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EN

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

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DECISIONS

EN

(1) Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) No 74/2012

of 27 January 2012

concerning the classification of certain goods in the Combined Nomenclature

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff [1], and in particular Article 9(1)(a) thereof,

Whereas:

(1) In order to ensure uniform application of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.

(2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific provisions of the Union, with a view to the application of tariff and other measures relating to trade in goods.

(3) Pursuant to those general rules, the goods described in column (1) of the table set out in the Annex should be classified under the CN code indicated in column (2), by virtue of the reasons set out in column (3) of that table.

(4) It is appropriate to provide that binding tariff information which has been issued by the customs authorities of Member States in respect of the classification of goods in the Combined Nomenclature but which is not in accordance with this Regulation can, for a period of three months, continue to be invoked by the holder, under Article 12(6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [2].

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

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column (1) of the table set out in the Annex shall be classified within the Combined Nomenclature under the CN code indicated in column (2) of that table.

Article 2

Binding tariff information issued by the customs authorities of Member States, which is not in accordance with this Regulation, can continue to be invoked for a period of three months under Article 12(6) of Regulation (EEC) No 2913/92.

Article 3

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

[1] OJ L 256, 7.9.1987, p. 1.

[2] OJ L 302, 19.10.1992, p. 1.

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

Done at Brussels, 27 January 2012.

For the Commission,
On behalf of the President,
Algirdas ŠEMETA
Member of the Commission

ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
A panel made of aluminium and tempered glass, measuring approximately 140 x 30 cm (so-called "shower panel with hydromassage"). The panel is equipped with a mixing tap, 6 horizontal hydromassage nozzles, an "anti-calc" handheld shower head, an upper shower head with a wide spraying range, and a shelf for accessories. It is also equipped with control knobs for setting the temperature of the water, its intensity, etc. The panel is designed for mounting in compatible bathroom shower cabins. In addition to the shower function, it also provides hydromassage by narrow water streams under high pressure coming through the nozzles.	9019 10 90	Classification is determined by General Rules 1, 3(c) and 6 for the interpretation of the Combined Nomenclature and by the wording of CN codes 9019, 9019 10 and 9019 10 90. As the panel is made up of a mixing tap with shower heads of heading 8481 and a massage apparatus with 6 hydromassage nozzles of heading 9019, it is considered to be composite goods within the meaning of General Rule 3(b). The absence of additional features for increasing the water pressure, such as a pump, does not preclude classification of the massage apparatus component under heading 9019 (see also HS Explanatory Notes to heading 9019, (II), second paragraph). Given their objective characteristics and properties, neither component gives the panel its essential character. The panel is therefore to be classified under CN code 9019 10 90 as other massage apparatus.

COMMISSION IMPLEMENTING REGULATION (EU) No 75/2012

of 30 January 2012

entering a name in the register of protected designations of origin and protected geographical indications ["Miód z Sejneńszczyny/Łoździejszczyzny"/"Seinų/Lazdijų krašto medus" (PDO)]

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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

Whereas:

(1) Pursuant to the first subparagraph of Article 6(2) of Regulation (EC) No 510/2006, Poland and Lithuania's application to register the name "Miód z Sejneńszczyny/Łoździejszczyzny"/"Seinų/Lazdijų krašto medus" was published in the *Official Journal of the European Union* [2].

(2) As no statement of objection under Article 7 of Regulation (EC) No 510/2006 has been received by the Commission, that name should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name contained in the Annex to this Regulation is hereby entered in the register.

Article 2

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

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

Done at Brussels, 30 January 2012.

For the Commission,
On behalf of the President,
Dacian CIOLOŞ
Member of the Commission

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[1] OJ L 93, 31.3.2006, p. 12.
[2] OJ C 116, 14.4.2011, p. 15.

ANNEX

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

Class 1.4. Other products of animal origin (eggs, honey, various dairy products except butter, etc.)

POLAND

Miód z Sejneńszczyny/Łoździejszczyzny (PDO)

LITHUANIA

Seinų/Lazdijų krašto medus (PDO)

COMMISSION IMPLEMENTING REGULATION (EU) No 76/2012

of 30 January 2012

entering a name in the register of protected designations of origin and protected geographical indications [Holsteiner Katenschinken / Holsteiner Schinken / Holsteiner Katenrauchschinken / Holsteiner Knochenschinken (PGI)]

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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

Whereas:

(1) Pursuant to the first subparagraph of Article 6(2) of Regulation (EC) No 510/2006, Germany's application to register the name 'Holsteiner Katenschinken / Holsteiner Schinken / Holsteiner Katenrauchschinken/ Holsteiner Knochenschinken' was published in the *Official Journal of the European Union* [2].

(2) As no statement of objection under Article 7 of Regulation (EC) No 510/2006 has been received by the Commission, that name should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name contained in the Annex to this Regulation is hereby entered in the register.

Article 2

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

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

Done at Brussels, 30 January 2012.

For the Commission,
On behalf of the President,
Dacian CIOLOŞ
Member of the Commission

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[1] OJ L 93, 31.3.2006, p. 12.
[2] OJ C 109, 8.4.2011, p. 6.

ANNEX

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

Class 1.2. Meat products (cooked, salted, smoked, etc.)

GERMANY

Holsteiner Katenschinken / Holsteiner Schinken / Holsteiner Katenrauchschinken / Holsteiner Knochenschinken (PGI)

COMMISSION IMPLEMENTING REGULATION (EU) No 77/2012

of 30 January 2012

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

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors [2], and in particular Article 136(1) thereof,

Whereas:

(1) Implementing Regulation (EU) No 543/2011 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 XVI, Part A thereto.

(2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed 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*.

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

Done at Brussels, 30 January 2012.

For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and Rural Development

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[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 157, 15.6.2011, 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	IL	138,3
	MA	58,6
	TN	90,3
	TR	119,7
	ZZ	101,7
0707 00 05	EG	217,9
	JO	241,9
	MA	148,6
	TR	180,8
	ZZ	197,3
0709 91 00	EG	143,2
	ZZ	143,2
0709 93 10	MA	124,4
	TR	177,7
	ZZ	151,1
0805 10 20	EG	49,6
	MA	54,8
	TN	58,8
	TR	63,2
	ZZ	56,6
0805 20 10	IL	185,7
	MA	94,2
	ZZ	140,0
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	61,2
	EG	88,5
	IL	94,5
	JM	118,0
	KR	91,5
	MA	55,4
	PK	50,1
	TR	97,0
	ZZ	82,0
0805 50 10	TR	65,8
	ZZ	65,8
0808 10 80	CA	118,4
	CL	79,0
	CN	74,5
	US	155,0
	ZZ	106,7
0808 30 90	CN	46,1
	TR	95,1
	US	120,1
	ZA	97,6
	ZZ	89,7

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

COMMISSION IMPLEMENTING REGULATION (EU) No 78/2012

of 30 January 2012

amending the representative prices and additional import duties for certain products in the sugar sector fixed by Implementing Regulation (EU) No 971/2011 for the 2011/12 marketing year

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 2011/12 marketing year are fixed by Commission Implementing Regulation (EU) No 971/2011 [3]. Those prices and duties were last amended by Commission Implementing Regulation (EU) No 59/2012 [4].

(2) The data currently available to the Commission indicate that those amounts should be amended in accordance with Article 36 of Regulation (EC) No 951/2006.

(3) Given the need to ensure that this measure applies as soon as possible after the updated data have been made available, this Regulation should enter into force on the day of its publication,

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 Implementing Regulation (EU) No 971/2011 for the 2011/12 marketing year, are hereby amended as set out in the Annex hereto.

Article 2

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

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

Done at Brussels, 30 January 2012.

For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and Rural Development

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[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 178, 1.7.2006, p. 24.
[3] OJ L 254, 30.9.2011, p. 12.
[4] OJ L 19, 24.1.2012, p. 15.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 31 January 2012

(EUR)

CN code	Representative price per 100 kg net of the product concerned	Additional duty per 100 kg net of the product concerned
1701 12 10 (1)	42,50	0,00
1701 12 90 (1)	42,50	1,86
1701 13 10 (1)	42,50	0,00
1701 13 90 (1)	42,50	2,15
1701 14 10 (1)	42,50	0,00
1701 14 90 (1)	42,50	2,15
1701 91 00 (2)	48,55	2,90
1701 99 10 (2)	48,55	0,00
1701 99 90 (2)	48,55	0,00
1702 90 95 (3)	0,49	0,22

(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.

DECISIONS

COUNCIL DECISION 2012/50/CFSP

of 27 January 2012

amending Decision 2011/72/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Whereas:

(1) On 31 January 2011, the Council adopted Decision 2011/72/CFSP [1].

(2) On the basis of a review of Decision 2011/72/CFSP, the restrictive measures should be extended until 31 January 2013.

(3) Decision 2011/72/CFSP should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 5 of Decision 2011/72/CFSP is replaced by the following:

'*Article 5*

This Decision shall apply until 31 January 2013. It shall be kept under constant review. It may be renewed or amended, as appropriate, if the Council deems that its objectives have not been met.'.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 27 January 2012.

For the Council

The President

N. WAMMEN

([1]) OJ L 28, 2.2.2011, p. 62.

COMMISSION DECISION

of 23 March 2011

on State aid C 39/07 implemented by Italy for Legler SpA

(notified under document C(2011) 1758)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2012/51/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (hereinafter 'the Treaty'), and in particular the first subparagraph of Article 108(2) thereof,

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

Having regard to the Commission decision to initiate the procedure laid down in Article 108(2) of the Treaty [1],

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

Whereas:

I. **PROCEDURE**

(1) On 5 April 2007, six months after the granting of rescue aid approved as compatible with the internal market by the Commission [2], Italy notified a restructuring plan for Legler SpA.

(2) On 25 September 2007, the Commission initiated the formal investigation procedure in respect of the restructuring plan [3]. Observations from Italy were received on 30 November 2007.

(3) On 10 December 2007, the Commission received comments from one interested party. It transmitted the comments to Italy by letter dated 3 March 2008. Italy provided its observations by letter dated 20 May 2008.

(4) On 23 July 2008, the Italian authorities withdrew the restructuring aid notification, stating that the plan had been abandoned.

(5) The Commission requested further information from the Italian authorities on 8 August 2008, 22 October 2008, 9 February 2009, 4 September 2009 and 17 March 2010, to which the Italian authorities replied by letters dated 26 September 2008, 1 December 2008, 3 June 2009, 6 October 2009, 24 February 2010 and 20 April 2010.

II. **DESCRIPTION**

II.1. **Beneficiary**

(6) Legler SpA is the parent company of an Italian textile manufacturing group (hereinafter referred to as 'Legler', 'the group' or 'the company') founded in 1863 which, at the time the formal investigation procedure was initiated, comprised several legal entities, namely: Legler Ottana SpA, Legler Siniscola SpA and Legler Macomer SpA. Legler SpA held a minority shareholding in Legler Maroc SA and a 40 % share in Legler Ottana SpA The majority shareholding in Legler SpA was held by the holding company Piltar Ltd (hereinafter referred to as 'Piltar').

(7) In 2007, Legler employed 1 213 [4] persons and had plants in the region of Sardinia (at Macomer — province of Oristano, and at Siniscola and Ottana — province of Nuoro) and in the region of Lombardy (at Ponte San Pietro — province of Bergamo). The group's turnover was EUR 101 million in 2006 and EUR 30,9 million in September 2007.

(8) Legler's core activity was the manufacturing of high-quality denim fabric, a sector in which the company had been a leading player in Italy and Germany and an important supplier to France and the Benelux. According to the Italian authorities, the denim market comprises two segments: *prêt-à-porter* for famous brands (this was Legler's main sector) and mass-market products, where competition is mainly price-based. Legler's main competitors were based in Italy, Greece, France, Tunisia, Turkey and Japan. Legler began experiencing difficulties in 2003, when a significant part of production was relocated to Asia or the southern Mediterranean.

(9) On 30 May 2007, at a board meeting of SFIRS SpA, an investment company of the region of Sardinia, it was decided that SFIRS would purchase from Intex SpA, in liquidation, for the price of EUR 450 000, a debt of a nominal value of EUR 17 million owed by Legler SpA and Legler Siniscola SpA.

[1] OJ C 289, 1.12.2007, p. 22.
[2] OJ C 159, 12.7.2007, p. 2. The rescue aid was approved for the period 5 October 2006 to 5 April 2007.
[3] See footnote 1.
[4] This figure represents the number of persons who worked full-time for the company during the entire period under consideration.

(10) At the same meeting, SFIRS also decided to convert a part of Legler's EUR 17 million debt, in the amount of EUR 14,5 million, into participation in Legler's equity.

(11) On 31 May 2007, the debt-for-equity swap was carried out at a shareholders' meeting of Legler. By converting part of Legler's debt (for a face value of EUR 14,5 million) into Legler capital, SFIRS acquired 49 % of the ordinary shares (and 100 % of the extraordinary shares [5]) in Legler SpA The remaining 51 % was retained by Piltar.

(12) In January 2008, SFIRS decided to divest itself of its shareholding in Legler SpA, and of the remaining Legler group debt, and launched a call for expressions of interest for the joint purchase of the Legler equity and debt.

(13) The winning offer, submitted by the company Ferratex SRL (hereinafter referred to as 'Ferratex') was in the total amount of EUR 2 000 001. According to the Italian authorities, this price reflected the market value of SFIRS' total receivables from Legler and its subsidiaries, evaluated by an independent expert at EUR 2 million, plus the symbolic price of EUR 1 for SFIRS's holding in Legler's equity, also based on an independent expert's appraisal. The sale took place on 25 January 2008.

(14) However, Legler ceased operations at all its plants in the period between December 2007 and August 2008 and all its plants have since remained inactive.

(15) On 23 July 2008 Legler SpA changed its name to Texfer SpA. Its Sardinian subsidiaries were also renamed respectively Texfer Ottana SpA, Texfer Siniscola SpA and Texfer Macomer SpA.

(16) On 18 August 2008 the group's parent company was declared insolvent by the competent court, and on 13 November 2008 it was admitted to the collective insolvency proceedings known as '*amministrazione straordinaria*', together with its subsidiaries.

(17) The rescue aid guarantee was called by the bank shortly after Legler's failure to repay the rescue loan by the deadline. Consequently, the competent Ministry reimbursed the loan plus interest on 16 September 2008.

(18) On 21 October 2010 Texfer SpA was declared bankrupt. On 17 and 18 November 2010 Texfer Ottana SpA, Texfer Siniscola SpA and Texfer Macomer SpA were also declared bankrupt.

Financial situation of the beneficiary

(19) In 2006, Legler's equity was negative at EUR - 8,6 million, against a still positive value of EUR 17,2 million in 2005. The company reported losses of EUR 25,9 million in 2006 and of EUR 28,1 million in 2005. Its turnover amounted to EUR 101,4 million in 2006 while it had been EUR 124,2 million in 2005. EBITDA amounted to - 10,9 in 2006 and - 0,7 in 2005. Interest costs were also increasing.

(20) On 30 November 2007, Legler's equity was negative for an amount of EUR 16,3 million. The losses over the period 2003-2007 had reached EUR 94,9 million and the company's situation had been steadily deteriorating, with increasing losses and shrinking turnover.

(21) On 13 November 2008 the group was subjected to collective insolvency proceedings under the national law, which ended with bankruptcy (see recitals 16 to 18).

II.2. **The restructuring measures**

(22) The restructuring plan (*piano industriale*) notified by Italy (hereinafter also referred to as 'the plan') covered a three-year period (2007-2009) and consisted of three measures: (i) EUR 13 million in the form of a medium-term guarantee for the restructuring period, replacing the six-month guarantee authorised as rescue aid [6]; (ii) EUR 13,2 million in the form of a direct grant; and (iii) EUR 13 million in the form of a conversion of debt into equity. However, on 31 May 2007 SFIRS implemented a debt-for-equity swap for a nominal amount of EUR 14,5 million.

(23) Although the Italian authorities had submitted a restructuring plan (*piano industriale*) for the period 2007-2009, they claimed that the actual restructuring period would run from 1 June 2007 to the end of 2012. The only data provided to chart the progress of the company's restructuring from 2009 until 2012 were the cash flows and the evolution of the liabilities of the newly created company (NewCo).

(5) The extraordinary shares gave the shareholder a preferential right in the allocation of profit and repayment of capital in the event of dissolution of the company.

(6) I.e. until 31 December 2012.

(24) In this broader time-frame, the overall costs for setting up a new company from the merger of Legler SpA and its Sardinian subsidiaries amounted to EUR 106,2 million, including EUR 86,7 million for extensive group reorganisation, while the balance would go to restore capital and cover losses.

(25) The NewCo's activity would focus on the company's traditional core business, i.e. high-quality denim, whereas the other two production lines (corduroy and flat cotton) would be closed down. The group's geographical location would also be concentrated in only two production plants (Siniscola and Ottana), located in the same region. The remaining assets would be sold to enable Legler to provide its own contribution and to reduce energy, transport and personnel costs. The Macomer plant was not included in the plan ([7]).

(26) The plan also envisaged the entry of a new shareholder together with SFIRS, and indicated the need to obtain credit lines from private sources to implement the reorganisation process.

II.3. **Grounds for initiating the procedure**

(27) In its decision to initiate the procedure, the Commission had doubts whether the debt-for-equity swap was free from State aid elements. The Commission doubted that a private investor would have accepted swapping debt for shares in the company in the circumstances, especially as it appeared that part of the company's activities had been suspended for several months and the Italian authorities had submitted to the Commission no counterfactual scenario supporting SFIRS' assumption that investing in Legler and bearing its restructuring costs was more cost-effective than liquidating the group.

(28) As regards the compatibility of the aid with the internal market on the basis of the Community guidelines on State aid for rescuing and restructuring firms in difficulty ([8]) (hereinafter referred to as 'the rescue and restructuring guidelines'), the Commission firstly posed the question whether Legler's difficulties could have been dealt with by the majority shareholder Piltar and whether there had been an arbitrary allocation of costs within the group.

(29) Secondly, the Commission doubted that the plan would be able to restore long-term viability, as the planned divestment of assets and production lines seemed rather indeterminate and many assumptions on future operating conditions seemed unrealistic, given the suspension of Legler's production. The Commission also doubted that the proposed compensatory measures were real and went beyond the measures necessary to restore viability, that the level of own contribution was sufficient and that the 'one time, last time' principle had been respected.

(30) Finally, the Commission requested the Italian authorities to submit information concerning the doubts raised (origin of SFIRS' credit, detailed information on Piltar and on the allocation of costs within the group, on the compensatory measures, on the actual likelihood of Legler finding a new shareholder and on access to the private financing required for reorganising Legler).

III. **COMMENTS FROM INTERESTED PARTIES**

(31) By letter dated 14 December 2007, an interested party submitted its comments on the opening decision. The third party claimed that the measures in question would cause distortions of competition and pointed out that the sector was affected by significant overcapacity. It provided figures on worldwide denim production capacity for the year 2006, showing a global overcapacity of 27 %.

IV. **COMMENTS FROM ITALY**

(32) Firstly, the Italian authorities explained how SFIRS had become the majority shareholder in Legler. In March 2007 SFIRS purchased debt of Legler SpA and Legler Siniscola SpA from the company Intex SpA, in liquidation, for the price of EUR 450 000. On 31 May 2007 SFIRS converted part of that debt, having a nominal value of EUR 14,5 million, into Legler equity, thereby acquiring 49 % of Legler's ordinary shares (while Piltar retained the remaining 51 %) and 100 % of its extraordinary shares ([9]).

(33) Secondly, the Italian authorities explained that Piltar was a mere vehicle controlled by natural persons. It was founded exclusively for the purpose of acquiring a shareholding in Legler and was engaged in no other business activity. The Italian authorities added that Piltar had long made it clear that it did not plan to support the company financially and that it intended to divest itself progressively of its shareholding in the group. Indeed, it appears that together with the 49 % shareholding SFIRS also acquired the right to purchase the remaining 51 % of Legler's ordinary shares.

(34) Thirdly, the Italian authorities promised to provide information on the compensatory measures.

([7]) The plan envisaged a separate industrial plan for this site.

([8]) Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 2) and Commission communication concerning the prolongation of the Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 156, 9.7.2009, p. 3).

([9]) See footnote 6 above.

(35) Fourthly, Italy stated that the market segments targeted by Legler's restructuring plan to restore financial viability, described in recital 25, were showing encouraging trends. The Italian authorities also mentioned the company's intention to secure private credit lines and a new shareholder to finance part of the plan, and stated that steps had already been taken to that effect.

(36) Next, in response to the third party's comments, the Italian authorities pointed out that Legler's market share in the year 2006 was as little as 0,27 %. They added that as a compensatory measure, the plan involved a 22 % reduction in the company's capacity compared to 2006 and a 40 % reduction compared to 2005. Therefore, they considered that the aid would not distort competition to an extent contrary to the common interest.

(37) In their submissions following the withdrawal of the restructuring plan, the Italian authorities argued that the debt-for-equity swap would not qualify as State aid within the meaning of Article 107(1) of the Treaty, as SFIRS had acted in line with the market economy investor principle. According to the Italian authorities a private investor would have acted in the same way to avoid bankruptcy and recover at least part of his credit in the most effective way, i.e. by converting it into capital and restructuring the company together with a new private investor and a new credit line.

V. ASSESSMENT

(38) Under Article 8(1) of Council Regulation (EC) No 659/1999 [10], the Member State concerned may withdraw the notification within the meaning of Article 2 in due time before the Commission has taken a decision pursuant to Article 4 or 7.

(39) In this case, where the Commission initiated the formal investigation procedure, the Commission shall close that procedure pursuant to Article 8(2) of the same Regulation.

(40) The Commission notes that the direct grant of EUR 13,2 million has not been implemented by Italy and Italy will not pursue this aid project further. As the restructuring plan has been withdrawn, the formal investigation procedure opened on this measure no longer serves any purpose.

(41) As the other two notified restructuring measures were unlawfully implemented by Italy, in order to close the formal investigation procedure the Commission must determine whether they constitute State aid within the meaning of Article 107(1) of the Treaty, and if so, whether this aid is compatible with the internal market.

(42) Article 107(1) of the Treaty lays down that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade among Member States, be incompatible with the internal market.

(43) Where State aid within the meaning of Article 107(1) of the Treaty is to be or was granted to a company in difficulty, the compatibility of this aid must be assessed on the basis of the rescue and restructuring guidelines. Consequently, the aid can only be considered compatible on the basis of Article 107(3)(c) of the Treaty if the conditions laid down in the rescue and restructuring guidelines are met.

V.1. **Existence of aid**

The extension of the rescue aid guarantee for the entire duration of the restructuring period

(44) The rescue aid guarantee in the amount of EUR 13 million was not terminated on the expiry of the six-month period for which it had been approved by the Commission, but remained in place after notification of the plan was withdrawn (see recital 17).

(45) The extension of the rescue aid guarantee was notified as a measure granted from the resources of the competent Ministry, financed from the State budget. Therefore, it was granted from State resources and it is imputable to the State. The guarantee constitutes a selective advantage as it allowed Legler to access financial resources which it would not have otherwise obtained, given its financial situation. Hence, it relieved Legler from the costs it would otherwise have incurred. Furthermore, as Legler was implementing a restructuring process aimed at resuming production, the aid was liable to distort competition in the internal market and to affect trade between Member States. The distortive effect of the measure was stressed by a third party, who also pointed out that the sector suffers from overcapacity.

(46) Therefore, the Commission considers that the extension of the rescue aid guarantee, which is also a restructuring measure, constitutes State aid within the meaning of Article 107(1) of the Treaty.

(47) In determining the amount of aid, the Commission recalls paragraph 4.1(a) of the Guarantee Notice [11], which states that 'for companies in difficulty, a market guarantor, if any, would, at the time the guarantee is granted charge a high premium given the expected rate

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

[11] Commission Notice on application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (OJ C 155, 20.6.2008, p. 10).

of default. If the likelihood that the borrower will not be able to repay the loan becomes particularly high, this market rate may not exist and in exceptional circumstances the aid element of the guarantee may turn out to be as high as the amount effectively covered by that guarantee.'

(48) In the light of Legler's severe financial distress at the time the guarantee was granted (increasing losses, decreasing turnover and negative equity as described in recitals 19 to 21 and 52), the Commission considers that it was highly unlikely that the company would have been able to obtain a bank loan on the market without State intervention; therefore, the Commission concludes that the aid amount corresponds to the totality of the loan amount ([12]).

Debt-for-equity swap

(49) The Commission remarks that the swap was implemented by SFIRS, a public entity whose main shareholder, the Region of Sardinia, exerts a dominant influence on its decisions ([13]). Italy has never denied this fact. Hence, the Commission concludes that the measure in question is imputable to the State and was granted through State resources. This measure is also selective as it favours a single company, Legler. Furthermore, as Legler was pursuing a restructuring process aimed at resuming production, the aid was liable to distort competition in the internal market and to affect trade between Member States. The potential distortive impact of the measure was also highlighted in the comments submitted by a third party, which also pointed out that the sector suffers from overcapacity.

(50) In its response, Italy argued that the measure in question conferred no advantage on Legler as, in its view, it was in line with the market economy investor principle.

(51) According to settled case-law ([14]), in order to determine whether Legler received an advantage from State resources it is necessary to consider whether, in similar circumstances, a private investor with characteristics comparable to those of SFIRS would have been willing to carry out a similar debt-for-equity swap, having regard to the information available and developments foreseeable at the date the transaction was implemented.

(52) Firstly, on the basis of Legler's financial statements, the Commission notes that in 2007 the company had a capital of EUR 1,8 million and a negative equity of EUR - 16,2 million; over the period 2003-2007 losses reached EUR 94,9 million and the company's situation was clearly deteriorating, with increasing losses and decreasing turnover.

(53) The Commission also notes that despite the critical financial situation outlined above, SFIRS did not carry out a comprehensive cost/benefit analysis and a risk assessment for the transaction. In fact, despite numerous requests from the Commission to this effect, the Italian authorities have never submitted a substantiated counterfactual scenario demonstrating that SFIRS' choice was preferable to the scenario of liquidating Legler.

(54) Indeed, similar remarks were made by the Bank of Italy in a report ([15]) issued after an investigation into SFIRS' activity. The report criticised SFIRS' behaviour for the incompleteness of its prior analysis of the debt-for-equity swap and for the inherent contradiction of making an 'investment' offering no concrete prospects of recovery.

(55) Irrespective of this assessment, the financial situation of the company was such that no reasonable private investor in a market economy would have entered into a similar transaction.

(56) In this regard, the Commission also notes that the restructuring plan (*piano industriale*) notified by the company cannot be considered as a realistic basis for predicting the company's future performance. The fact alone that the plan covered not all but only a part of the restructuring period, and provided no information on the subsequent progress of the restructuring (see recital 23), clearly shows that such lack of information would have dissuaded any private investor from entering into the transaction in question.

(57) Second, as to SFIRS' actual prospects of recovering the money owed to it by Legler, by becoming a shareholder via the debt-for-equity swap SFIRS had actually weakened its claim position, compared with its prior position as a preferential creditor.

(58) The value and future prospects of SFIRS' equity investment at the moment of the debt-for-equity swap seemed too limited to counterbalance the risks outlined

([12]) See also the Commission's decision in case C 59/07 of 28 October 2009 on rescue aid to Ixfin (OJ L 167, 1.7.2010, p. 39).

([13]) SFIRS SpA (a financial intermediary under Articles 106 and 107 of Legislative Decree No 385 of 1 September 1993) prepares plans and programmes, and drafts guidelines of the autonomous region of Sardinia targeting the region's economic and social development. SFIRS is an operational instrument of the Autonomous Region of Sardinia which holds 93 % of its shares. SFIRS is administered by a board of directors appointed by the autonomous region of Sardinia. Moreover, SFIRS is subject to the same power of direction and control as the administration of the autonomous region of Sardinia.

([14]) Case C-482/99 *France* v *Commission*, paragraph 70. Case C-42/93 *Spain* v *Commission*, paragraph 13.

([15]) Submitted by Italy as an annex to its letter of 29 May 2009.

above, particularly in the light of the company's critical financial situation. This was clearly highlighted by an independent valuation of the company, which gave it the symbolic figure of EUR 1.

(59) It can be concluded from the above that in carrying out the debt-for-equity swap SFIRS did not act as a private investor operating under normal market conditions. A private investor would not have entered into such a transaction without a credible and realistic prior assessment showing that it would be more cost-effective to swap the debt for equity instead of remaining a preferential creditor of the company.

(60) Hence, by carrying out the debt-for-equity swap, SFIRS granted an advantage to Legler.

(61) It follows from the foregoing that the debt-for-equity swap constitutes State aid within the meaning of Article 107(1) of the Treaty.

(62) As to calculating the amount of aid, it should be noted that the notion of State aid is limited to aid granted through public resources. The amount of aid must be calculated on the basis of the market value of the debt which SFIRS converted into Legler's equity. Hence, if the total nominal value of Legler's debt towards SFIRS was EUR 17 million, while on the day before the swap its market value was EUR 450 000, the market value of the transaction whereby SFIRS' converted 85,3 % of its total credit i.e. a nominal value of EUR 14,5 million, into equity, was EUR 383 850 (i.e. 85,3 % of EUR 450 000). Hence, the advantage granted through State resources was EUR 383 850. On the other hand, the nominal value of the swapped credit cannot be viewed as an advantage other than in merely accounting terms.

V.2. **Compatibility of the aid with the internal market**

(63) As the two notified measures have been found to constitute State aid within the meaning of Article 107(1) of the Treaty, the Commission has to assess whether this aid is compatible with the internal market.

(64) The compatibility of the State aid measures in question with the internal market must be assessed on the basis of the rescue and restructuring guidelines.

(65) As regards the public guarantee, in order to assess its compatibility a distinction must be made between extension of the rescue aid on one hand, and the provision of State aid in the form of a medium-term guarantee, which is also a restructuring measure (for the duration of the restructuring period) on the other.

(66) With regard to the extension of the rescue aid, point 26 of the guidelines provides that where the Member State has submitted a restructuring plan within six months of the date of authorisation or, in the case of non-notified aid, of implementation of the measure, the deadline for reimbursing the loan or for putting an end to the guarantee is extended until the Commission reaches its decision on the plan, unless the Commission decides that such an extension is not justified.

(67) The notification of the restructuring plan allowed the rescue aid to continue beyond six months. However, Italy later withdrew this notification. It follows from point 26 of the guidelines that the notification of a restructuring plan is a condition *sine qua non* for an extension of the rescue aid. Therefore, if a notified restructuring plan is later withdrawn, the extension allowed for the rescue aid has to be terminated.

(68) It follows from the Commission's decision-making practice (cases *Ernault* [16] and *Huta Cynku* [17]) that if neither a restructuring plan nor a liquidation plan have been notified to the Commission or, as in the present case, if the restructuring plan has been withdrawn, the extension of the rescue aid in question cannot be maintained beyond the date on which the Member State withdrew notification of the restructuring plan.

(69) As the medium-term guarantee (for the duration of the restructuring plan), intended as notified restructuring aid, was an extension of the rescue aid guarantee, it was compatible until Italy withdrew its notification.

(70) Thus, the compatibility of the extended State aid guarantee with the internal market should be assessed starting from the day following that on which Italy withdrew its notification (i.e. from 24 July 2008).

Eligibility of the company for restructuring aid

(71) The granting of State aid to a company in difficulty can be considered compatible on the basis of Article 107(3)(c) of the Treaty only if all the conditions laid down in the rescue and restructuring guidelines are respected.

(72) Pursuant to points 12(a) and 14 of the guidelines, only firms in difficulty are eligible for restructuring aid.

(73) Under point 9 of the guidelines, a firm, irrespective of its size, is regarded as being in difficulty where it is unable, whether through its own resources or with the funds it is

(16) Case C 32/05 (ex N 250/05) of 4 April 2007 (OJ L 277, 20.10.2007, p. 25).
(17) Case C 32/06 (ex N 179/06) of 25 September 2007 (OJ L 44, 20.2.2008, p. 36).

able to obtain from its shareholders or on the market, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business.

(74) Under point 10 of the guidelines a firm is regarded as being in difficulty in the following circumstances:

(a) in the case of a limited liability company, where more than half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months;

(b) in the case of a company where at least some members have unlimited liability for the debt of the company, where more than half of its capital as shown in the company accounts has disappeared and more than one quarter of that capital has been lost in the preceding 12 months;

(c) whatever the type of company concerned, where it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings.

(75) It follows from point 10(a) of the rescue and restructuring guidelines that without outside intervention a company that has experienced a massive loss of registered capital will inevitably go out of business in the short or medium term. In an earlier decision [18] the Commission concluded that a company that has negative equity will *a fortiori* be considered to be in difficulty. In its Biria judgment [19] the General Court also confirmed that a massive loss of capital is indeed a sign of difficulty, and that the Commission had been right in concluding that a company with negative equity is a company in difficulty.

(76) Legler fulfilled the criterion of point 10(a) of the rescue and restructuring guidelines as it had a negative equity in the year of 2006 (see recital 19).

(77) The Commission also notes that Legler was already considered to be a firm in difficulty within the meaning of Point 10(a) of the rescue and restructuring guidelines as at 22 May 2007, when the rescue aid was authorised.

(78) Thereafter, Legler's financial situation did not improve. In fact, it was declared insolvent by the competent court in 2008 (see recital 16).

(79) The Commission also observes that Legler is not a newly created firm within the meaning of point 12 of the rescue and restructuring guidelines.

(80) Pursuant to point 13 of the rescue and restructuring guidelines a firm belonging to or taken over by a larger business group is not normally eligible for rescue or restructuring aid, except where it can be demonstrated that the firm's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself.

(81) The Commission notes that Piltar was a mere commercial vehicle, which pursued no business activity other than holding shares in Legler. None of the information available to the Commission suggests that the company's difficulties were the result of an arbitrary allocation of costs within the group. Moreover, as Piltar was fully owned by private individuals and engaged in no business activity other than its equity investment in Legler, it was not in a position to contribute to Legler's restructuring.

(82) On the basis of the foregoing, it can be concluded that the conditions set out in point 9 of the rescue and restructuring guidelines are fulfilled.

(83) Given that Legler is eligible for restructuring aid, it now has to be assessed whether the conditions set out in points 32 to 51 of the rescue and restructuring guidelines for compatibility of the restructuring aid are met.

Consequence of the plan's withdrawal on the compatibility of the restructuring measures

(84) However, Italy withdrew Legler's restructuring plan, and therefore it is no longer committed to any restructuring plan within the meaning of point 35 of the rescue and restructuring guidelines. Consequently, the Commission cannot assess the unlawful aid in the light of the criteria set out in points 32 to 51 of the rescue and restructuring guidelines.

(85) Moreover, the Commission takes the view that the public guarantee and the debt-for-equity swap cannot be found to be compatible with the internal market on any other legal basis.

VI. **CONCLUSION**

(86) The formal investigation procedure under Article 108(2) of the Treaty in respect of the direct grant of EUR 13,2 million must be terminated since Italy has withdrawn its notification and does not intend to pursue this aid project further.

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[18] C 38/07 (ex NN 45/07) *Arbel Fauvet Rail SA* of 7 October 2010 (OJ L 238, 24.10.2007, p. 17).

[19] T-102/07 *Freistaat Sachsen* v *Commission* and T-120/07 *MB Immobilien Verwaltungs and MB System & Co.* (T-120/07) v *Commission.*

(87) The Commission concludes that the public guarantee and the debt-for-equity swap fall within the scope of Article 107(1) of the Treaty.

(88) These two measures were implemented by Italy in breach of Article 108(3) of the Treaty.

(89) According to the Treaty and the Court of Justice's established case-law, when it has found aid to be incompatible with the internal market the Commission is competent to decide that the State concerned must abolish or alter it [20]. The Court has also consistently held that the obligation on a State to abolish aid regarded by the Commission as being incompatible with the internal market is designed to restore the previously existing situation [21]. In this context, the Court has established that that objective is attained once the recipient has repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage which it had enjoyed over its competitors on the market, and the situation prior to the payment of the aid is restored [22].

(90) Following that case-law, Article 14 of Council Regulation (EC) No 659/99 [23] laid down that 'where negative decisions are taken in respect of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary'.

(91) Thus, given that the measures at hand are to be considered as unlawful aid incompatible with the internal market, the amounts of aid of these two measures, i.e. EUR 13 million and EUR 383 850 respectively, must be recovered in order to restore the situation that existed on the market prior to the granting of the aid.

(92) As regards the public guarantee, recovery shall therefore be effected from the day following Italy's withdrawal of the notification of the restructuring aid, i.e. from 24 July 2008, and shall bear recovery interest until their actual recovery.

(93) As regards the debt-for-equity swap, the sums to be recovered shall bear interest from the date on which the aid was put at the disposal of the beneficiary, i.e. from 31 May 2007, until their actual recovery,

HAS ADOPTED THIS DECISION:

Article 1

The formal investigation procedure under Article 108(2) of the Treaty in respect of the direct grant of EUR 13,2 million to the company Legler SpA is closed.

Article 2

The public guarantee amounting to EUR 13 million and the debt-for-equity swap of EUR 383 850 respectively, granted by Italy in breach of Article 108(3) of the Treaty in favour of Legler SpA constitute State aid incompatible with the internal market.

Article 3

1. Italy shall recover the aid referred to in Article 2 from the beneficiary.

2. The sums to be recovered shall bear interest until the date of their actual recovery.

As regards the public guarantee, such interest shall be calculated from the day following Italy's withdrawal of notification of the restructuring aid.

As regards the debt-for-equity swap, such interest shall be calculated from the date on which the aid was made available to the beneficiary.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 [24] and Commission Regulation (EC) No 271/2008 [25] amending Regulation (EC) No 794/2004.

4. Italy shall cancel all outstanding payments of the aid referred to in Article 2 with effect from the date of adoption of this Decision.

Article 4

1. Recovery of the aid referred to in Article 2 shall be immediate and effective.

2. Italy shall ensure that this decision is implemented within four months following the date of notification of this Decision.

Article 5

1. Within two months following notification of this Decision, Italy shall submit the following information to the Commission:

(a) the total amount (principal and interest) to be recovered from the beneficiary;

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

(c) documents demonstrating that the beneficiary has been ordered to repay the aid.

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(20) Case C-70/72 *Commission* v *Germany*, paragraph 13.
(21) Joined cases C-278/92, C-279/92 and C-280/92 *Spain* v *Commission*, paragraph 75.
(22) Case C-75/97 *Belgium* v *Commission*, paragraphs 64-65.
(23) OJ L 83, 27.3.1999, p. 1.
(24) OJ L 140, 30.4.2004, p. 1.
(25) OJ L 82, 25.3.2008, p. 1.

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

Article 6

This Decision is addressed to the Italian Republic.

Done at Brussels, 23 March 2011.

For the Commission

Joaquín ALMUNIA

Vice-President

COMMISSION IMPLEMENTING DECISION

of 27 January 2012

on the clearance of the accounts of certain paying agencies in Germany and the Netherlands concerning expenditure financed by the European Agricultural Guarantee Fund (EAGF) for the 2010 financial year

(notified under document C(2012) 369)

(Only the German and Dutch texts are authentic)

(2012/52/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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(8) thereof,

After consulting the Committee on the Agricultural Funds,

Whereas:

(1) Commission Implementing Decision 2011/272/EU [2] cleared, for the 2010 financial year, the accounts of all the paying agencies except for the German paying agency 'Rheinland-Pfalz', the Greek paying agency 'OPEKEPE', the Italian paying agency 'ARBEA', and the Dutch paying agency 'Dienst Regelingen'.

(2) Following the transmission of new information and after additional checks, the Commission can now take a decision on the integrality, accuracy and veracity of the accounts submitted by the German paying agency 'Rheinland-Pfalz' and the Dutch paying agency 'Dienst Regelingen'.

(3) The first subparagraph of Article 10(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 [3] lays down that the amounts that are recoverable from, or payable to, each Member State, in accordance with the accounts clearance decision referred to in the first subparagraph of Article 10(1) of the said Regulation, shall be determined by deducting the monthly payments in respect of the financial year in question, i.e. 2010, from expenditure recognised for that year in accordance with paragraph 1. The Commission shall deduct that amount from or add it to the monthly payment relating to the expenditure effected in the second month following that in which the accounts clearance decision is taken.

(4) 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 and 50 % by the EU budget 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 Regulation (EC) No 885/2006. Annex III to the said Regulation provides the model table that had to be provided in 2011 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.

(5) 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 EU 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 to be borne by the EU budget. This decision is without prejudice to future conformity decisions pursuant to Article 32(8) of the said Regulation.

[1] OJ L 209, 11.8.2005, p. 1.
[2] OJ L 119, 7.5.2011, p. 70.
[3] OJ L 171, 23.6.2006, p. 90.

(6) In clearing the accounts of the paying agencies concerned, the Commission must take account of the amounts already withheld from the Member States concerned on the basis of Implementing Decision 2011/272/EU.

(7) 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 EU financing expenditure not effected in accordance with EU rules,

HAS ADOPTED THIS DECISION:

Article 1

The accounts of the German paying agency 'Rheinland-Pfalz' and the Dutch paying agency 'Dienst Regelingen' concerning expenditure financed by the European Agricultural Guarantee Fund (EAGF), in respect of the 2010 financial year, are hereby cleared.

The amounts which are recoverable from, or payable to, each Member State concerned 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.

Article 2

This Decision is addressed to the Federal Republic of Germany and the Kingdom of the Netherlands.

Done at Brussels, 27 January 2012.

For the Commission

Dacian CIOLOȘ

Member of the Commission

ANNEX

CLEARANCE OF THE PAYING AGENCIES' ACCOUNTS

FINANCIAL YEAR 2010

Amount to be recovered from or paid to the Member State

MS		2010 — 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)	Amount recovered from (–) or paid to (+) the Member State under Implementing Decision 2011/272/EU	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 expenditure/assigned revenue in the monthly declarations								
		a	b	c = a + b	d	e	f = c + d + e	g	h = f – g	i	j = h – i
DE	EUR	5 573 405 084,75	0,00	5 573 405 084,75	– 7 108 483,29	– 779 304,45	5 565 517 297,01	5 565 435 172,87	82 124,14	84 373,43	– 2 249,29
NL	EUR	895 187 155,61	0,00	895 187 155,61	– 0,03	– 5 835,72	895 181 319,86	894 473 110,44	708 209,42	0,00	708 209,42

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	
		k	l	m	n	o	p = k + l + m + n + o
DE	EUR	0,00	0,00	0,00	0,00	– 2 249,29	– 2 249,29
NL	EUR	714 045,14	0,00	0,00	0,00	– 5 835,72	708 209,42

(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 2010.
(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 (column a), or the total of the monthly declarations for the expenditure disjoined (column b).
Applicable exchange rate: Article 7(2) of 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 2012: 05 07 01 06, 05 02 16 02, 6701, 6702, 6803.

COMMISSION IMPLEMENTING DECISION

of 27 January 2012

extending the validity of Decision 2006/502/EC requiring Member States to take measures to ensure that only lighters which are child-resistant are placed on the market and to prohibit the placing on the market of novelty lighters

(notified under document C(2012) 370)

(Text with EEA relevance)

(2012/53/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety [1], and in particular Article 13 thereof,

Whereas:

(1) Commission Decision 2006/502/EC [2] requires Member States to take measures to ensure that only lighters which are child-resistant are placed on the market and to prohibit the placing on the market of novelty lighters.

(2) Decision 2006/502/EC was adopted in accordance with the provisions of Article 13 of Directive 2001/95/EC, which restricts the validity of the Decision to a period not exceeding 1 year, but allows it to be confirmed for additional periods none of which shall exceed 1 year.

(3) The validity of Decision 2006/502/EC was extended by 1-year periods, firstly by Commission Decision 2007/231/EC [3] until 11 May 2008, secondly by Commission Decision 2008/322/EC [4] until 11 May 2009, thirdly by Commission Decision 2009/298/EC [5] until 11 May 2010, fourthly by Commission Decision 2010/157/EU [6] until 11 May 2011, and fifthly by Commission Decision 2011/176/EU [7] until 11 May 2012.

(4) In the absence of other satisfactory measures addressing the child safety of lighters, it is necessary to extend the validity of Decision 2006/502/EC for a further 12 months.

(5) Therefore, Decision 2006/502/EC should be amended accordingly.

(6) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Directive 2001/95/EC,

HAS ADOPTED THIS DECISION:

Article 1

In Article 6 of Decision 2006/502/EC, paragraph 2 is replaced by the following:

'2. This Decision shall apply until 11 May 2013.'

Article 2

Member States shall take the necessary measures to comply with this Decision by 11 May 2012 at the latest and shall publish those measures. They shall forthwith inform the Commission thereof.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 27 January 2012.

For the Commission
John DALLI
Member of the Commission

(1) OJ L 11, 15.1.2002, p. 4.
(2) OJ L 198, 20.7.2006, p. 41.
(3) OJ L 99, 14.4.2007, p. 16.
(4) OJ L 109, 19.4.2008, p. 40.
(5) OJ L 81, 27.3.2009, p. 23.
(6) OJ L 67, 17.3.2010, p. 9.
(7) OJ L 76, 22.3.2011, p. 99.

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