for diversification are calculated on the basis of the tonnes of sugar quota renounced in the 2009/2010

marketing year in the Member State concerned, as provided for in Article 13(2) of Regulation (EC) No 968/2006,

HAS ADOPTED THIS DECISION:

Article 1

The amounts per Member State concerned of the aid for diversification and the additional aid for diversification provided for in Articles 6 and 7 of Regulation (EC) No 320/2006 respectively, as fixed in respect of the quotas renounced in the 2009/2010 marketing year, are set out in the Annex to this Decision.

Article 2

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 4 May 2009.

For the Commission

Mariann FISCHER BOEL

Member of the Commission⁽¹⁾ OJ L 58, 28.2.2006, p. 42.⁽²⁾ OJ L 176, 30.6.2006, p. 32.

ANNEX

Amounts per Member State of the aid for diversification and the additional aid for diversification 2009/2010 marketing year

(EUR)

Member State	Aid for diversification	Additional aid for diversification
Spain	10 304 268,00	23 197 020,93

CORRIGENDA**Corrigendum to Commission Directive 2008/113/EC of 8 December 2008 amending Council Directive 91/414/EEC to include several micro-organisms as active substances**

(Official Journal of the European Union L 330 of 9 December 2008)

On page 14, in the Annex, row 213, column 'Common name, identification numbers':

for: 'T11',

read: 'T25';

on page 14, in the Annex, row 213, column 'Specific provisions':

for: 'T11',

read: 'T25'.

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