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Price: EUR 18

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⁽¹⁾ Text with EEA relevance

I

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

REGULATIONS

COMMISSION REGULATION (EC) No 799/2008**of 8 August 2008****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 9 August 2008.

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

Done at Brussels, 8 August 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1. Regulation as last amended by Commission Regulation (EC) No 510/2008 (OJ L 149, 7.6.2008, p. 61).

⁽²⁾ OJ L 350, 31.12.2007, p. 1. Regulation as last amended by Regulation (EC) No 590/2008 (OJ L 163, 24.6.2008, p. 24).

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	MK	29,6
	XS	27,8
	ZZ	28,7
0707 00 05	TR	106,2
	ZZ	106,2
0709 90 70	TR	93,9
	ZZ	93,9
0805 50 10	AR	77,4
	CL	63,1
	UY	60,8
	ZA	88,5
	ZZ	72,5
0806 10 10	CL	82,1
	EG	152,6
	IL	157,1
	MK	68,7
	TR	141,6
	ZZ	120,4
0808 10 80	AR	85,8
	BR	80,4
	CL	97,5
	CN	85,2
	NZ	107,6
	US	95,0
	UY	148,0
	ZA	86,8
	ZZ	98,3
0808 20 50	AR	67,2
	CL	99,3
	TR	144,3
	ZA	98,0
	ZZ	102,2
0809 20 95	CA	242,0
	TR	554,5
	US	462,0
	ZZ	419,5
0809 30	TR	159,2
	ZZ	159,2
0809 40 05	BA	66,2
	IL	136,9
	MK	59,0
	XS	62,1
	ZZ	81,1

⁽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 800/2008

of 6 August 2008

declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation)

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid⁽¹⁾, and in particular Article 1(1) points (a) and (b) thereof,

Having published a draft of this Regulation⁽²⁾,

After consulting the Advisory Committee on State Aid,

Whereas:

(1) Regulation (EC) No 994/98 empowers the Commission to declare, in accordance with Article 87 of the Treaty that under certain conditions aid to small and medium-sized enterprises ('SMEs'), aid in favour of research and development, aid in favour of environmental protection, employment and training aid, and aid that complies with the map approved by the Commission for each Member State for the grant of regional aid is compatible with the common market and not subject to the notification requirement of Article 88(3) of the Treaty.

(2) The Commission has applied Articles 87 and 88 of the Treaty in numerous decisions and gained sufficient experience to define general compatibility criteria as

regards aid in favour of SMEs, in the form of investment aid in and outside assisted areas, in the form of risk capital schemes and in the area of research, development and innovation, in particular in the context of the implementation of Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises⁽³⁾, and as regards the extension of the scope of that Regulation to include aid for research and development, the implementation of Commission Regulation (EC) No 364/2004 of 25 February 2004 amending Regulation (EC) No 70/2001⁽⁴⁾, the implementation of the Commission communication on State aid and risk capital⁽⁵⁾ and the Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises⁽⁶⁾, as well as the implementation of the Community framework for State aid for research and development and innovation⁽⁷⁾.

(3) The Commission has also gained sufficient experience in the application of Articles 87 and 88 of the Treaty in the fields of training aid, employment aid, environmental aid, research and development and innovation aid and regional aid with respect to both SMEs and large enterprises, in particular in the context of the implementation of Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid⁽⁸⁾, Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment⁽⁹⁾, Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid⁽¹⁰⁾ the Community framework for State aid for research and development⁽¹¹⁾, the Community Framework for State aid for research and development and innovation, the 2001 Community guidelines on State for environmental protection⁽¹²⁾, the 2008 Community guidelines on State aid for environmental protection⁽¹³⁾ and the Guidelines on national regional aid for 2007-2013⁽¹⁴⁾.

⁽³⁾ OJ L 10, 13.1.2001, p. 33. Regulation as last amended by Regulation (EC) No 1976/2006 (OJ L 368, 23.12.2006, p. 85).

⁽⁴⁾ OJ L 63, 28.2.2004, p. 22.

⁽⁵⁾ OJ C 235, 21.8.2001, p. 3.

⁽⁶⁾ OJ C 194, 18.8.2006, p. 2.

⁽⁷⁾ OJ C 323, 30.12.2006, p. 1.

⁽⁸⁾ OJ L 10, 13.1.2001, p. 20. Regulation as last amended by Regulation (EC) No 1976/2006.

⁽⁹⁾ OJ L 337, 13.12.2002, p. 3. Regulation as last amended by Regulation (EC) No 1976/2006.

⁽¹⁰⁾ OJ L 302, 1.11.2006, p. 29.

⁽¹¹⁾ OJ C 45, 17.2.1996, p. 5.

⁽¹²⁾ OJ C 37, 3.2.2001, p. 3.

⁽¹³⁾ OJ C 82, 1.4.2008, p. 1.

⁽¹⁴⁾ OJ C 54, 4.3.2006, p. 13.

⁽¹⁾ OJ L 142, 14.5.1998, p. 1.

⁽²⁾ OJ C 210, 8.9.2007, p. 14.

- (4) In the light of this experience, it is necessary to adapt some of the conditions laid down in Regulations (EC) Nos 68/2001, 70/2001, 2204/2002 and 1628/2006. For reasons of simplification and to ensure more efficient monitoring of aid by the Commission, those Regulations should be replaced by a single Regulation. Simplification should result from, amongst other things, a set of common harmonised definitions and common horizontal provisions laid down in Chapter I of this Regulation. In order to ensure the coherence of State aid legislation, the definitions of aid and aid scheme should be identical to the definitions provided for these concepts in Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁾. Such simplification is essential in order to ensure that the Lisbon Strategy for Growth and Jobs yields results, especially for SMEs.
- (5) This Regulation should exempt any aid that fulfils all the relevant conditions of this Regulation, and any aid scheme, provided that any individual aid that could be granted under such scheme fulfils all the relevant conditions of this Regulation. In order to ensure transparency, as well as more efficient monitoring of aid, any individual aid measure granted under this Regulation should contain an express reference to the applicable provision of Chapter II and to the national law on which the individual aid is based.
- (6) In order to monitor the implementation of this Regulation, the Commission should also be in a position to obtain all necessary information from Member States concerning the measures implemented under this Regulation. A failure of the Member State to provide information within a reasonable deadline on these aid measures may therefore be considered to be an indication that the conditions of this Regulation are not being respected. Such failure may therefore lead the Commission to decide that this Regulation, or the relevant part of this Regulation, should be withdrawn, for the future, as regards the Member State concerned and that all subsequent aid measures, including new individual aid measures granted on the basis of aid schemes previously covered by this Regulation, need to be notified to the Commission in accordance with Article 88 of the Treaty. As soon as the Member State has provided correct and complete information, the Commission should allow the Regulation to be fully applicable again.
- (7) State aid within the meaning of Article 87(1) of the Treaty not covered by this Regulation should remain subject to the notification requirement of Article 88(3) of the Treaty. This Regulation should be without prejudice to the possibility for Member States to notify aid the objectives of which correspond to objectives covered by this Regulation. Such aid will be assessed by the Commission in particular on the basis of the conditions set out in this Regulation and in accordance with the criteria laid down in specific guidelines or frameworks adopted by the Commission wherever the aid measure at stake falls within the scope of application of such specific instrument.
- (8) This Regulation should not apply to export aid or aid favouring domestic over imported products. In particular, it should not apply to aid financing the establishment and operation of a distribution network in other countries. Aid towards the cost of participating in trade fairs, or of studies or consultancy services needed for the launch of a new or existing product on a new market should not normally constitute export aid.
- (9) This Regulation should apply across virtually all sectors. In the sector of fisheries and aquaculture, this Regulation should exempt only aid in the fields of research and development and innovation, aid in the form of risk capital, training aid and aid for disadvantaged and disabled workers.
- (10) In the agricultural sector, in view of the special rules which apply in the primary production of agricultural products, this Regulation should exempt only aid in the fields of research and development, aid in the form of risk capital, training aid, environmental aid and aid for disadvantaged and disabled workers to the extent that these categories of aid are not covered by Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products and amending Regulation (EC) No 70/2001 ⁽²⁾.
- (11) In view of the similarities between the processing and marketing of agricultural products and of non-agricultural products this Regulation should apply to the processing and marketing of agricultural products, provided that certain conditions are met.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

⁽²⁾ OJ L 358, 16.12.2006, p. 3.

- (12) Neither on-farm activities necessary for preparing a product for the first sale, nor the first sale to resellers or processors should be considered processing or marketing for the purposes of this Regulation. The Court of Justice of the European Communities has established that, once the Community has legislated for the establishment of a common organisation of the market in a given sector of agriculture, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it. This Regulation should therefore not apply to aid, the amount of which is fixed on the basis of price or quantity of products purchased or put on the market, nor should it apply to aid which is linked to an obligation to share it with primary producers.
- (13) In view of Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry ⁽¹⁾, this Regulation should not apply to aid favouring activities in the coal sector with the exception of training aid, research and development and innovation aid and environmental aid.
- (14) Where a regional aid scheme purports to realise regional objectives, but is targeted at particular sectors of the economy, the objective and likely effects of the scheme may be sectorial rather than horizontal. Therefore, regional aid schemes targeted at specific sectors of economic activity, as well as regional aid granted for activities in the steel sector, in the shipbuilding sector, as foreseen in the Commission communication concerning the prolongation of the Framework on State aid to shipbuilding ⁽²⁾, and in the synthetic fibres sector, should not be covered by the exemption from notification. However, the tourism sector plays an important role in national economies and in general has a particularly positive effect on regional development. Regional aid schemes aimed at tourism activities should therefore be exempt from the notification requirement.
- (15) Aid granted to undertakings in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty ⁽³⁾ should be assessed under those Guidelines in order to avoid their circumvention. Aid to such undertakings should therefore be excluded from the scope of this Regulation. In order to reduce the administrative burden for Member States, when granting aid covered by this Regulation to SMEs, the definition of what is to be considered an undertaking in difficulty should be simplified as compared to the definition used in those Guidelines. Moreover, SMEs which have been incorporated for less than three years should not be considered, for the purposes of this Regulation, to be in difficulty with regard to that period, unless they fulfil the criteria under the relevant national law for being the subject of collective insolvency proceedings. That simplification should be without prejudice to the qualification of those SMEs under those Guidelines with regard to aid not covered by this Regulation and without prejudice to the qualification as undertakings in difficulty of large enterprises, under this Regulation, which remain subject to the full definition provided in those Guidelines.
- (16) The Commission has to ensure that authorised aid does not alter trading conditions in a way contrary to the general interest. Therefore, aid in favour of a beneficiary which is subject to an outstanding recovery order following a previous Commission Decision declaring an aid illegal and incompatible with the common market, should be excluded from the scope of this Regulation. As a consequence, any ad hoc aid paid out to such a beneficiary and any aid scheme not containing a provision explicitly excluding such beneficiaries remains subject to the notification requirements of Article 88(3) of the Treaty. That provision should not affect the legitimate expectations of beneficiaries of aid schemes which are not subject to outstanding recovery orders.
- (17) In order to ensure the consistent application of Community State aid rules, as well as for reasons of administrative simplification, the definitions of terms which are relevant to the various categories of aid covered by this Regulation should be harmonised.
- (18) For the purposes of calculating aid intensity, all figures used should be taken before any deduction of tax or other charge. For the purpose of calculating aid intensities, aid payable in several instalments should be discounted to its value at the moment of granting. The interest rate to be used for discounting purposes and for calculating the aid amount in aid not taking the form of a grant, should be the reference rate applicable at the time of grant, as laid down in the Communication from the Commission on the revision of the method for setting the reference and discount rates ⁽⁴⁾.

⁽¹⁾ OJ L 205, 2.8.2002, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

⁽²⁾ OJ C 260, 28.10.2006, p. 7.

⁽³⁾ OJ C 244, 1.10.2004, p. 2.

⁽⁴⁾ OJ C 14, 19.1.2008, p. 6.

- (19) In cases where aid is awarded by means of tax exemptions or reductions on future taxes due, subject to the respect of a certain aid intensity defined in gross grant equivalent, discounting of aid tranches should take place on the basis of the reference rates applicable at the various times the tax advantages become effective. In the case of tax exemptions or reductions on future taxes, the applicable reference rate and the exact amount of the aid tranches may not be known in advance. In such a case, Member States should set in advance a cap on the discounted value of the aid respecting the applicable aid intensity. Subsequently, when the amount of the aid tranche in a given year becomes known, discounting can take place on the basis of the reference rate applicable at that time. The discounted value of each aid tranche should be deducted from the overall amount of the cap.
- (20) For the purposes of transparency, equal treatment and effective monitoring, this Regulation should apply only to aid which is transparent. Transparent aid is aid for which it is possible to calculate precisely the gross grant equivalent *ex ante* without a need to undertake a risk assessment. Aid comprised in loans, in particular, should be considered transparent where the gross grant equivalent has been calculated on the basis of the reference rate as laid down in the Communication from the Commission on the revision of the method for setting the reference and discount rates. Aid comprised in fiscal measures should be considered transparent where the measure provides for a cap ensuring that the applicable threshold is not exceeded. In the case of reductions in environmental taxes, which are not subject to an individual notification threshold under this Regulation, no cap needs to be included for the measure to be considered transparent.
- (21) Aid comprised in guarantee schemes should be considered transparent when the methodology to calculate the gross grant equivalent has been approved following notification of this methodology to the Commission, and, in the case of regional investment aid, also when the Commission has approved such methodology after adoption of Regulation (EC) No 1628/2006. The Commission will examine such notifications on the basis of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees⁽¹⁾. Aid comprised in guarantee schemes should also be considered transparent where the beneficiary is an SME and the gross grant equivalent has been calculated on the basis of the safe-harbour premiums laid down in points 3.3 and 3.5 of that Notice.
- (22) In view of the difficulty in calculating the grant equivalent of aid in the form of repayable advances, such aid should be covered by this Regulation only if the total amount of the repayable advance is inferior to the applicable individual notification threshold and the maximum aid intensities provided under this Regulation.
- (23) Due to the higher risk of distortion of competition, large amounts of aid should continue to be assessed by the Commission on an individual basis. Thresholds should therefore be set for each category of aid within the scope of this Regulation, at a level which takes into account the category of aid concerned and its likely effects on competition. Any aid granted above those thresholds remains subject to the notification requirement of Article 88(3) of the Treaty.
- (24) With a view to ensuring that aid is proportionate and limited to the amount necessary, thresholds should, whenever possible, be expressed in terms of aid intensities in relation to a set of eligible costs. Because it is based on a form of aid for which eligible costs are difficult to identify, the threshold with regard to aid in the form of risk capital should be formulated in terms of maximum aid amounts.
- (25) The thresholds in terms of aid intensity or aid amount should be fixed, in the light of the Commission's experience, at a level that strikes the appropriate balance between minimising distortions of competition in the aided sector and tackling the market failure or cohesion issue concerned. With respect to regional investment aid, this threshold should be set at a level taking into account the allowable aid intensities under the regional aid maps.
- (26) In order to determine whether the individual notification thresholds and the maximum aid intensities laid down in this Regulation are respected, the total amount of public support for the aided activity or project should be taken into account, regardless of whether that support is financed from local, regional, national or Community sources.
- (27) Moreover, this Regulation should specify the circumstances under which different categories of aid covered by this Regulation may be cumulated. As regards cumulation of aid covered by this Regulation with State aid not covered by this Regulation, regard should be had to the Decision of the Commission approving the aid not covered by this Regulation, as well as to the State aid rules on which that decision is based. Special provisions should apply in respect of cumulation of aid for disabled workers with other categories of aid, notably with investment aid, which can be calculated on the basis of the wage costs concerned. This Regulation should also make provision for cumulation of aid measures with identifiable eligible costs and aid measures without identifiable eligible costs.

⁽¹⁾ OJ C 155, 20.6.2008, p. 10.

- (28) In order to ensure that the aid is necessary and acts as an incentive to develop further activities or projects, this Regulation should not apply to aid for activities in which the beneficiary would already engage under market conditions alone. As regards any aid covered by this Regulation granted to an SME, such incentive should be considered present when, before the activities relating to the implementation of the aided project or activities are initiated, the SME has submitted an application to the Member State. As regards aid in the form of risk capital in favour of SMEs, the conditions laid down in this Regulation, notably with respect to the size of the investment tranches per target enterprise, the degree of involvement of private investors, the size of the company and the business stage financed, ensure that the risk capital measure will have an incentive effect.
- (29) As regards any aid covered by this Regulation granted to a beneficiary which is a large enterprise, the Member State should, in addition to the conditions applying to SMEs, also ensure that the beneficiary has analysed, in an internal document, the viability of the aided project or activity with aid and without aid. The Member State should verify that this internal document confirms a material increase in size or scope of the project/activity, a material increase in the total amount spent by the beneficiary on the subsidised project or activity or a material increase in the speed of completion of the project/activity concerned. As regards regional aid, incentive effect may also be established on the basis of the fact that the investment project would not have been carried out as such in the assisted region concerned in the absence of the aid.
- (30) As regards aid for disadvantaged or disabled workers, an incentive effect should be considered to be present by the fact that the aid measure concerned leads to a net increase in the number of disadvantaged or disabled workers hired by the undertaking concerned or leads to additional costs in favour of facilities or equipment devoted to disabled workers. Where the beneficiary of an aid for the employment of disabled workers in the form of wage subsidies was already benefiting from aid for employing disabled workers, which either fulfilled the conditions of Regulation (EC) No 2204/2002 or had been individually approved by the Commission, it is presumed that the condition of a net increase in the number of disabled workers, which was fulfilled for the pre-existing aid measures, continues to be fulfilled for the purpose of this Regulation.
- (31) Fiscal aid measures should be subject to specific conditions of incentive effect, in view of the fact that they are provided on the basis of different procedures than other categories of aid. Reductions in environmental taxes fulfilling the conditions of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity⁽¹⁾ and covered by this Regulation should be presumed to have an incentive effect in view of fact that these reduced rates contribute at least indirectly to an improvement of environmental protection by allowing the adoption or the continuation of the overall tax scheme concerned, thereby incentivising the undertakings subject to the environmental tax to reduce their level of pollution.
- (32) Moreover, as the incentive effect of ad hoc aid granted to large enterprises is considered to be difficult to establish, this form of aid should be excluded from the scope of application of this Regulation. The Commission will examine the existence of such incentive effect in the context of the notification of the aid concerned on the basis of the criteria established in the applicable guidelines, frameworks or other Community instruments.
- (33) In order to ensure transparency and effective monitoring in accordance with Article 3 of Regulation (EC) No 994/98, it is appropriate to establish a standard form to be used by Member States to provide the Commission with summary information whenever, in pursuance of this Regulation, an aid scheme or ad hoc aid is implemented. The summary information form should be used for the publication of the measure in the *Official Journal of the European Union* and on the internet. The summary information should be sent to the Commission in electronic format making use of the established IT application. The Member State concerned should publish on the internet the full text of such aid measure. In the case of ad hoc aid measures, business secrets may be deleted. The name of the beneficiary and the amount of aid should however not be considered a business secret. Member States should ensure that such text remains accessible on the internet as long as the aid measure is in force. With the exception of aid taking the form of fiscal measures, the act granting the aid should also contain a reference to the specific provision(s) of Chapter II of this Regulation relevant to such an act.
- (34) In order to ensure transparency and effective monitoring, the Commission should establish specific requirements as regards the form and the content of the annual reports to be submitted to the Commission by Member States. Moreover, it is appropriate to establish rules concerning the records that Member States should keep regarding the aid schemes and individual aid exempted by this Regulation, in view of the provisions of Article 15 of Regulation (EC) No 659/1999.

⁽¹⁾ OJ L 283, 31.10.2003, p. 51. Directive as last amended by Directive 2004/75/EC (OJ L 157, 30.4.2004, p. 100).

- (35) It is necessary to establish further conditions that should be fulfilled by any aid measure exempted by this Regulation. Having regard to Articles 87(3)(a) and 87(3)(c) of the Treaty, such aid should be proportionate to the market failures or handicaps that have to be overcome in order to be in the Community interest. It is therefore appropriate to limit the scope of this Regulation, as far as it concerns investment aid, to aid granted in relation to certain tangible and intangible investments. In the light of Community overcapacity and the specific problems of distortion of competition in the road freight and air transport sectors, so far as undertakings having their main economic activity in those transport sectors are concerned, transport means and equipment should not be regarded as eligible investment costs. Special provisions should apply as regards the definition of tangible assets for the purpose of environmental aid.
- (36) Consistent with the principles governing the aid falling within Article 87(1) of the Treaty, aid should be considered to be granted at the moment the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime.
- (37) In order not to favour the capital factor of an investment over the labour factor, provision should be made for the possibility of measuring aid to investment in favour of SMEs and regional aid on the basis of either the costs of the investment or the costs of employment directly created by an investment project.
- (38) Environmental aid schemes in the form of tax reductions, aid for disadvantaged workers, regional investment aid, aid for newly created small enterprises, aid for enterprises newly created by female entrepreneurs or aid in the form of risk capital granted to a beneficiary on an ad hoc basis may have a major impact on competition in the relevant market because it favours the beneficiary over other undertakings which have not received such aid. Because it is granted only to a single undertaking, ad hoc aid is likely to have only a limited positive structural effect on the environment, the employment of disabled and disadvantaged workers, regional cohesion or the risk capital market failure. For this reason, aid schemes concerning those categories of aid should be exempted under this Regulation, whilst ad hoc aid should be notified to the Commission. This Regulation should however exempt ad hoc regional aid when this ad hoc aid is used to supplement aid granted on the basis of a regional investment aid scheme, with a maximum limit for the ad hoc component of 50 % of the total aid to be granted for the investment.
- (39) The provisions of this Regulation relating to SME investment and employment aid should not provide, as was the case in Regulation (EC) No 70/2001, any possibility for increasing the maximum aid intensities by means of a regional bonus. However, it should be possible for the maximum aid intensities laid down in the provisions concerning regional investment aid to be granted also to SMEs, as long as the conditions for granting regional investment and employment aid are fulfilled. Similarly, the provisions relating to environmental investment aid should not provide any possibility for increasing the maximum aid intensities by means of a regional bonus. It should also be possible for the maximum aid intensities laid down in the provisions concerning regional investment aid to be applied to projects which have a positive impact on the environment, as long as the conditions for granting regional investment aid are fulfilled.
- (40) By addressing the handicaps of the disadvantaged regions, national regional aid promotes the economic, social and territorial cohesion of Member States and the Community as a whole. National regional aid is designed to assist the development of the most disadvantaged regions by supporting investment and job creation in a sustainable context. It promotes the setting-up of new establishments, the extension of existing establishments, the diversification of the output of an establishment into new additional products or a fundamental change in the overall production process of an existing establishment.
- (41) In order to prevent large regional investment projects from being artificially divided into sub-projects, thereby escaping the notification thresholds provided under this Regulation, a large investment project should be considered to be a single investment project if the investment is undertaken within a period of three years by the same undertaking or undertakings and consists of fixed assets combined in an economically indivisible way. To assess whether an investment is economically indivisible, Member States should take into account the technical, functional and strategic links and the immediate geographical proximity. The economic indivisibility should be assessed independently from ownership. This means that to establish whether a large investment project constitutes a single investment project, the assessment should be the same irrespective of whether the project is carried out by one undertaking, by more than one undertaking sharing the investment costs or by more undertakings bearing the costs of separate investments within the same investment project (for example in the case of a joint venture).

- (42) In contrast to regional aid, which should be confined to assisted areas, SME investment and employment aid should be able to be granted both in assisted and in non-assisted areas. The Member States should thus be able to provide, in assisted areas, investment aid as long as they respect either all conditions applying to regional investment and employment aid or all conditions applying to SME investment and employment aid.
- (43) The economic development of the assisted regions is hindered by relatively low levels of entrepreneurial activity and in particular by even lower than average rates of business start-ups. It is therefore necessary to include in this Regulation a category of aid, which can be granted in addition to regional investment aid, in order to provide incentives to support business start-ups and the early stage development of small enterprises in the assisted areas. In order to ensure that this aid for newly created enterprises in assisted regions is effectively targeted, this category of aid should be graduated in accordance with the difficulties faced by each category of region. Furthermore, in order to avoid an unacceptable risk of distortions of competition, including the risk of crowding-out existing enterprises, the aid should be strictly limited to small enterprises, limited in amount and degressive. Granting aid designed exclusively for newly created small enterprises or enterprises newly created by female entrepreneurs may produce perverse incentives for existing small enterprises to close down and re-open in order to receive this category of aid. Member States should be aware of this risk and should design aid schemes in such a way as to avoid this problem, for example by placing limits on applications from owners of recently closed firms.
- (44) The economic development of the Community may be hindered by low levels of entrepreneurial activity by certain categories of the population who suffer certain disadvantages, such as getting access to finance. The Commission has reviewed the possibility of market failure in this respect as regards a variety of categories of persons, and is at this stage in a position to conclude that women, in particular have lower than average rates of business start-ups as compared to men, as is evidenced, amongst others, by statistical data of Eurostat. It is therefore necessary to include in this Regulation a category of aid providing incentives for the creation of enterprises by female entrepreneurs in order to tackle the specific market failures women encounter most notably with respect to access to finance. Women also face particular difficulties linked to bearing caring costs for family members. Such aid should allow the achievement of substantive rather than formal equality between men and women by reducing *de facto* inequalities existing in the area of entrepreneurship, in line with the requirements of the case-law of the Court of Justice of the European Communities. At the expiry of this Regulation the Commission will have to reconsider whether the scope of this exemption and the categories of beneficiaries concerned remain justified.
- (45) Sustainable development is one of the main pillars in the Lisbon Strategy for Growth and Jobs, together with competitiveness and security of energy supplies. Sustainable development is based, amongst other things, on a high level of protection and improvement of the quality of the environment. Promoting environmental sustainability and combating climate change leads as well to increasing security of supply and ensuring the competitiveness of European economies and the availability of affordable energy. The area of environmental protection is often confronted with market failures in the form of negative externalities. Under normal market conditions, undertakings may not necessarily have an incentive to reduce their pollution since such reduction may increase their costs. When undertakings are not obliged to internalise the costs of pollution, society as a whole bears these costs. This internalisation of environmental costs can be ensured by imposing environmental regulation or taxes. The lack of full harmonisation of environmental standards at Community level creates an uneven playing field. Furthermore, an even higher level of environmental protection can be achieved by the initiatives to go beyond the mandatory Community standards, which may harm the competitive position of the undertakings concerned.
- (46) In view of the sufficient experience gathered in the application of the Community guidelines on State aid for environmental protection, investment aid enabling undertakings to go beyond Community standards for environmental protection or increase the level of environmental protection in the absence of Community standards, aid for the acquisition of transport vehicles which go beyond Community standards or which increase the level of environmental protection in the absence of Community standards, aid for early adaptation to future Community standards by SMEs, environmental aid for investment in energy saving, environmental aid for investment in high efficiency cogeneration, environmental aid for investments to promote renewable energy sources including investment aid relating to sustainable biofuels, aid for environmental studies and certain aid in the form of reductions in environmental taxes should be exempt from the notification requirement.

- (47) Aid in the form of tax reductions favouring environmental protection covered by this Regulation, should, in line with the Community guidelines on State aid for environmental protection, be limited to a period of 10 years. After this period, Member States should re-evaluate the appropriateness of the tax reductions concerned. This should be without prejudice to the possibility for Member States of re-adopting these measures or similar measures under this Regulation after having realised such re-evaluation.
- (48) A correct calculation of the extra investment or production costs to achieve environmental protection is essential to determine whether or not aid is compatible with Article 87(3) of the Treaty. As outlined in the Community guidelines on State aid for environmental protection, eligible costs should be limited to the extra investment costs necessary to achieve a higher level of environmental protection.
- (49) In view of the difficulties which may arise, in particular, with respect to the deduction of benefits deriving from extra investment, provision should be made for a simplified method of calculation of the extra investment costs. Therefore these costs should, for the purpose of applying this Regulation, be calculated without taking into account operating benefits, cost savings or additional ancillary production and without taking into account operating costs engendered during the life of the investment. The maximum aid intensities provided under this Regulation for the different categories of environmental investment aid concerned have therefore been reduced systematically as compared to the maximum aid intensities provided for by the Community guidelines on State aid for environmental protection.
- (50) As regards environmental aid for investment in energy saving measures it is appropriate to allow Member States to choose either the simplified method of calculation or the full cost calculation, identical to the one provided for in the Community guidelines on State aid for environmental protection. In view of the particular practical difficulties which may arise when applying the full cost calculation method, those cost calculations should be certified by an external auditor.
- (51) As regards environmental aid for investment in cogeneration and environmental aid for investments to promote renewable energy sources, the extra costs should, for the purpose of the application of this Regulation, be calculated without taking into account other support measures granted for the same eligible costs, with the exception of other environmental investment aid.
- (52) With regard to investments related to hydropower installations it should be noted that their environmental impact can be twofold. In terms of low greenhouse gas emissions they certainly provide potential. On the other hand, such installations might also have a negative impact, for example on water systems and biodiversity.
- (53) In order to eliminate differences that might give rise to distortions of competition and to facilitate coordination between different Community and national initiatives concerning SMEs, as well as for reasons of administrative clarity and legal certainty, the definition of SME used for the purpose of this Regulation should be based on the definition in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium sized enterprises ⁽¹⁾.
- (54) SMEs play a decisive role in job creation and, more generally, act as a factor of social stability and economic drive. However, their development may be limited by market failures, leading to these SMEs suffering from typical handicaps. SMEs often have difficulties in obtaining capital, risk capital or loans, given the risk-averse nature of certain financial markets and the limited collateral that they may be able to offer. Their limited resources may also restrict their access to information, notably regarding new technology and potential markets. In order to facilitate the development of the economic activities of SMEs, this Regulation should therefore exempt certain categories of aid when they are granted in favour of SMEs. Consequently, it is justified to exempt such aid from prior notification and to consider that, for the purposes of the application of this Regulation only, when a beneficiary falls within the SME definition provided for in this Regulation, that SME can be presumed, when the aid amount does not exceed the applicable notification threshold, to be limited in its development by the typical SME handicaps prompted by market failures.
- (55) Having regard to the differences between small enterprises and medium-sized enterprises, different basic aid intensities and different bonuses should be set for small enterprises and for medium-sized enterprises. Market failures affecting SMEs in general, including difficulties of access to finance, result in even greater obstacles to the development of small enterprises as compared to medium-sized enterprises.

⁽¹⁾ OJ L 124, 20.5.2003, p. 36.

- (56) On the basis of the experience gained in applying the Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises there appear to be a number of specific risk capital market failures in the Community in respect of certain types of investments at certain stages of undertakings' development. These market failures result from an imperfect matching of supply and demand of risk capital. As a result, the level of risk capital provided in the market may be too restricted, and undertakings do not obtain funding despite having a valuable business model and growth prospects. The main source of market failure relevant to risk capital markets, which particularly affects access to capital by SMEs and which may justify public intervention, relates to imperfect or asymmetric information. Consequently, risk capital schemes taking the form of commercially managed investment funds in which a sufficient proportion of the funds are provided by private investors in the form of private equity promoting profit-driven risk capital measures in favour of target enterprises should be exempt from the notification requirement under certain conditions. The conditions that the investment funds should be commercially managed and that the ensuing risk capital measures be profit driven should not prevent the investment funds from targeting their activities and particular market segments, such as enterprises created by female entrepreneurs. This Regulation should not affect the status of the European Investment Fund and the European Investment Bank, as defined in the Community guidelines on risk capital.
- (57) Aid for research, development and innovation can contribute to economic growth, strengthening competitiveness and boosting employment. On the basis of its experience with the application of Regulation (EC) No 364/2004, the Community framework for State aid for research and development and the Community Framework for State aid for research and development and innovation, it appears that, given the available research and development capabilities of both SMEs and large enterprises, market failures may prevent the market from reaching the optimal output and lead to an inefficient outcome. Such inefficient outcomes generally relate to positive externalities/knowledge spill-overs, public goods/knowledge spill-overs, imperfect and asymmetric information and coordination and network failures.
- (58) Aid for research, development and innovation is of particular importance, especially for SMEs because one of the structural disadvantages of SMEs lies in the difficulty they may experience in gaining access to new technological developments, technology transfers or highly qualified personnel. Therefore, aid for research and development projects, aid for technical feasibility studies and aid to cover industrial property rights costs for SMEs, as well as aid for young innovative small enterprises, aid for innovation advisory services and for innovation support services and aid for the loan of highly qualified personnel should be exempt from the requirement of prior notification, under certain conditions.
- (59) As regards project aid for research and development, the aided part of the research project should completely fall within the categories of fundamental research, industrial research or experimental development. When a project encompasses different tasks, each task should be qualified as falling under the categories of fundamental research, industrial research or experimental development or as not falling under any of those categories at all. That qualification need not necessarily follow a chronological approach, moving sequentially over time from fundamental research to activities closer to the market. Accordingly, a task which is carried out at a late stage of a project may be qualified as industrial research. Similarly, it is not excluded that an activity carried out at an earlier stage of the project may constitute experimental development.
- (60) In the agricultural sector certain aid for research and development should be exempted if conditions similar to those provided in the specific provisions laid down for the agricultural sector in the Community framework for State aid for research and development and innovation are fulfilled. If those specific conditions are not fulfilled, it is appropriate to provide for the aid to be exempted if it fulfils the conditions set out in the general provisions related to research and development in this Regulation.
- (61) The promotion of training and the recruitment of disadvantaged and disabled workers and compensation of additional costs for the employment of disabled workers constitute a central objective of the economic and social policies of the Community and of its Member States.

- (62) Training usually has positive externalities for society as a whole since it increases the pool of skilled workers from which other firms may draw, improves the competitiveness of Community industry and plays an important role in the Community employment strategy. Training, including e-learning, is also essential for the constitution, the acquisition and the diffusion of knowledge, a public good of primary importance. In view of the fact that undertakings in the Community generally under-invest in the training of their workers, especially when this training is general in nature and does not lead to an immediate and concrete advantage for the undertaking concerned, State aid can help to correct this market failure. Therefore such aid should be exempt, under certain conditions, from prior notification. In view of the particular handicaps with which SMEs are confronted and the higher relative costs that they have to bear when they invest in training, the intensities of aid exempted by this Regulation should be increased for SMEs. The characteristics of training in the maritime transport sector justify a specific approach for that sector.
- (63) A distinction can be drawn between general and specific training. The permissible aid intensities should differ in accordance with the type of training provided and the size of the undertaking. General training provides transferable qualifications and substantially improves the employability of the trained worker. Aid for this purpose has less distortive effects on competition, meaning that higher intensities of aid can be exempted from prior notification. Specific training, which mainly benefits the undertaking, involves a greater risk of distortion of competition and the intensity of aid which can be exempted from prior notification should therefore be much lower. Training should be considered to be general in nature also when it relates to environmental management, eco-innovation or corporate social responsibility and thereby increases the capacity of the beneficiary to contribute to general objectives in the environment field.
- (64) Certain categories of disabled or disadvantaged workers still experience particular difficulty in entering the labour market. For this reason there is a justification for public authorities to apply measures providing incentives to undertakings to increase their levels of employment, in particular of workers from these disadvantaged categories. Employment costs form part of the normal operating costs of any undertaking. It is therefore particularly important that aid for the employment of disabled and disadvantaged workers should have a positive effect on employment levels of those categories of workers and should not merely enable undertakings to reduce costs which they would otherwise have to bear. Consequently, such aid should be exempt from prior notification when it is likely to assist those categories of workers in re-entering the job market or, as regards disabled workers, re-entering and staying in the job market.
- (65) Aid for the employment of disabled workers in the form of wage subsidies may be calculated on the basis of the specific degree of disability of the disabled worker concerned or may be provided as a lump sum provided that neither method leads to the aid exceeding the maximum aid intensity for each individual worker concerned.
- (66) It is appropriate to lay down transitional provisions for individual aid which was granted before the entry into force of this Regulation and was not notified in breach of the obligation provided for in Article 88(3) of the Treaty. With the repeal of Regulation (EC) No 1628/2006, the existing regional investment schemes, as exempted, should be allowed to continue being implemented under the conditions foreseen by that Regulation, in line with Article 9(2), second subparagraph, of that Regulation.
- (67) In the light of the Commission's experience in this area, and in particular the frequency with which it is generally necessary to revise State aid policy, it is appropriate to limit the period of application of this Regulation. Should this Regulation expire without being extended, aid schemes already exempted by this Regulation should continue to be exempted for a further period of six months, in order to give Member States time to adapt.
- (68) Regulation (EC) No 70/2001, Regulation (EC) No 68/2001 and Regulation (EC) No 2204/2002 expired on 30 June 2008 and Regulation (EC) No 1628/2006 should be repealed,

HAS ADOPTED THIS REGULATION:

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CHAPTER I

COMMON PROVISIONS

Article 1

Scope

1. This Regulation shall apply to the following categories of aid:

(a) regional aid;

(b) SME investment and employment aid;

(c) aid for the creation of enterprises by female entrepreneurs;

(d) aid for environmental protection;

(e) aid for consultancy in favour of SMEs and SME participation in fairs;

(f) aid in the form of risk capital;

(g) aid for research, development and innovation;

(h) training aid;

(i) aid for disadvantaged or disabled workers.

2. It shall not apply to:
- (a) aid to export-related activities, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current costs linked to the export activity;
 - (b) aid contingent upon the use of domestic over imported goods.
3. This Regulation shall apply to aid in all sectors of the economy with the exception of the following:
- (a) aid favouring activities in the fishery and aquaculture sectors, as covered by Council Regulation (EC) No 104/2000 ⁽¹⁾, except for training aid, aid in the form of risk capital, aid for research and development and innovation and aid for disadvantaged and disabled workers;
 - (b) aid favouring activities in the primary production of agricultural products, except for training aid, aid in the form of risk capital, aid for research and development, environmental aid, and aid for disadvantaged and disabled workers to the extent that these categories of aid are not covered by Commission Regulation (EC) No 1857/2006;
 - (c) aid favouring activities in the processing and marketing of agricultural products, in the following cases:
 - (i) when the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned; or
 - (ii) when the aid is conditional on being partly or entirely passed on to primary producers;
 - (d) aid favouring activities in the coal sector with the exception of training aid, research and development and innovation aid and environmental aid;
 - (e) regional aid favouring activities in the steel sector;
 - (f) regional aid favouring activities in the shipbuilding sector;
 - (g) regional aid favouring activities in the synthetic fibres sector.
4. This Regulation shall not apply to regional aid schemes which are targeted at specific sectors of economic activity within manufacturing or services. Schemes aimed at tourism activities are not considered targeted at specific sectors.
5. This Regulation shall not apply to ad hoc aid granted to large enterprises, except as provided for in Article 13(1).
6. This Regulation shall not apply to the following aid:
- (a) aid schemes which do not explicitly exclude the payment of individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission Decision declaring an aid illegal and incompatible with the common market;
 - (b) ad hoc aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission Decision declaring an aid illegal and incompatible with the common market;
 - (c) aid to undertakings in difficulty.
7. For the purposes of point (c) of paragraph 6, an SME shall be considered to be an undertaking in difficulty if it fulfils the following conditions:
- (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; or
 - (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 over the preceding 12 months; or
 - (c) whatever the type of company concerned, where it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings.
- An SME which has been incorporated for less than three years shall not be considered, for the purposes of this Regulation, to be in difficulty with regard to that period unless it meets the condition set out in point (c) of the first subparagraph.

⁽¹⁾ OJ L 17, 21.1.2000, p. 22.

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

1. 'aid' means any measure fulfilling all the criteria laid down in Article 87(1) of the Treaty;
2. 'aid scheme' means any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be awarded to one or several undertakings for an indefinite period of time and/or for an indefinite amount;
3. 'individual aid' means:
 - (a) ad hoc aid; and
 - (b) notifiable awards of aid on the basis of an aid scheme;
4. 'ad hoc aid' means individual aid not awarded on the basis of an aid scheme;
5. 'aid intensity' means the aid amount expressed as a percentage of the eligible costs;
6. 'transparent aid' means aid in respect of which it is possible to calculate precisely the gross grant equivalent *ex ante* without need to undertake a risk assessment;
7. 'small and medium-sized enterprises' or 'SMEs' means undertakings fulfilling the criteria laid down in Annex I;
8. 'large enterprises' means undertakings not fulfilling the criteria laid down in Annex I;
9. 'assisted areas' means regions eligible for regional aid, as determined in the approved regional aid map for the Member State concerned for the period 2007-2013;
10. 'tangible assets' means, without prejudice to Article 17(12), assets relating to land, buildings and plant, machinery and equipment; in the transport sector transport means and transport equipment are considered eligible assets, except with regard to regional aid and except for road freight and air transport;
11. 'intangible assets' means assets entailed by the transfer of technology through the acquisition of patent rights, licences, know-how or unpatented technical knowledge;
12. 'large investment project' means an investment in capital assets with eligible costs above EUR 50 million, calculated at prices and exchange rates on the date when the aid is granted;
13. 'number of employees' means the number of annual labour units (ALU), namely the number of persons employed full time in one year, part-time and seasonal work being ALU fractions;
14. 'employment directly created by an investment project' means employment concerning the activity to which the investment relates, including employment created following an increase in the utilisation rate of the capacity created by the investment;
15. 'wage cost' means the total amount actually payable by the beneficiary of the aid in respect of the employment concerned, comprising:
 - (a) the gross wage, before tax;
 - (b) the compulsory contributions, such as social security charges; and
 - (c) child care and parent care costs;
16. 'SME investment and employment aid' means aid fulfilling the conditions laid down in Article 15;
17. 'investment aid' means, regional investment and employment aid under Article 13, SME investment and employment aid under Article 15 and investment aid for environmental protection under Articles 18 to 23;
18. 'disadvantaged worker' means any person who:
 - (a) has not been in regular paid employment for the previous 6 months; or
 - (b) has not attained an upper secondary educational or vocational qualification (ISCED 3); or
 - (c) is over the age of 50 years; or
 - (d) lives as a single adult with one or more dependents; or

- (e) works in a sector or profession in a Member State where the gender imbalance is at least 25 % higher than the average gender imbalance across all economic sectors in that Member State, and belongs to that underrepresented gender group; or
- (f) is a member of an ethnic minority within a Member State and who requires development of his or her linguistic, vocational training or work experience profile to enhance prospects of gaining access to stable employment;
19. 'severely disadvantaged worker' means any person who has been unemployed for 24 months or more;
20. 'disabled worker' means any person:
- (a) recognised as disabled under national law; or
- (b) having a recognised limitation which results from physical, mental or psychological impairment;
21. 'sheltered employment' means employment in an undertaking where at least 50 % of workers are disabled;
22. 'agricultural product' means:
- (a) the products listed in Annex I to the Treaty, except fishery and aquaculture products covered by Regulation (EC) No 104/2000;
- (b) products falling under CN codes 4502, 4503 and 4504 (cork products);
- (c) products intended to imitate or substitute milk and milk products, as referred to in Council Regulation (EC) No 1234/2007 ⁽¹⁾;
23. 'processing of agricultural products' means any operation on an agricultural product resulting in a product which is also an agricultural product, except on-farm activities necessary for preparing an animal or plant product for the first sale;
24. 'marketing of agricultural products' means holding or display with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered to be marketing if it takes place in separate premises reserved for that purpose;
25. 'tourism activities' means the following activities in terms of NACE Rev. 2:
- (a) NACE 55: Accommodation;
- (b) NACE 56: Food and beverage service activities;
- (c) NACE 79: Travel agency, tour operator reservation service and related activities;
- (d) NACE 90: Creative, arts and entertainment activities;
- (e) NACE 91: Libraries, archives, museums and other cultural activities;
- (f) NACE 93: Sports activities and amusement and recreation activities;
26. 'repayable advance' means a loan for a project which is paid in one or more instalments and the conditions for the reimbursement of which depend on the outcome of the research and development and innovation project;
27. 'risk capital' means finance provided through equity and quasi-equity financing to undertakings during their early-growth stages (seed, start-up and expansion phases);
28. 'enterprise newly created by female entrepreneurs' means a small enterprise fulfilling the following conditions:
- (a) one or more women own at least 51 % of the capital of the small enterprise concerned or are the registered owners of the small enterprise concerned; and
- (b) a woman is in charge of the management of the small enterprise;
29. 'steel sector' means all activities related to the production of one or more of the following products:
- (a) pig iron and ferro-alloys:
- pig iron for steelmaking, foundry and other pig iron, spiegeleisen and high-carbon ferro-manganese, not including other ferro-alloys;

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

- (b) crude and semi finished products of iron, ordinary steel or special steel:

liquid steel cast or not cast into ingots, including ingots for forging semi finished products: blooms, billets and slabs; sheet bars and tinplate bars; hot-rolled wide coils, with the exception of production of liquid steel for castings from small and medium-sized foundries;

- (c) hot finished products of iron, ordinary steel or special steel:

rails, sleepers, fishplates, soleplates, joists, heavy sections 80 mm and over, sheet piling, bars and sections of less than 80 mm and flats of less than 150 mm, wire rod, tube rounds and squares, hot-rolled hoop and strip (including tube strip), hot-rolled sheet (coated or uncoated), plates and sheets of 3 mm thickness and over, universal plates of 150 mm and over, with the exception of wire and wire products, bright bars and iron castings;

- (d) cold finished products:

tinplate, terneplate, blackplate, galvanized sheets, other coated sheets, cold-rolled sheets, electrical sheets and strip for tinplate, cold-rolled plate, in coil and in strip;

- (e) tubes:

all seamless steel tubes, welded steel tubes with a diameter of over 406.4 mm;

30. 'synthetic fibres sector' means:

- (a) extrusion/texturisation of all generic types of fibre and yarn based on polyester, polyamide, acrylic or polypropylene, irrespective of their end-uses; or
- (b) polymerisation (including polycondensation) where it is integrated with extrusion in terms of the machinery used; or
- (c) any ancillary process linked to the contemporaneous installation of extrusion/texturisation capacity by the prospective beneficiary or by another company in the group to which it belongs and which, in the specific business activity concerned, is normally integrated with such capacity in terms of the machinery used.

Article 3

Conditions for exemption

1. Aid schemes fulfilling all the conditions of Chapter I of this Regulation, as well as the relevant provisions of Chapter II of this Regulation, shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that any individual aid awarded under such scheme fulfils all the conditions of this Regulation, and the scheme contains an express reference to this Regulation, by citing its title and publication reference in the *Official Journal of the European Union*.

2. Individual aid granted under a scheme referred to in paragraph 1 shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that the aid fulfils all the conditions of Chapter I of this Regulation, as well as the relevant provisions of Chapter II of this Regulation, and that the individual aid measure contains an express reference to the relevant provisions of this Regulation, by citing the relevant provisions, the title of this Regulation and its publication reference in the *Official Journal of the European Union*.

3. Ad hoc aid fulfilling all the conditions of Chapter I of this Regulation, as well as the relevant provisions of Chapter II of this Regulation, shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that the aid contains an express reference to the relevant provisions of this Regulation, by citing the relevant provisions, the title of this Regulation and its publication reference in the *Official Journal of the European Union*.

Article 4

Aid intensity and eligible costs

1. For the purposes of calculating aid intensity, all figures used shall be taken before any deduction of tax or other charge. Where aid is awarded in a form other than a grant, the aid amount shall be the grant equivalent of the aid. Aid payable in several instalments shall be discounted to its value at the moment of granting. The interest rate to be used for discounting purposes shall be the reference rate applicable at the time of grant.

2. In cases where aid is awarded by means of tax exemptions or reductions on future taxes due, subject to the respect of a certain aid intensity defined in gross grant equivalent, discounting of aid tranches shall take place on the basis of the reference rates applicable at the various times the tax advantages become effective.

3. The eligible costs shall be supported by documentary evidence which shall be clear and itemised.

Article 5

Transparency of aid

1. This Regulation shall apply only to transparent aid.

In particular, the following categories of aid shall be considered to be transparent:

- (a) aid comprised in grants and interest rate subsidies;
- (b) aid comprised in loans, where the gross grant equivalent has been calculated on the basis of the reference rate prevailing at the time of the grant;
- (c) aid comprised in guarantee schemes:
 - (i) where the methodology to calculate the gross grant equivalent has been accepted following notification of this methodology to the Commission in the context of the application of this Regulation or Regulation (EC) No 1628/2006 and the approved methodology explicitly addresses the type of guarantees and the type of underlying transactions at stake; or
 - (ii) where the beneficiary is a small or medium-sized enterprise and the gross grant equivalent has been calculated on the basis of the safe-harbour premiums laid down in the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees;
- (d) aid comprised in fiscal measures, where the measure provides for a cap ensuring that the applicable threshold is not exceeded.

2. The following categories of aid shall not be considered to be transparent:

- (a) aid comprised in capital injections, without prejudice to the specific provisions concerning risk capital;
- (b) aid comprised in risk capital measures, with the exception of aid fulfilling the conditions of Article 29.

3. Aid in the form of repayable advances shall be considered to be transparent aid only if the total amount of the repayable

advance does not exceed the applicable thresholds under this Regulation. If the threshold is expressed in terms of aid intensity, the total amount of the repayable advance, expressed as a percentage of the eligible costs, shall not exceed the applicable aid intensity.

Article 6

Individual notification thresholds

1. This Regulation shall not apply to any individual aid, whether granted ad hoc or on the basis of a scheme, the gross grant equivalent of which exceeds the following thresholds:

- (a) SME investment and employment aid: EUR 7,5 million per undertaking per investment project;
- (b) investment aid for environmental protection: EUR 7,5 million per undertaking per investment project;
- (c) aid for consultancy in favour of SMEs: EUR 2 million per undertaking per project;
- (d) aid for SME participation in fairs: EUR 2 million per undertaking per project;
- (e) research and development project aid and feasibility studies:
 - (i) if the project is predominantly fundamental research EUR 20 million per undertaking, per project/feasibility study;
 - (ii) if the project is predominantly industrial research, EUR 10 million per undertaking, per project/feasibility study;
 - (iii) for all other projects, EUR 7,5 million per undertaking, per project/feasibility study;
 - (iv) if the project is a EUREKA project twice the amounts laid down in points (i), (ii) and (iii) respectively.
- (f) aid for industrial property rights costs for SMEs: EUR 5 million per undertaking per project;
- (g) training aid: EUR 2 million per training project;
- (h) aid for the recruitment of disadvantaged workers: EUR 5 million per undertaking per year;

- (i) aid for the employment of disabled workers in the form of wage costs: EUR 10 million per undertaking per year;
- (j) aid compensating for additional costs of employing disabled workers: EUR 10 million per undertaking per year.

For the purposes of determining the appropriate threshold applicable to research and development project aid and feasibility studies pursuant to point (e), a project shall be considered to consist 'predominantly' of fundamental research or 'predominantly' of industrial research, if more than 50 % of the eligible project costs are incurred through activities which fall within the category of fundamental research or industrial research respectively. In cases where the predominant character of the project cannot be established, the lower threshold shall apply.

2. Regional investment aid awarded in favour of large investment projects shall be notified to the Commission if the total amount of aid from all sources exceeds 75 % of the maximum amount of aid an investment with eligible costs of EUR 100 million could receive, applying the standard aid threshold in force for large enterprises in the approved regional aid map on the date the aid is to be granted.

Article 7

Cumulation

1. In determining whether the individual notification thresholds laid down in Article 6 and the maximum aid intensities laid down in Chapter II are respected, the total amount of public support measures for the aided activity or project shall be taken into account, regardless of whether that support is financed from local, regional, national or Community sources.

2. Aid exempted by this Regulation may be cumulated with any other aid exempted under this Regulation as long as those aid measures concern different identifiable eligible costs.

3. Aid exempted by this Regulation shall not be cumulated with any other aid exempted under this Regulation or *de minimis* aid fulfilling the conditions laid down in Commission Regulation (EC) No 1998/2006⁽¹⁾ or with other Community funding in relation to the same — partly or fully overlapping — eligible costs if such cumulation would result in exceeding the highest aid intensity or aid amount applicable to this aid under this Regulation.

4. By way of derogation from paragraph 3, aid in favour of disabled workers, as provided for in Articles 41 and 42, may be cumulated with aid exempted under this Regulation in relation to the same eligible costs above the highest applicable threshold

under this Regulation, provided that such cumulation does not result in an aid intensity exceeding 100 % of the relevant costs over any period for which the workers concerned are employed.

5. As regards the cumulation of aid measures exempted under this Regulation with identifiable eligible costs and aid measures exempted under this Regulation without identifiable eligible costs, the following conditions shall apply:

- (a) where a target undertaking has received capital under a risk capital measure under Article 29 and subsequently applies, during the first three years after the first risk capital investment, for aid within the scope of this Regulation, the relevant aid thresholds or maximum eligible amounts under this Regulation shall be reduced by 50 % in general and by 20 % for target undertakings located in assisted areas; the reduction shall not exceed the total amount of risk capital received; this reduction shall not apply to aid for research, development and innovation exempted under Articles 31 to 37;
- (b) during the first 3 years after being granted, aid for young innovative enterprises may not be cumulated with other aid exempted under this Regulation, with the only exception of aid exempted under Article 29 and aid exempted under Articles 31 to 37.

Article 8

Incentive effect

1. This Regulation shall exempt only aid which has an incentive effect.

2. Aid granted to SMEs, covered by this Regulation, shall be considered to have an incentive effect if, before work on the project or activity has started, the beneficiary has submitted an application for the aid to the Member State concerned.

3. Aid granted to large enterprises, covered by this Regulation, shall be considered to have an incentive effect if, in addition to fulfilling the condition laid down in paragraph 2, the Member State has verified, before granting the individual aid concerned, that documentation prepared by the beneficiary establishes one or more of the following criteria:

- (a) a material increase in the size of the project/activity due to the aid;
- (b) a material increase in the scope of the project/activity due to the aid;

⁽¹⁾ OJ L 379, 28.12.2006, p. 5.

- (c) a material increase in the total amount spent by the beneficiary on the project/activity due to the aid;
- (d) a material increase in the speed of completion of the project/activity concerned;
- (e) as regards regional investment aid referred to in Article 13, that the project would not have been carried out as such in the assisted region concerned in the absence of the aid.

4. The conditions laid down in paragraphs 2 and 3 shall not apply in relation to fiscal measures if the following conditions are fulfilled:

- (a) the fiscal measure establishes a legal right to aid in accordance with objective criteria and without further exercise of discretion by the Member State; and
- (b) the fiscal measure has been adopted before work on the aided project or activity has started; this condition shall not apply in the case of fiscal successor schemes.

5. As regards aid compensating for the additional costs of employing disabled workers, as referred to in Article 42, the conditions laid down in paragraphs 2 and 3 of this Article shall be considered to be met if the conditions laid down in Article 42(3) are fulfilled.

As regards aid for the recruitment of disadvantaged workers in the form of wage subsidies and aid for the employment of disabled workers in the form of wage subsidies, as referred to in Articles 40 and 41, the conditions laid down in paragraphs 2 and 3 of this Article shall be considered to be met if the aid leads to a net increase in the number of disadvantaged/disabled workers employed.

As regards aid in the form of reductions in environmental taxes, as referred to in Article 25, the conditions laid down in paragraphs 2, 3 and 4 of this Article shall be considered to be met.

As regards aid in the form of risk capital, as referred to in Article 29, the conditions laid down in paragraph 2 of this Article shall be considered to be met.

6. If the conditions of paragraphs 2 and 3 are not fulfilled, the entire aid measure shall not be exempted under this Regulation.

Article 9

Transparency

1. Within 20 working days following the entry into force of an aid scheme or the awarding of an ad hoc aid, which has

been exempted pursuant to this Regulation, the Member State concerned shall forward to the Commission a summary of the information regarding such aid measure. That summary shall be provided in electronic form, via the established Commission IT application and in the form laid down in Annex III.

The Commission shall acknowledge receipt of the summary without delay.

The summaries shall be published by the Commission in the *Official Journal of the European Union* and on the Commission's website.

2. Upon the entry into force of an aid scheme or the awarding of an ad hoc aid, which has been exempted pursuant to this Regulation, the Member State concerned shall publish on the internet the full text of such aid measure. In the case of an aid scheme, this text shall set out the conditions laid down in national law which ensure that the relevant provisions of this Regulation are complied with. The Member State concerned shall ensure that the full text of the aid measure is accessible on the internet as long as the aid measure concerned is in force. The summary information provided by the Member State concerned pursuant to paragraph 1 shall specify an internet address leading directly to the full text of the aid measure.

3. When granting individual aid exempted pursuant to this Regulation, with the exception of aid taking the form of fiscal measures, the act granting the aid shall contain an explicit reference to the specific provisions of Chapter II concerned by that act, to the national law which ensures that the relevant provisions of this Regulation are complied with and to the internet address leading directly to the full text of the aid measure.

4. Without prejudice to the obligations contained in paragraphs 1, 2 and 3, whenever individual aid is granted under an existing aid scheme for research and development projects covered by Article 31 and the individual aid exceeds EUR 3 million and whenever individual regional investment aid is granted, on the basis of an existing aid scheme for large investment projects, which is not individually notifiable pursuant to Article 6, the Member States shall, within 20 working days from the day on which the aid is granted by the competent authority, provide the Commission with the summary information requested in the standard form laid down in Annex II, via the established Commission IT application.

Article 10

Monitoring

1. The Commission shall regularly monitor aid measures of which it has been informed pursuant to Article 9.

2. Member States shall maintain detailed records regarding any individual aid or aid scheme exempted under this Regulation. Such records shall contain all information necessary to establish that the conditions laid down in this Regulation are fulfilled, including information on the status of any undertaking whose entitlement to aid or a bonus depends on its status as an SME, information on the incentive effect of the aid and information making it possible to establish the precise amount of eligible costs for the purpose of applying this Regulation.

Records regarding individual aid shall be maintained for 10 years from the date on which the aid was granted. Records regarding an aid scheme shall be maintained for 10 years from the date on which the last aid was granted under such scheme.

3. On written request, the Member State concerned shall provide the Commission within a period of 20 working days or such longer period as may be fixed in the request, with all the information which the Commission considers necessary to monitor the application of this Regulation.

Where the Member State concerned does not provide the information requested within the period prescribed by the Commission or within a commonly agreed period, or where the Member State provides incomplete information, the Commission shall send a reminder setting a new deadline for the submission of the information. If, despite such reminder, the Member State concerned does not provide the information requested, the Commission may, after having provided the Member State concerned with the possibility to make its views known, adopt a decision stating that all or part of the future aid measures to which this Regulation applies are to be notified to the Commission in accordance with Article 88(3) of the Treaty.

Article 11

Annual reporting

In accordance with Chapter III of Commission Regulation (EC) No 794/2004 ⁽¹⁾, Member States shall compile a report in electronic form on the application of this Regulation in respect of each whole year or each part of the year during which this Regulation applies. The internet address leading directly to the full text of the aid measures shall also be included in such annual report.

Article 12

Specific conditions applicable to investment aid

1. In order to be considered an eligible cost for the purposes of this Regulation, an investment shall consist of the following:

(a) an investment in tangible and/or intangible assets relating to the setting-up of a new establishment, the extension of an

existing establishment, diversification of the output of an establishment into new additional products or a fundamental change in the overall production process of an existing establishment; or

(b) the acquisition of the capital assets directly linked to an establishment, where the establishment has closed or would have closed had it not been purchased, and the assets are bought by an independent investor; in the case of business succession of a small enterprise in favour of family of the original owner(s) or in favour of former employees, the condition that the assets shall be bought by an independent investor shall be waived.

The sole acquisition of the shares of an undertaking shall not constitute investment.

2. In order to be considered eligible costs for the purposes of this Regulation, intangible assets shall fulfil all the following conditions:

(a) they must be used exclusively in the undertaking receiving the aid; as regards regional investment aid, they must be used exclusively in the establishment receiving the aid;

(b) they must be regarded as amortizable assets;

(c) they must be purchased from third parties under market conditions, without the acquirer being in a position to exercise control, within the meaning of Article 3 of Council Regulation (EC) No 139/2004 ⁽²⁾, on the seller, vice versa; or

(d) in the case of SME investment aid, they must be included in the assets of the undertaking for at least three years; in the case of regional investment aid, they must be included in the assets of the undertaking and remain in the establishment receiving the aid for at least five years or, in the case of SMEs, at least three years.

3. In order to be considered an eligible cost for the purposes of this Regulation, employment directly created by an investment project shall fulfil all the following conditions:

(a) employment shall be created within three years of completion of the investment;

⁽¹⁾ OJ L 140, 30.4.2004, p. 1.

⁽²⁾ OJ L 24, 29.1.2004, p. 1.

- (b) the investment project shall lead to a net increase in the number of employees in the establishment concerned, compared with the average over the previous 12 months;
- (c) the employment created shall be maintained during a minimum period of five years in the case of large enterprise and a minimum period of three years in case of SMEs.

CHAPTER II

SPECIFIC PROVISIONS FOR THE DIFFERENT CATEGORIES OF AID

SECTION 1

Regional aid

Article 13

Regional investment and employment aid

1. Regional investment and employment aid schemes shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in this Article are fulfilled.

Ad hoc aid which is only used to supplement aid granted on the basis of regional investment and employment aid schemes and which does not exceed 50 % of the total aid to be granted for the investment, shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that the ad hoc aid awarded fulfils all the conditions of this Regulation.

2. The aid shall be granted in regions eligible for regional aid, as determined in the approved regional aid map for the Member State concerned for the period 2007-2013. The investment must be maintained in the recipient region for at least five years, or three years in the case of SMEs, after the whole investment has been completed. This shall not prevent the replacement of plant or equipment which has become outdated due to rapid technological change, provided that the economic activity is retained in the region concerned for the minimum period.

3. The aid intensity in present gross grant equivalent shall not exceed the regional aid threshold which is in force at the time the aid is granted in the assisted region concerned.

4. With the exception of aid granted in favour of large investment projects and regional aid for the transport sector,

the thresholds fixed in paragraph 3 may be increased by 20 percentage points for aid awarded to small enterprises and by 10 percentage points for aid awarded to medium-sized enterprises.

5. The thresholds fixed in paragraph 3 shall apply to the intensity of the aid calculated either as a percentage of the investment's eligible tangible and intangible costs or as a percentage of the estimated wage costs of the person hired, calculated over a period of two years, for employment directly created by the investment project or a combination thereof, provided that the aid does not exceed the most favourable amount resulting from the application of either calculation.

6. Where the aid is calculated on the basis of tangible or intangible investment costs, or of acquisition costs in case of takeovers, the beneficiary must provide a financial contribution of at least 25 % of the eligible costs, either through its own resources or by external financing, in a form which is free of any public support. However, where the maximum aid intensity approved under the national regional aid map for the Member State concerned, increased in accordance with paragraph 4, exceeds 75 %, the financial contribution of the beneficiary is reduced accordingly. If the aid is calculated on the basis of tangible or intangible investment costs, the conditions set out in paragraph 7 shall also apply.

7. In the case of acquisition of an establishment, only the costs of buying assets from third parties shall be taken into consideration, provided that the transaction has taken place under market conditions. Where the acquisition is accompanied by other investment, the costs relating to the latter shall be added to the cost of the purchase.

Costs related to the acquisition of assets under lease, other than land and buildings, shall be taken into consideration only if the lease takes the form of financial leasing and contains an obligation to purchase the asset at the expiry of the term of the lease. For the lease of land and buildings, the lease must continue for at least five years after the anticipated date of the completion of the investment project or three years in the case of SMEs.

Except in the case of SMEs and takeovers, the assets acquired shall be new. In the case of takeovers, assets for the acquisition of which aid has already been granted prior to the purchase shall be deducted. For SMEs, the full costs of investments in intangible assets may also be taken into consideration. For large enterprises, such costs are eligible only up to a limit of 50 % of the total eligible investment costs for the project.

8. Where the aid is calculated on the basis of wage costs, the employment shall be directly created by the investment project.

9. By way of derogation from paragraphs 3 and 4, the maximum aid intensities for investments in the processing and marketing of agricultural products may be set at:

- (a) 50 % of eligible investments in regions eligible under Article 87(3)(a) of the Treaty and 40 % of eligible investments in other regions eligible for regional aid, as determined in the regional aid map approved for the Member States concerned for the period 2007-2013, if the beneficiary is an SME;
- (b) 25 % of eligible investments in regions eligible under Article 87(3)(a) of the Treaty and 20 % of eligible investments in other regions eligible for regional aid, as determined in the regional aid map approved for the Member States concerned for the period 2007-2013, if the beneficiary has less than 750 employees and/or less than EUR 200 million turnover, calculated in accordance with Annex I to this Regulation.

10. In order to prevent a large investment being artificially divided into sub-projects, a large investment project shall be considered to be a single investment project when the investment is undertaken within a period of three years by the same undertaking or undertakings and consists of fixed assets combined in an economically indivisible way.

Article 14

Aid for newly created small enterprises

1. Aid schemes in favour of newly created small enterprises shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in paragraphs 2, 3 and 4 of this Article are fulfilled.

2. The beneficiary shall be a small enterprise.

3. The aid amount shall not exceed:

- (a) EUR 2 million for small enterprises with their economic activity in regions eligible for the derogation provided for in Article 87(3)(a) of the Treaty;

- (b) EUR 1 million for small enterprises with their economic activity in regions eligible for the derogation provided for in Article 87(3)(c) of the Treaty.

Annual amounts of aid per undertaking shall not exceed 33 % of the amounts of aid laid down in points (a) and (b).

4. The aid intensity shall not exceed:

- (a) in regions covered by Article 87(3)(a) of the Treaty, 35 % of eligible costs incurred in the first three years after the creation of the undertaking, and 25 % in the two years thereafter;
- (b) in regions covered by Article 87(3)(c) of the Treaty, 25 % of eligible costs incurred in the first three years after the creation of the undertaking, and 15 % in the two years thereafter.

These intensities may be increased by 5 % in regions covered by Article 87(3)(a) of the Treaty with a gross domestic product (GDP) per capita of less than 60 % of the EU-25 average, in regions with a population density of less than 12.5 inhabitants/km² and in small islands with a population of less than 5 000 inhabitants, and other communities of the same size suffering from similar isolation.

5. The eligible costs shall be legal, advisory, consultancy and administrative costs directly related to the creation of the small enterprise, as well as the following costs, insofar as they are actually incurred within the first five years after the creation of the undertaking:

- (a) interest on external finance and a dividend on own capital employed not exceeding the reference rate;
- (b) fees for renting production facilities/equipment;
- (c) energy, water, heating, taxes (other than VAT and corporate taxes on business income) and administrative charges;
- (d) depreciation, fees for leasing production facilities/equipment as well as wage costs, provided that the underlying investments or job creation and recruitment measures have not benefited from other aid.

6. Small enterprises controlled by shareholders of undertakings that have closed down in the previous 12 months cannot benefit from aid under this Article if the enterprises concerned are active in the same relevant market or in adjacent markets.

SECTION 2

SME investment and employment aid

Article 15

SME investment and employment aid

1. SME investment and employment aid shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in paragraphs 2, 3 and 4 of this Article are fulfilled.

2. The aid intensity shall not exceed:

- (a) 20 % of the eligible costs in the case of small enterprises;
- (b) 10 % of the eligible costs in the case of medium-sized enterprises.

3. The eligible costs shall be the following:

- (a) the costs of investment in tangible and intangible assets; or
- (b) the estimated wage costs of employment directly created by the investment project, calculated over a period of two years.

4. Where the investment concerns the processing and marketing of agricultural products, the aid intensity shall not exceed:

- (a) 75 % of eligible investments in the outermost regions;
- (b) 65 % of eligible investments in the smaller Aegean Islands within the meaning of Council Regulation (EC) No 1405/2006 ⁽¹⁾;
- (c) 50 % of eligible investments in regions eligible under Article 87(3)(a) of the Treaty;
- (d) 40 % of eligible investments in all other regions.

SECTION 3

Aid for female entrepreneurship

Article 16

Aid for small enterprises newly created by female entrepreneurs

1. Aid schemes in favour of small enterprises newly created by female entrepreneurs shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in paragraphs 2 to 5 of this Article are fulfilled.

2. The beneficiaries shall be small enterprises newly created by female entrepreneurs.

3. The aid amount shall not exceed EUR 1 million per undertaking.

Annual amounts of aid per undertaking shall not exceed 33 % of the amounts of aid laid down in the first subparagraph.

4. The aid intensity shall not exceed 15 % of eligible costs incurred in the first five years after the creation of the undertaking.

5. The eligible costs shall be legal, advisory, consultancy and administrative costs directly related to the creation of the small enterprise, as well as the following costs, insofar as they are actually incurred within the first five years of the creation of the undertaking:

- (a) interest on external finance and a dividend on own capital employed not exceeding the reference rate;
- (b) fees for renting production facilities/equipment;
- (c) energy, water, heating, taxes (other than VAT and corporate taxes on business income) and administrative charges;
- (d) depreciation, fees for leasing production facilities/equipment as well as wage costs, provided that the underlying investments or job creation and recruitment measures have not benefited from other aid;
- (e) child care and parent care costs including, where applicable, costs relating to parental leave.

6. Small enterprises controlled by shareholders of undertakings that have closed down in the previous 12 months cannot benefit from aid under this Article if the enterprises concerned are active in the same relevant market or in adjacent markets.

⁽¹⁾ OJ L 265, 26.9.2006, p. 1.

SECTION 4

Aid for environmental protection

Article 17

Definitions

For the purposes of this Section, the following definitions shall apply:

1. 'environmental protection' means any action designed to remedy or prevent damage to physical surroundings or natural resources by the beneficiary's own activities, to reduce risk of such damage or to lead to a more efficient use of natural resources, including energy-saving measures and the use of renewable sources of energy;
2. 'energy-saving measures' mean action which enables undertakings to reduce the amount of energy used notably in their production cycle;
3. 'Community standard' means:
 - (a) a mandatory Community standard setting the levels to be attained in environmental terms by individual undertakings; or
 - (b) the obligation under Directive 2008/1/EC of the European Parliament and of the Council ⁽¹⁾ to use the best available techniques as set out in the most recent relevant information published by the Commission pursuant to Article 17(2) of that Directive;
4. 'renewable energy sources' means the following renewable non-fossil energy sources: wind, solar, geothermal, wave, tidal, hydropower installations, biomass, landfill gas, sewage treatment plant gas and biogases;
5. 'biofuels' means liquid or gaseous fuel for transport produced from biomass;
6. 'sustainable biofuels' means biofuels fulfilling the sustainability criteria set out in Article 15 of the proposal for a Directive of the European Parliament and the Council on the promotion of the use of energy from renewable sources ⁽²⁾; once the Directive has been adopted by the European Parliament and the Council and published in the *Official Journal of the European Union*, the sustainability criteria laid down in the Directive shall apply;
7. 'energy from renewable energy sources' means energy produced by plants using only renewable energy sources, as well as the share in terms of calorific value of energy produced from renewable energy sources in hybrid plants — which also use conventional energy sources; it includes renewable electricity used for filling storage systems, but excludes electricity produced as a result of storage systems;
8. 'cogeneration' means the simultaneous generation in one process of thermal energy and electrical and/or mechanical energy;
9. 'high efficiency cogeneration' means cogeneration meeting the criteria of Annex III to Directive 2004/8/EC of the European Parliament and of the Council ⁽³⁾ and satisfying the harmonised efficiency reference values established by Commission Decision 2007/74/EC ⁽⁴⁾;
10. 'environmental tax' means a tax whose specific tax base has a clear negative effect on the environment or which seeks to tax certain activities, goods or services so that the environmental costs may be included in their price and/or so that producers and consumers are oriented towards activities which better respect the environment;
11. 'Community minimum tax level' means the minimum level of taxation provided for in Community legislation; for energy products and electricity, the Community minimum tax level means the minimum level of taxation laid down in Annex I to Directive 2003/96/EC;
12. 'tangible assets' means investments in land which are strictly necessary in order to meet environmental objectives, investments in buildings, plant and equipment intended to reduce or eliminate pollution and nuisances, and investments to adapt production methods with a view to protecting the environment.

Article 18

Investment aid enabling undertakings to go beyond Community standards for environmental protection or increase the level of environmental protection in the absence of Community standards

1. Investment aid enabling undertakings to go beyond Community standards for environmental protection or increase the level of environmental protection in the absence of Community standards shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in paragraphs 2 to 8 of this Article are fulfilled.

⁽¹⁾ OJ L 24, 29.1.2008, p. 8.

⁽²⁾ COM(2008) 19 final.

⁽³⁾ OJ L 52, 21.2.2004, p. 50.

⁽⁴⁾ OJ L 32, 6.2.2007, p. 183.

2. The aided investment shall fulfil one of the following conditions:

- (a) the investment shall enable the beneficiary to increase the level of environmental protection resulting from its activities by going beyond the applicable Community standards, irrespective of the presence of mandatory national standards that are more stringent than the Community standards;
- (b) the investment shall enable the beneficiary to increase the level of environmental protection resulting from its activities in the absence of Community standards.

3. Aid may not be granted where improvements are to ensure that companies comply with Community standards already adopted and not yet in force.

4. The aid intensity shall not exceed 35 % of the eligible costs.

However, the aid intensity may be increased by 20 percentage points for aid awarded to small enterprises and by 10 percentage points for aid awarded to medium-sized enterprises.

5. The eligible costs shall be the extra investment costs necessary to achieve a level of environmental protection higher than the level required by the Community standards concerned, without taking account of operating benefits and operating costs.

6. For the purposes of paragraph 5, the cost of the investment directly related to environmental protection shall be established by reference to the counterfactual situation:

- (a) where the cost of investing in environmental protection can be easily identified in the total investment cost, this precise environmental protection-related cost shall constitute the eligible costs;
- (b) in all other cases, the extra investment costs shall be established by comparing the investment with the counterfactual situation in the absence of State aid; the correct counterfactual shall be the cost of a technically comparable investment that provides a lower degree of environmental protection (corresponding to mandatory Community standards, if they exist) and that would credibly be realised without aid ('reference investment'); technically comparable investment means an investment with the same production capacity and all other technical characteristics (except those directly related to the extra investment for environmental protection); in addition, such a reference investment must, from a business point of view, be a credible alternative to the investment under assessment.

7. The eligible investment shall take the form of investment in tangible assets and/or in intangible assets.

8. In the case of investments aiming at obtaining a level of environmental protection higher than Community standards, the counterfactual shall be chosen as follows:

- (a) where the undertaking is adapting to national standards adopted in the absence of Community standards, the eligible costs shall consist of the additional investment costs necessary to achieve the level of environmental protection required by the national standards;
- (b) where the undertaking adapts to or goes beyond national standards which are more stringent than the relevant Community standards or goes beyond Community standards, the eligible costs shall consist of the additional investment costs necessary to achieve a level of environmental protection higher than the level required by the Community standards. The cost of investments needed to reach the level of protection required by the Community standards shall not be eligible;
- (c) where no standards exist, the eligible costs shall consist of the investment costs necessary to achieve a higher level of environmental protection than that which the undertaking or undertakings in question would achieve in the absence of any environmental aid.

9. Aid for investments relating to the management of waste of other undertakings shall not be exempted under this Article.

Article 19

Aid for the acquisition of new transport vehicles which go beyond Community standards or which increase the level of environmental protection in the absence of Community standards

1. Investment aid for the acquisition of new transport vehicles enabling undertakings active in the transport sector to go beyond Community standards for environmental protection or increase the level of environmental protection in the absence of Community standards shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in paragraphs 2, 3 and 4 of this Article are fulfilled.

2. The aided investment shall fulfil the condition laid down in Article 18(2).

3. Aid for the acquisition of new transport vehicles for road, railway, inland waterway and maritime transport complying with adopted Community standards shall be exempted, when such acquisition occurs before these Community standards enter into force and where, once mandatory, they do not apply retroactively to vehicles already purchased.

4. Aid for retrofitting operations of existing transport vehicles with an environmental protection objective shall be exempted if the existing means of transport are upgraded to environmental standards that were not yet in force at the date of entry into operation of those means of transport or if the means of transport are not subject to any environmental standards.

5. The aid intensity shall not exceed 35 % of the eligible costs.

However, the aid intensity may be increased by 20 percentage points for aid awarded to small enterprises and by 10 percentage points for aid awarded to medium-sized enterprises.

6. The eligible costs shall be the extra investment costs necessary to achieve a level of environmental protection higher than the level required by the Community standards.

The eligible costs shall be calculated as set out in Article 18(6) and (7) and without taking account of operating benefits and operating costs.

Article 20

Aid for early adaptation to future Community standards for SMEs

1. Aid allowing SMEs to comply with new Community standards which increase the level of environmental protection and are not yet in force shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in paragraphs 2, 3 and 4 of this Article are fulfilled.

2. The Community standards shall have been adopted and the investment shall be implemented and finalised at least one year before the date of entry into force of the standard concerned.

3. The aid intensity shall not exceed 15 % of the eligible costs for small enterprises and 10 % of the eligible costs for medium-sized enterprises if the implementation and finalisation take place more than three years before the date of entry into force of the standard and 10 % for small enterprises if the implementation and finalisation take place between one and three years before the date of entry into force of the standard.

4. The eligible costs shall be the extra investment costs necessary to achieve the level of environmental protection required by the Community standard compared to the existing level of environmental protection required prior to the entry into force of this standard.

The eligible costs shall be calculated as set out in Article 18(6) and (7) and without taking account of operating benefits and operating costs.

Article 21

Environmental investment aid for energy saving measures

1. Environmental investment aid enabling undertakings to achieve energy savings shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that it meets:

(a) the conditions laid down in paragraphs 2 and 3 of this Article; or

(b) the conditions laid down in paragraphs 4 and 5 thereof.

2. The aid intensity shall not exceed 60 % of the eligible costs.

However, the aid intensity may be increased by 20 percentage points for aid awarded to small enterprises and by 10 percentage points for aid awarded to medium-sized enterprises.

3. The eligible costs shall be the extra investment costs necessary to achieve energy savings beyond the level required by the Community standards.

The eligible costs shall be calculated as set out in Article 18(6) and (7).

The eligible costs shall be calculated net of any operating benefits and costs related to the extra investment for energy saving and arising during the first three years of the life of this investment in the case of SMEs, the first four years in the case of large undertakings that are not part of the EU CO₂ Emission Trading System and the first five years in the case of large undertakings that are part of the EU CO₂ Emission Trading System. For large undertakings this period may be reduced to the first three years of the life of this investment where the depreciation time of the investment can be demonstrated not to exceed three years.

The eligible cost calculations shall be certified by an external auditor.

4. The aid intensity shall not exceed 20 % of the eligible costs.

However, the aid intensity may be increased by 20 percentage points for aid awarded to small enterprises and by 10 percentage points for aid awarded to medium-sized enterprises.

5. The eligible costs shall be calculated as set out in Article 18(6) and (7) and without taking account of operating benefits and operating costs.

Article 22

Environmental investment aid for high-efficiency cogeneration

1. Environmental investment aid for high-efficiency cogeneration shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in paragraphs 2, 3 and 4 of this Article are fulfilled.

2. The aid intensity shall not exceed 45 % of the eligible costs.

However, the aid intensity may be increased by 20 percentage points for aid awarded to small enterprises and by 10 percentage points for aid awarded to medium-sized enterprises.

3. The eligible costs shall be the extra investment costs necessary to realise a high efficiency cogeneration plant as compared to the reference investment. The eligible costs shall be calculated as set out in Article 18(6) and (7) and without taking account of operating benefits and operating costs.

4. A new cogeneration unit shall overall make primary energy savings compared to separate production as provided for by Directive 2004/8/EC and Decision 2007/74/EC. The improvement of an existing cogeneration unit or conversion of an existing power generation unit into a cogeneration unit shall result in primary energy savings compared to the original situation.

Article 23

Environmental investment aid for the promotion of energy from renewable energy sources

1. Environmental investment aid for the promotion of energy from renewable energy sources shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in paragraphs 2, 3 and 4 of this Article are fulfilled.

2. The aid intensity shall not exceed 45 % of the eligible costs.

However, the aid intensity may be increased by 20 percentage points for aid awarded to small enterprises and by 10 percentage points for aid awarded to medium-sized enterprises.

3. The eligible costs shall be the extra costs borne by the beneficiary compared with a conventional power plant or with a conventional heating system with the same capacity in terms of the effective production of energy.

The eligible costs shall be calculated as set out in Article 18(6) and (7) and without taking account of operating benefits and operating costs.

4. Environmental investment aid for the production of biofuels shall be exempted only to the extent the aided investments are used exclusively for the production of sustainable biofuels.

Article 24

Aid for environmental studies

1. Aid for studies directly linked to investments referred to in Article 18, investments in energy saving measures under the conditions set out in Article 21 and investments for the promotion of energy from renewable energy sources under the conditions set out in Article 23 shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that the conditions laid down in paragraphs 2 and 3 of this Article are fulfilled.

2. The aid intensity shall not exceed 50 % of the eligible costs.

However, the aid intensity may be increased by 20 percentage points for studies undertaken on behalf of small enterprises and by 10 percentage points for studies undertaken on behalf of medium-sized enterprises.

3. The eligible costs shall be the costs of the study.

Article 25

Aid in the form of reductions in environmental taxes

1. Environmental aid schemes in the form of reductions in environmental taxes fulfilling the conditions of Directive 2003/96/EC shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided the conditions laid down in paragraphs 2 and 3 of this Article are fulfilled.

2. The beneficiaries of the tax reduction shall pay at least the Community minimum tax level set by Directive 2003/96/EC.

3. Tax reductions shall be granted for maximum periods of ten years. After such 10 year period, Member States shall re-evaluate the appropriateness of the aid measures concerned.

SECTION 5

Aid for consultancy in favour of SMEs and SME participation in fairs

Article 26

Aid for consultancy in favour of SMEs

1. Aid for consultancy in favour of SMEs shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in paragraphs 2 and 3 of this Article are fulfilled.

2. The aid intensity shall not exceed 50 % of the eligible costs.

3. The eligible costs shall be the consultancy costs of services provided by outside consultants.

The services concerned shall not be a continuous or periodic activity nor relate to the undertaking's usual operating costs, such as routine tax consultancy services, regular legal services or advertising.

Article 27

Aid for SME participation in fairs

1. Aid to SMEs for participation in fairs shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided the conditions laid down in paragraphs 2 and 3 of this Article are fulfilled.

2. The aid intensity shall not exceed 50 % of the eligible costs.

3. The eligible costs shall be the costs incurred for renting, setting up and running the stand for the first participation of an undertaking in any particular fair or exhibition.

SECTION 6

Aid in the form of risk capital

Article 28

Definitions

For the purposes of this Section, the following definitions shall apply:

1. 'equity' means ownership interest in an undertaking, represented by the shares issued to investors;
2. 'quasi-equity' means financial instruments whose return for the holder is predominantly based on the profits or losses of the underlying target undertaking and which are unsecured in the event of default;
3. 'private equity' means private — as opposed to public — equity or quasi-equity investment in undertakings not listed on a stock-market, including venture capital;
4. 'seed capital' means financing provided to study, assess and develop an initial concept, preceding the start-up phase;
5. 'start-up capital' means financing provided to undertakings, which have not sold their product or service commercially and are not yet generating a profit for product development and initial marketing;
6. 'expansion capital' means financing provided for the growth and expansion of an undertaking, which may or may not break even or trade profitably, for the purposes of increasing production capacity, market or product development or the provision of additional working capital;
7. 'exit strategy' means a strategy for the liquidation of holdings by a venture capital or private equity fund in accordance with a plan to achieve maximum return, including trade sale, write-offs, repayment of preference shares/loans, sale to another venture capitalist, sale to a financial institution and sale by public offering, including Initial Public Offerings;
8. 'target undertaking' means an undertaking in which an investor or investment fund is considering investing.

Article 29

Aid in the form of risk capital

1. Risk capital aid schemes in favour of SMEs shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided the conditions laid down in paragraphs 2 to 8 of this Article are fulfilled.

2. The risk capital measure shall take the form of participation into a profit driven private equity investment fund, managed on a commercial basis.

3. The tranches of investment to be made by the investment fund shall not exceed EUR 1,5 million per target undertaking over any period of twelve months.

4. For SMEs located in assisted areas, as well as for small enterprises located in non-assisted areas, the risk capital measure shall be restricted to providing seed capital, start-up capital and/or expansion capital. For medium-sized enterprises located in non-assisted areas, the risk capital measure shall be restricted to providing seed capital and/or start-up capital, to the exclusion of expansion capital.

5. The investment fund shall provide at least 70 % of its total budget invested into target SMEs in the form of equity or quasi-equity.

6. At least 50 % of the funding of the investment funds shall be provided by private investors. In the case of investment funds targeting exclusively SMEs located in assisted areas, at least 30 % of the funding shall be provided by private investors.

7. To ensure that the risk capital measure is profit-driven, the following conditions shall be fulfilled:

- (a) a business plan shall exist for each investment, containing details of product, sales and profitability development and establishing the *ex ante* viability of the project; and
- (b) a clear and realistic exit strategy shall exist for each investment.

8. To ensure that the investment fund is managed on a commercial basis, the following conditions shall be fulfilled:

- (a) there shall be an agreement between a professional fund manager and participants in the fund, providing that the manager's remuneration is linked to performance and setting out the objectives of the fund and proposed timing of investments; and
- (b) private investors shall be represented in decision-making, such as through an investors' or advisory committee; and
- (c) best practices and regulatory supervision shall apply to the management of funds.

SECTION 7

Aid for research and development and innovation

Article 30

Definitions

For the purposes of this Section, the following definitions shall apply:

1. 'research organisation' means an entity, such as a university or research institute, irrespective of its legal status (organised under public or private law) or way of financing, whose

primary goal is to conduct fundamental research, industrial research or experimental development and to disseminate their results by way of teaching, publication or technology transfer; all profits must be reinvested in these activities, the dissemination of their results or teaching; undertakings that can exert influence upon such an organisation, for instance in their capacity as shareholders or members of the organisation, shall enjoy no preferential access to the research capacities of such an organisation or to the research results generated by it;

2. 'fundamental research' means experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any direct practical application or use in view;

3. 'industrial research' means the planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services. It comprises the creation of components parts to complex systems, which is necessary for the industrial research, notably for generic technology validation, to the exclusion of prototypes;

4. 'experimental development' means the acquiring, combining, shaping and using existing scientific, technological, business and other relevant knowledge and skills for the purpose of producing plans and arrangements or designs for new, altered or improved products, processes or services. These may also include, for instance, other activities aiming at the conceptual definition, planning and documentation of new products, processes or services. Those activities may comprise producing drafts, drawings, plans and other documentation, provided that they are not intended for commercial use;

The development of commercially usable prototypes and pilot projects is also included where the prototype is necessarily the final commercial product and where it is too expensive to produce for it to be used only for demonstration and validation purposes. In case of a subsequent commercial use of demonstration or pilot projects, any revenue generated from such use must be deducted from the eligible costs.

The experimental production and testing of products, processes and services shall also be eligible, provided that these cannot be used or transformed to be used in industrial applications or commercially.

Experimental development shall not include routine or periodic changes made to products, production lines, manufacturing processes, existing services and other operations in progress, even if such changes may represent improvements;

5. 'highly qualified personnel' means researchers, engineers, designers and marketing managers with tertiary education degree and at least 5 years of relevant professional experience; doctoral training may count as relevant professional experience;
6. 'secondment' means temporary employment of personnel by a beneficiary during a period of time, after which the personnel has the right to return to its previous employer.

Article 31

Aid for research and development projects

1. Aid for research and development projects shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that the conditions laid down in paragraphs 2 to 5 of this Article are fulfilled.

2. The aided part of the research and development project shall completely fall within one or more of the following research categories:

- (a) fundamental research;
- (b) industrial research;
- (c) experimental development.

When a project encompasses different tasks, each task shall be qualified as falling under one of the categories listed in the first subparagraph or as not falling under any of those categories.

3. The aid intensity shall not exceed:
 - (a) 100 % of the eligible costs for fundamental research;
 - (b) 50 % of the eligible costs for industrial research;
 - (c) 25 % of the eligible costs for experimental development.

The aid intensity shall be established for each beneficiary of aid, including in a collaboration project, as provided in paragraph 4(b)(i).

In the case of aid for a research and development project being carried out in collaboration between research organisations and undertakings, the combined aid deriving from direct government support for a specific project and, where they constitute aid, contributions from research organisations to that project may not exceed the applicable aid intensities for each beneficiary undertaking.

4. The aid intensities set for industrial research and experimental development in paragraph 3 may be increased as follows:

- (a) where the aid is granted to SMEs, the aid intensity may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises; and
- (b) a bonus of 15 percentage points may be added, up to a maximum aid intensity of 80 % of the eligible costs, if:
 - (i) the project involves effective collaboration between at least two undertakings which are independent of each other and the following conditions are fulfilled:
 - no single undertaking bears more than 70 % of the eligible costs of the collaboration project,
 - the project involves collaboration with at least one SME or is carried out in at least two different Member States, or
 - (ii) the project involves effective collaboration between an undertaking and a research organisation and the following conditions are fulfilled:
 - the research organisation bears at least 10 % of the eligible project costs, and
 - the research organisation has the right to publish the results of the research projects insofar as they stem from research carried out by that organisation, or
 - (iii) in the case of industrial research, the results of the project are widely disseminated through technical and scientific conferences or through publication in scientific or technical journals or in open access repositories (databases where raw research data can be accessed by anyone), or through free or open source software.

For the purposes of point (b)(i) and (ii) of the first subparagraph, subcontracting shall not be considered to be effective collaboration.

5. The eligible costs shall be the following:

- (a) personnel costs (researchers, technicians and other supporting staff to the extent employed on the research project);
 - (b) costs of instruments and equipment to the extent and for the period used for the research project; if such instruments and equipment are not used for their full life for the research project, only the depreciation costs corresponding to the life of the research project, as calculated on the basis of good accounting practice, shall be considered eligible;
 - (c) costs for buildings and land, to the extent and for the duration used for the research project; with regard to buildings, only the depreciation costs corresponding to the life of the research project, as calculated on the basis of good accounting practice shall be considered eligible; for land, costs of commercial transfer or actually incurred capital costs shall be eligible;
 - (d) cost of contractual research, technical knowledge and patents bought or licensed from outside sources at market prices, where the transaction has been carried out at arm's length and there is no element of collusion involved, as well as costs of consultancy and equivalent services used exclusively for the research activity;
 - (e) additional overheads incurred directly as a result of the research project;
 - (f) other operating costs, including costs of materials, supplies and similar products incurred directly as a result of the research activity.
6. All eligible costs shall be allocated to a specific category of research and development.

Article 32

Aid for technical feasibility studies

1. Aid for technical feasibility studies preparatory to industrial research or experimental development activities shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in paragraphs 2 and 3 of this Article are fulfilled.
2. The aid intensity shall not exceed:
 - (a) for SMEs, 75 % of the eligible costs for studies preparatory to industrial research activities and 50 % of the eligible costs for studies preparatory to experimental development activities;

- (b) for large enterprises, 65 % of the eligible costs for studies preparatory to industrial research activities and 40 % of the eligible costs for studies preparatory to experimental development activities.

3. The eligible costs shall be the costs of the study.

Article 33

Aid for industrial property rights costs for SMEs

1. Aid to SMEs for the costs associated with obtaining and validating patents and other industrial property rights shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided the conditions laid down in paragraphs 2 and 3 of this Article are fulfilled.
2. The aid intensity shall not exceed the intensity for research and development project aid laid down in Article 31(3) and (4), in respect of the research activities which first led to the industrial property rights concerned.
3. The eligible costs shall be the following:
 - (a) all costs preceding the grant of the right in the first jurisdiction, including costs relating to the preparation, filing and prosecution of the application as well as costs incurred in renewing the application before the right has been granted;
 - (b) translation and other costs incurred in order to obtain the granting or validation of the right in other legal jurisdictions;
 - (c) costs incurred in defending the validity of the right during the official prosecution of the application and possible opposition proceedings, even if such costs occur after the right is granted.

Article 34

Aid for research and development in the agricultural and fisheries sectors

1. Aid for research and development concerning products listed in Annex I to the Treaty shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in paragraphs 2 to 7 of this Article are fulfilled.
2. The aid shall be of interest to all operators in the particular sector or sub-sector concerned.

3. Information that research will be carried out, and with which goal, shall be published on the internet, prior to the commencement of the research. An approximate date of expected results and their place of publication on the internet, as well as a mention that the result will be available at no cost, must be included.

The results of the research shall be made available on internet, for a period of at least 5 years. They shall be published no later than any information which may be given to members of any particular organisation.

4. Aid shall be granted directly to the research organisation and must not involve the direct granting of non-research related aid to a company producing, processing or marketing agricultural products, nor provide price support to producers of such products.

5. The aid intensity shall not exceed 100 % of the eligible costs.

6. The eligible costs shall be those provided in Article 31(5).

7. Aid for research and development concerning products listed in Annex I to the Treaty and not fulfilling the conditions laid down in this Article shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided the conditions laid down in Articles 30, 31 and 32 of this Regulation are fulfilled.

Article 35

Aid to young innovative enterprises

1. Aid to young innovative enterprises shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in paragraphs 2 to 5 of this Article are fulfilled.

2. The beneficiary shall be a small enterprise that has been in existence for less than 6 years at the time when the aid is granted.

3. The research and development costs of the beneficiary shall represent at least 15 % of its total operating costs in at least one of the three years preceding the granting of the aid or, in the case of a start-up enterprise without any financial history, in the audit of its current fiscal period, as certified by an external auditor.

4. The aid amount shall not exceed EUR 1 million.

However, the aid amount shall not exceed EUR 1,5 million in regions eligible for the derogation provided for in

Article 87(3)(a) of the Treaty, and EUR 1,25 million in regions eligible for the derogation provided for in Article 87(3)(c) of the Treaty.

5. The beneficiary may receive the aid only once during the period in which it qualifies as a young innovative enterprise.

Article 36

Aid for innovation advisory services and for innovation support services

1. Aid for innovation advisory services and for innovation support services shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in paragraphs 2 to 6 of this Article are fulfilled.

2. The beneficiary shall be an SME.

3. The aid amount shall not exceed a maximum of EUR 200 000 per beneficiary within any three year period.

4. The service provider shall benefit from a national or European certification. If the service provider does not benefit from a national or European certification, the aid intensity shall not exceed 75 % of the eligible costs.

5. The beneficiary must use the aid to buy the services at market price, or if the service provider is a non-for-profit entity, at a price which reflects its full costs plus a reasonable margin.

6. The eligible costs shall be the following:

(a) as regards innovation advisory services, the costs relating to: management consulting, technological assistance, technology transfer services, training, consultancy for acquisition, protection and trade in Intellectual Property Rights and for licensing agreements, consultancy on the use of standards;

(b) as regards innovation support services, the costs relating to: office space, data banks, technical libraries, market research, use of laboratory, quality labelling, testing and certification.

Article 37

Aid for the loan of highly qualified personnel

1. Aid for the loan of highly qualified personnel seconded from a research organisation or a large enterprise to an SME shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in paragraphs 2 to 5 of this Article are fulfilled.

2. The seconded personnel must not be replacing other personnel, but must be employed in a newly created function within the beneficiary undertaking and must have been employed for at least two years in the research organisation or the large enterprise, which is sending the personnel on secondment.

The seconded personnel must work on research and development and innovation activities within the SME receiving the aid.

3. The aid intensity shall not exceed 50 % of the eligible costs, for a maximum of 3 years per undertaking and per person borrowed.

4. The eligible costs shall be all personnel costs for borrowing and employing highly qualified personnel, including the costs of using a recruitment agency and of paying a mobility allowance for the seconded personnel.

5. This Article shall not apply to consultancy costs as referred to in Article 26.

SECTION 8

Training aid

Article 38

Definitions

For the purposes of this Section, the following definitions shall apply:

1. 'specific training' means training involving tuition directly and principally applicable to the employee's present or future position in the undertaking and providing qualifications which are not or only to a limited extent transferable to other undertakings or fields of work;

2. 'general training' means training involving tuition which is not applicable only or principally to the employee's present or future position in the undertaking, but which provides qualifications that are largely transferable to other undertakings or fields of work. Training shall be considered 'general' if, for example:

(a) it is jointly organised by different independent undertakings or where employees of different undertakings may avail themselves of the training;

(b) it is recognised, certified or validated by public authorities or bodies or by other bodies or institutions on which a Member State or the Community has conferred the necessary powers.

Article 39

Training aid

1. Training aid shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in paragraphs 2, 3 and 4 of this Article are fulfilled.

2. The aid intensity shall not exceed:

(a) 25 % of the eligible costs for specific training; and

(b) 60 % of the eligible costs for general training.

However, the aid intensity may be increased, up to a maximum aid intensity of 80 % of the eligible costs, as follows:

(a) by 10 percentage points if the training is given to disabled or disadvantaged workers;

(b) by 10 percentage points if the aid is awarded to medium-sized enterprises and by 20 percentage points if the aid is awarded to small enterprises.

Where the aid is granted in the maritime transport sector, it may reach an intensity of 100 % of the eligible costs, whether the training project concerns specific or general training, provided that the following conditions are met:

(a) the trainee shall not be an active member of the crew but shall be supernumerary on board; and

(b) the training shall be carried out on board ships entered on Community registers.

3. In cases where the aid project involves both specific and general training components which cannot be separated for the calculation of the aid intensity, and in cases where the specific or general character of the training aid project cannot be established, the aid intensities applicable to specific training shall apply.

4. The eligible costs of a training aid project shall be:

(a) trainers' personnel costs;

(b) trainers' and trainees' travel expenses, including accommodation;

(c) other current expenses such as materials and supplies directly related to the project;

(d) depreciation of tools and equipment, to the extent that they are used exclusively for the training project;

(e) cost of guidance and counselling services with regard to the training project;

(f) trainees' personnel costs and general indirect costs (administrative costs, rent, overheads) up to the amount of the total of the other eligible costs referred to in points (a) to (e). As regards the trainees' personnel costs, only the hours during which the trainees actually participate in the training, after deduction of any productive hours, may be taken into account.

SECTION 9

Aid for disadvantaged and disabled workers

Article 40

Aid for the recruitment of disadvantaged workers in the form of wage subsidies

1. Aid schemes for the recruitment of disadvantaged workers in the form of wage subsidies shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided the conditions laid down in paragraphs 2 to 5 of this Article are fulfilled.

2. The aid intensity shall not exceed 50 % of the eligible costs.

3. Eligible costs shall be the wage costs over a maximum period of 12 months following recruitment.

However, where the worker concerned is a severely disadvantaged worker, eligible costs shall be the wage costs over a maximum period of 24 months following recruitment.

4. Where the recruitment does not represent a net increase, compared with the average over the previous twelve months, in the number of employees in the undertaking concerned, the post or posts shall have fallen vacant following voluntary departure, disability, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy.

5. Except in the case of lawful dismissal for misconduct, the disadvantaged worker shall be entitled to continuous employment for a minimum period consistent with the national legislation concerned or any collective agreements governing employment contracts.

If the period of employment is shorter than 12 months or, as the case may be 24 months, the aid shall be reduced pro rata accordingly.

Article 41

Aid for the employment of disabled workers in the form of wage subsidies

1. Aid for the employment of disabled workers in the form of wage subsidies shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided the conditions laid down in paragraphs 2 to 5 of this Article are fulfilled.

2. The aid intensity shall not exceed 75 % of the eligible costs.

3. Eligible costs shall be the wage costs over any given period during which the disabled worker is being employed.

4. Where the recruitment does not represent a net increase, compared with the average over the previous twelve months, in the number of employees in the undertaking concerned, the post or posts shall have fallen vacant following voluntary departure, disability, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy.

5. Except in the case of lawful dismissal for misconduct the workers shall be entitled to continuous employment for a minimum period consistent with the national legislation concerned or any collective agreements governing employment contracts.

If the period of employment is shorter than 12 months, the aid shall be reduced pro rata accordingly.

Article 42

Aid for compensating the additional costs of employing disabled workers

1. Aid for compensating the additional costs of employing disabled workers shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided the conditions laid down in paragraphs 2 and 3 of this Article are fulfilled.

2. The aid intensity shall not exceed 100 % of the eligible costs.

3. Eligible costs shall be costs other than wage costs covered by Article 41, which are additional to those which the undertaking would have incurred if employing workers who are not disabled, over the period during which the worker concerned is being employed.

The eligible costs shall be the following:

- (a) costs of adapting premises;
- (b) costs of employing staff for time spent solely on the assistance of the disabled workers;
- (c) costs of adapting or acquiring equipment, or acquiring and validating software for use by disabled workers, including adapted or assistive technology facilities, which are additional to those which the beneficiary would have incurred if employing workers who are not disabled;
- (d) where the beneficiary provides sheltered employment, the costs of constructing, installing or expanding the establishment concerned, and any costs of administration and transport which result directly from the employment of disabled workers.

CHAPTER III

FINAL PROVISIONS

Article 43

Repeal

Regulation (EC) No 1628/2006 shall be repealed.

Any references to the repealed Regulation and to Regulation (EC) No 68/2001, Regulation (EC) No 70/2001 and Regulation (EC) No 2204/2002 shall be construed as references to this Regulation.

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

Done at Brussels, 6 August 2008.

Article 44

Transitional provisions

1. This Regulation shall apply to individual aid granted before its entry into force, if the aid fulfils all the conditions laid down in this Regulation, with the exception of Article 9.

2. Any aid granted before 31 December 2008, which does not fulfil the conditions laid down in this Regulation but fulfils the conditions laid down in Regulation (EC) No 68/2001, Regulation (EC) No 70/2001, Regulation (EC) No 2204/2002 or Regulation (EC) No 1628/2006 shall be compatible with the common market and exempt from the notification requirement of Article 88(3) of the Treaty.

Any other aid granted before the entry into force of this Regulation, which fulfils neither the conditions laid down in this Regulation nor the conditions laid down in one of the Regulations referred to in the first subparagraph, shall be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.

3. At the end of the period of validity of this Regulation, any aid schemes exempted under this Regulation shall remain exempted during an adjustment period of six months, with the exception of regional aid schemes. The exemption of regional aid schemes shall expire at the date of expiry of the approved regional aid maps.

Article 45

Entry into force and applicability

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

It shall apply until 31 December 2013.

For the Commission

Neelie KROES

Member of the Commission

ANNEX I

Definition of SME*Article 1***Enterprise**

An enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity.

*Article 2***Staff headcount and financial thresholds determining enterprise categories**

1. The category of micro, small and medium-sized enterprises ('SMEs') is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

2. Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.

3. Within the SME category, a micro-enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

*Article 3***Types of enterprise taken into consideration in calculating staff numbers and financial amounts**

1. An 'autonomous enterprise' is any enterprise which is not classified as a partner enterprise within the meaning of paragraph 2 or as a linked enterprise within the meaning of paragraph 3.

2. 'Partner enterprises' are all enterprises which are not classified as linked enterprises within the meaning of paragraph 3 and between which there is the following relationship: an enterprise (upstream enterprise) holds, either solely or jointly with one or more linked enterprises within the meaning of paragraph 3, 25 % or more of the capital or voting rights of another enterprise (downstream enterprise).

However, an enterprise may be ranked as autonomous, and thus as not having any partner enterprises, even if this 25 % threshold is reached or exceeded by the following investors, provided that those investors are not linked, within the meaning of paragraph 3, either individually or jointly to the enterprise in question:

(a) public investment corporations, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses (business angels), provided the total investment of those business angels in the same enterprise is less than EUR 1 250 000;

(b) universities or non-profit research centres;

(c) institutional investors, including regional development funds;

(d) autonomous local authorities with an annual budget of less than EUR 10 million and less than 5 000 inhabitants.

3. 'Linked enterprises' are enterprises which have any of the following relationships with each other:

(a) an enterprise has a majority of the shareholders' or members' voting rights in another enterprise;

(b) an enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;

(c) an enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;

(d) an enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise.

There is a presumption that no dominant influence exists if the investors listed in the second subparagraph of paragraph 2 are not involving themselves directly or indirectly in the management of the enterprise in question, without prejudice to their rights as shareholders.

Enterprises having any of the relationships described in the first subparagraph through one or more other enterprises, or any one of the investors mentioned in paragraph 2, are also considered to be linked.

Enterprises which have one or other of such relationships through a natural person or group of natural persons acting jointly are also considered linked enterprises if they engage in their activity or in part of their activity in the same relevant market or in adjacent markets.

An 'adjacent market' is considered to be the market for a product or service situated directly upstream or downstream of the relevant market.

4. Except in the cases set out in paragraph 2, second subparagraph, an enterprise cannot be considered an SME if 25 % or more of the capital or voting rights are directly or indirectly controlled, jointly or individually, by one or more public bodies.

5. Enterprises may make a declaration of status as an autonomous enterprise, partner enterprise or linked enterprise, including the data regarding the thresholds set out in Article 2. The declaration may be made even if the capital is spread in such a way that it is not possible to determine exactly by whom it is held, in which case the enterprise may declare in good faith that it can legitimately presume that it is not owned as to 25 % or more by one enterprise or jointly by enterprises linked to one another. Such declarations are made without prejudice to the checks and investigations provided for by national or Community rules.

Article 4

Data used for the staff headcount and the financial amounts and reference period

1. The data to apply to the headcount of staff and the financial amounts are those relating to the latest approved accounting period and calculated on an annual basis. They are taken into account from the date of closure of the accounts. The amount selected for the turnover is calculated excluding value added tax (VAT) and other indirect taxes.

2. Where, at the date of closure of the accounts, an enterprise finds that, on an annual basis, it has exceeded or fallen below the headcount or financial thresholds stated in Article 2, this will not result in the loss or acquisition of the status of medium-sized, small or micro-enterprise unless those thresholds are exceeded over two consecutive accounting periods.

3. In the case of newly-established enterprises whose accounts have not yet been approved, the data to apply is to be derived from a bona fide estimate made in the course of the financial year.

Article 5

Staff headcount

The headcount corresponds to the number of annual work units (AWU), i.e. the number of persons who worked full-time within the enterprise in question or on its behalf during the entire reference year under consideration. The work of persons who have not worked the full year, the work of those who have worked part-time, regardless of duration, and the work of seasonal workers are counted as fractions of AWU. The staff consists of:

- (a) employees;
- (b) persons working for the enterprise being subordinated to it and deemed to be employees under national law;
- (c) owner-managers;
- (d) partners engaging in a regular activity in the enterprise and benefiting from financial advantages from the enterprise.

Apprentices or students engaged in vocational training with an apprenticeship or vocational training contract are not included as staff. The duration of maternity or parental leaves is not counted.

*Article 6***Establishing the data of an enterprise**

1. In the case of an autonomous enterprise, the data, including the number of staff, are determined exclusively on the basis of the accounts of that enterprise.

2. The data, including the headcount, of an enterprise having partner enterprises or linked enterprises are determined on the basis of the accounts and other data of the enterprise or, where they exist, the consolidated accounts of the enterprise, or the consolidated accounts in which the enterprise is included through consolidation.

To the data referred to in the first subparagraph are added the data of any partner enterprise of the enterprise in question situated immediately upstream or downstream from it. Aggregation is proportional to the percentage interest in the capital or voting rights (whichever is greater). In the case of cross-holdings, the greater percentage applies.

To the data referred to in the first and second subparagraph are added 100 % of the data of any enterprise, which is linked directly or indirectly to the enterprise in question, where the data were not already included through consolidation in the accounts.

3. For the application of paragraph 2, the data of the partner enterprises of the enterprise in question are derived from their accounts and their other data, consolidated if they exist. To these are added 100 % of the data of enterprises which are linked to these partner enterprises, unless their accounts data are already included through consolidation.

For the application of the same paragraph 2, the data of the enterprises which are linked to the enterprise in question are to be derived from their accounts and their other data, consolidated if they exist. To these are added, pro rata, the data of any possible partner enterprise of that linked enterprise, situated immediately upstream or downstream from it, unless it has already been included in the consolidated accounts with a percentage at least proportional to the percentage identified under the second subparagraph of paragraph 2.

4. Where in the consolidated accounts no staff data appear for a given enterprise, staff figures are calculated by aggregating proportionally the data from its partner enterprises and by adding the data from the enterprises to which the enterprise in question is linked.

ANNEX II

Form for the provision of summary information for research and development aid under the extended reporting obligation laid down in Article 9(4)

1. Aid in favour of (name of the undertaking(s) receiving the aid, SME or not):
2. Aid scheme reference (Commission reference of the existing scheme or schemes under which the aid is awarded):
3. Public entity/entities providing the assistance (name and co-ordinates of the granting authority or authorities):
4. Member State where the aided project or measure is carried out:
5. Type of project or measure:
6. Short description of project or measure:
7. Where applicable, eligible costs (in EUR):
8. Discounted aid amount (gross) in EUR:
9. Aid intensity (% in gross grant equivalent):
10. Conditions attached to the payment of the proposed aid (if any):
11. Planned start and end date of the project or measure:
12. Date of award of the aid:

Form for the provision of summary information for aid for large investment projects under the extended reporting obligation laid down in Article 9(4)

1. Aid in favour of (name of the undertaking(s) receiving the aid).
2. Aid scheme reference (Commission reference of the existing scheme or schemes under which the aid is awarded).
3. Public entity/entities providing the assistance (name and co-ordinates of the granting authority or authorities).
4. Member State where the investment takes place.
5. Region (NUTS 3 level) where the investment takes place.
6. Municipality (previously NUTS 5 level, now LAU 2) where the investment takes place.
7. Type of project (setting-up of a new establishment, extension of existing establishment, diversification of the output of an establishment into new additional products or a fundamental change in the overall production process of an existing establishment).
8. Products manufactured or services provided on the basis of the investment project (with PRODCOM/NACE nomenclature or CPA nomenclature for projects in the service sectors).

9. Short description of investment project.
 10. Discounted eligible cost of investment project (in EUR).
 11. Discounted aid amount (gross) in EUR.
 12. Aid intensity (% in GGE).
 13. Conditions attached to the payment of the proposed assistance (if any).
 14. Planned start and end date of the project.
 15. Date of award of the aid.
-

ANNEX III

Form for the provision of summary information under the reporting obligation laid down in Article 9(1)

Please fill in the information required below:

PART I

Aid reference	<i>(to be completed by the Commission)</i>	
Member State		
Member State reference number		
Region	Name of the Region (NUTS) ⁽¹⁾	Regional aid status ⁽²⁾
Granting authority	Name	
	Address	
	Webpage	
Title of the aid measure		
National legal basis (Reference to the relevant national official publication)		
Web link to the full text of the aid measure		
Type of measure	Scheme	
	Ad hoc aid	Name of the Beneficiary
Amendment of an existing aid measure		Commission aid number
	Prolongation	
	Modification	
Duration ⁽³⁾	Scheme	dd/mm/yy to dd/mm/yy
Date of granting ⁽⁴⁾	Ad hoc aid	dd/mm/yy
Economic sector(s) concerned	All economic sectors eligible to receive aid	
	Limited to specific sectors — Please specify in accordance with NACE Rev. 2. ⁽⁵⁾	
Type of beneficiary	SME	
	Large enterprises	

Budget	Annual overall amount of the budget planned under the scheme ⁽⁶⁾	National currency ... (in millions)	
	Overall amount of the ad hoc aid awarded to the undertaking ⁽⁷⁾	National currency ... (in millions)	
	For guarantees ⁽⁸⁾	National currency ... (in millions)	
Aid instrument (Art. 5)	Grant		
	Interest rate subsidy		
	Loan		
	Guarantee/Reference to the Commission decision ⁽⁹⁾		
	Fiscal measure		
	Risk capital		
	Repayable advances		
	Other (please specify)		
If co-financed by Community funds	Reference(s):	Amount of Community funding	National currency ... (in millions)

⁽¹⁾ NUTS — Nomenclature of Territorial Units for Statistics.

⁽²⁾ Article 87(3)(a) of the Treaty, Article 87(3)(c) of the Treaty, mixed areas, areas not eligible for regional aid.

⁽³⁾ Period during which the granting authority can commit itself to grant the aid.

⁽⁴⁾ Aid is to be considered to be granted at the moment the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime.

⁽⁵⁾ NACE Rev.2 — Statistical classification of Economic Activities in the European Community.

⁽⁶⁾ In case of an aid scheme: Indicate the annual overall amount of the budget planned under the scheme or the estimated tax loss per year for all aid instruments contained in the scheme.

⁽⁷⁾ In case of an ad hoc aid award: Indicate the overall aid amount/tax loss.

⁽⁸⁾ For guarantees, indicate the (maximum) amount of loans guaranteed.

⁽⁹⁾ Where appropriate, reference to the Commission decision approving the methodology to calculate the gross grant equivalent, in line with Article 5(1)(c) of the Regulation.

PART II

Please indicate under which provision of the GBER the aid measure is implemented.

General Objectives (list)	Objectives (list)	Maximum aid intensity in % or Maximum aid amount in national currency	SME — bonuses in %
Regional investment and employment aid (1) (Art. 13)	Scheme	... %	
	Ad hoc aid (Art. 13(1))	... %	
Aid for newly created small enterprises (Art. 14)		... %	
SME investment and employment aid (Art. 15)		... %	
Aid for small enterprises newly created by female entrepreneurs (Art. 16)		... %	
Aid for Environmental protection (Art. 17–25)	Investment aid enabling undertakings to go beyond Community standards for environmental protection or increase the level of environmental protection in the absence of Community standards (Art. 18) Please provide a specific reference to the relevant standard	... %	
	Aid for the acquisition of new transport vehicles which go beyond Community standards or which increase the level of environmental protection in the absence of Community standards (Art. 19)	... %	
	Aid for early adaptation to future Community standards for SMEs (Art. 20)	... %	
	Environmental investment aid for energy saving measures (Art. 21)	... %	
	Environmental investment aid for high efficiency cogeneration (Art. 22)	... %	
	Environmental investment aid for the promotion of energy from renewable energy sources (Art. 23)	... %	
	Aid for environmental studies (Art. 24)	... %	
	Aid in the form of reductions in en- vironmental taxes (Art. 25)	... national currency	

General Objectives (list)	Objectives (list)		Maximum aid intensity in % or Maximum aid amount in national currency	SME — bonuses in %
Aid for consultancy in favour of SMEs and SME participation in fairs (Art. 26–27)	Aid for consultancy in favour of SMEs (Art. 26)		... %	
	Aid for SME participation in fairs (Art. 27)		... %	
Aid in the form of risk capital (Art. 28–29)			... national currency	
Aid for research, development and innovation (Art. 30–37)	Aid for research and development projects (Art. 31)	Fundamental research (Art. 31(2)(a))	... %	
		Industrial research (Art. 31(2)(b))	... %	
		Experimental development (Art. 31(2)(c))	... %	
	Aid for technical feasibility studies (Art. 32)		... %	
	Aid for industrial property rights costs for SMEs (Art. 33)		... %	
	Aid for research and development in the agricultural and fisheries sectors (Art. 34)		... %	
	Aid to young innovative enterprises (Art. 35)		... national currency	
	Aid for innovation advisory services and for innovation support services (Art. 36)		... national currency	
	Aid for the loan of highly qualified personnel (Art. 37)		... national currency	
	Training aid (Art. 38–39)	Specific training (Art. 38(1))		... %
General training (Art. 38(2))		... %		

General Objectives (list)	Objectives (list)	Maximum aid intensity in % or Maximum aid amount in national currency	SME — bonuses in %
Aid for disadvantaged and disabled workers (Art. 40–42)	Aid for the recruitment of disadvantaged workers in the form of wage subsidies (Art. 40)	... %	
	Aid for the employment of disabled workers in the form of wage subsidies (Art. 41)	... %	
	Aid for compensating the additional costs of employing disabled workers (Art. 42)	... %	

(¹) In the case of ad hoc regional aid supplementing aid awarded under aid scheme(s), please indicate both the aid intensity granted under the scheme and the intensity of the ad hoc aid.

COMMISSION REGULATION (EC) No 801/2008**of 8 August 2008****amending the representative prices and additional duties for the import of certain products in the sugar sector fixed by Regulation (EC) No 1109/2007 for the 2007/08 marketing year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector ⁽¹⁾,

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 of the Article 36,

Whereas:

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

for the 2007/08 marketing year are fixed by Commission Regulation (EC) No 1109/2007 ⁽³⁾. These prices and duties have been last amended by Commission Regulation (EC) No 786/2008 ⁽⁴⁾.

(2) The data currently available to the Commission indicate that the said amounts should be changed 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 on imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EC) No 1109/2007 for the 2007/08 marketing year are hereby amended as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 9 August 2008.

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

Done at Brussels, 8 August 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 58, 28.2.2006, p. 1. Regulation as last amended by Regulation (EC) No 1260/2007 (OJ L 283, 27.10.2007, p. 1). Regulation (EC) No 318/2006 will be replaced by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1) as from 1 October 2008.

⁽²⁾ OJ L 178, 1.7.2006, p. 24. Regulation as last amended by Regulation (EC) No 514/2008 (OJ L 150, 10.6.2008, p. 7).

⁽³⁾ OJ L 253, 28.9.2007, p. 5.

⁽⁴⁾ OJ L 209, 6.8.2008, p. 11.

ANNEX

Amended representative prices and additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 95 applicable from 9 August 2008

(EUR)

CN code	Representative price per 100 kg of the product concerned	Additional duty per 100 kg of the product concerned
1701 11 10 ⁽¹⁾	23,55	4,52
1701 11 90 ⁽¹⁾	23,55	9,76
1701 12 10 ⁽¹⁾	23,55	4,33
1701 12 90 ⁽¹⁾	23,55	9,33
1701 91 00 ⁽²⁾	25,56	12,51
1701 99 10 ⁽²⁾	25,56	7,93
1701 99 90 ⁽²⁾	25,56	7,93
1702 90 95 ⁽³⁾	0,26	0,39

⁽¹⁾ Fixed for the standard quality defined in Annex I.III to Council Regulation (EC) No 318/2006 (OJ L 58, 28.2.2006, p. 1).

⁽²⁾ Fixed for the standard quality defined in Annex I.II to Regulation (EC) No 318/2006.

⁽³⁾ Fixed per 1 % sucrose content.

COMMISSION REGULATION (EC) No 802/2008**of 7 August 2008****establishing a prohibition of fishing for tusk in Norwegian waters of IV by vessels flying the flag of Germany**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy ⁽¹⁾, and in particular Article 26(4) thereof,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to common fisheries policy ⁽²⁾, and in particular Article 21(3) thereof,

Whereas:

- (1) Council Regulation (EC) No 40/2008 of 16 January 2008 fixing for 2008 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in Community waters and for Community vessels, in waters where catch limitations are required ⁽³⁾, lays down quotas for 2008.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2008.

- (3) It is therefore necessary to prohibit fishing for that stock and its retention on board, transhipment and landing,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2008 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. It shall be prohibited to retain on board, tranship or land such stock caught by those vessels after that date.

*Article 3***Entry into force**

This Regulation shall enter into force on the 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, 7 August 2008.

For the Commission

Fokion FOTIADIS

Director-General for Fisheries and Maritime Affairs

⁽¹⁾ OJ L 358, 31.12.2002, p. 59. Regulation as last amended by Regulation (EC) No 865/2007 (OJ L 192, 24.7.2007, p. 1).

⁽²⁾ OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1098/2007 (OJ L 248, 22.9.2007, p. 1).

⁽³⁾ OJ L 19, 23.1.2008, p. 1. Regulation as last amended by Regulation (EC) No 718/2008 (OJ L 198, 26.7.2008, p. 8).

ANNEX

No	24/T&Q
Member State	Germany
Stock	USK/4AB-N.
Species	Tusk (<i>Brosme brosme</i>)
Area	Norwegian waters of IV
Date	29.6.2008

COMMISSION REGULATION (EC) No 803/2008**of 8 August 2008****amending for the 98th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan ⁽¹⁾, and in particular Article 7(1), first indent, thereof,

Whereas:

(1) Annex I to Regulation (EC) No 881/2002 lists the persons, groups and entities covered by the freezing of funds and economic resources under that Regulation.

(2) On 23, 28 and 31 July 2008, the Sanctions Committee of the United Nations Security Council decided to amend the list of persons, groups and entities to whom the freezing of funds and economic resources should apply. Annex I should therefore be amended accordingly.

(3) In order to ensure that the measures provided for in this Regulation are effective, this Regulation must enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 881/2002 is hereby amended as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the the third 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, 8 August 2008.

For the Commission

Eneko LANDÁBURU

Director-General for External Relations

⁽¹⁾ OJ L 139, 29.5.2002, p. 9. Regulation as last amended by Commission Regulation (EC) No 678/2008 (OJ L 189, 17.7.2008, p. 23).

ANNEX

Annex I to Regulation (EC) No 881/2002 is amended as follows:

- (1) The entry 'Jemaah Islamiya (aka Jema'ah Islamiyah, Jemaah Islamiyah, Jemaah Islamiah, Jamaah Islamiyah, Jama'ah Islamiyah)' under the heading 'Legal persons, groups and entities' shall be replaced by:

'Jemaah Islamiya (*alias* (a) Jema'ah Islamiyah, (b) Jemaah Islamiyah, (c) Jemaah Islamiah, Jamaah Islamiyah, (d) Jama'ah Islamiyah). Other information: (a) The network in South-East Asia; (b) Founded by the late Abdullah Sungkar.'

- (2) The entry 'Abd Allah Mohamed Ragab **Abdel Rahman** (*alias* (a) Abu Al-Khayr, (b) Ahmad Hasan, (c) Abu Jihad). Date of birth: 3.11.1957. Place of birth: Kafr Al-Shaykh. Nationality: Egyptian. Other information: May be living in Pakistan, Afghanistan or Iran' under the heading 'Natural persons' shall be replaced by:

'Abd Allah Mohamed Ragab **Abdel Rahman** (*alias* (a) Abu Al-Khayr, (b) Ahmad Hasan, (c) Abu Jihad). Date of birth: 3.11.1957. Place of birth: Kafr Al-Shaykh, Egypt. Nationality: Egyptian. Other information: May be living in Pakistan, Afghanistan or Iran.'

- (3) The entry 'Zaki Ezat Zaki **Ahmed** (*alias* (a) Rifat Salim, (b) Abu Usama). Date of birth: 21.4.1960. Place of birth: Sharqiyah. Nationality: Egyptian. Other information: May be living on the Pakistani-Afghan border' under the heading 'Natural persons' shall be replaced by:

'Zaki Ezat Zaki **Ahmed** (*alias* (a) Rifat Salim, (b) Abu Usama). Date of birth: 21.4.1960. Place of birth: Sharqiyah, Egypt. Nationality: Egyptian. Other information: May be living on the Pakistani-Afghan border.'

- (4) The entry 'Mustapha Nasri Ben Abdul Kader **Ait El Hadi**. Date of birth: 5.3.1962. Place of birth: Tunis. Nationality: (a) Algerian (b) German. Other information: (a) son of Abdelkader and Amina Aissaoui, (b) residing in Bonn, Germany, as of February 1999' under the heading 'Natural persons' shall be replaced by:

'Mustapha Nasri Ben Abdul Kader **Ait El Hadi**. Date of birth: 5.3.1962. Place of birth: Tunis, Tunisia. Nationality: (a) Algerian (b) German. Other information: (a) son of Abdelkader and Amina Aissaoui; (b) Residing in Bonn, Germany, as of February 1999.'

- (5) The entry 'Hamid Abdallah Ahmed **Al-Ali** (*alias* (a) Dr Hamed Abdullah **Al-Ali**, (b) Hamed **Al-'Ali**, (c) Hamed bin 'Abdallah **Al-'Ali**, (d) Hamid 'Abdallah **Al-'Ali**, (e) Hamid 'Abdallah Ahmad **Al-'Ali**, (f) Hamid bin Abdallah Ahmed **Al-Ali**, (g) Abu Salim). Date of birth: 20.1.1960. Nationality: Kuwaiti' under the heading 'Natural persons' shall be replaced by:

'Hamid Abdallah Ahmad **Al-Ali** (*alias* (a) Dr Hamed Abdullah **Al-Ali**, (b) Hamed **Al-'Ali**, (c) Hamed bin 'Abdallah **Al-'Ali**, (d) Hamid 'Abdallah **Al-'Ali**, (e) Hamid 'Abdallah Ahmad **Al-'Ali**, (f) Hamid bin Abdallah Ahmed **Al-Ali**, (g) Hamid Abdallah Ahmed **Al-Ali**, (h) Abu Salim). Date of birth: 20.1.1960. Place of birth: Kuwait. Nationality: Kuwaiti. Passport No: 1739010 (Kuwaiti passport issued on 26.5.2003 in Kuwait, expired on 25.5.2008).'

- (6) The entry 'Sulaiman Jassem Sulaiman Abo Ghaith (*alias* Abo Ghaith). Date of birth: 14 December 1965. Place of birth: Kuwait. Former nationality: Kuwaiti' under the heading 'Natural persons' shall be replaced by:

'Sulaiman Jassem Sulaiman **Ali Abo Ghaith** (*alias* Abo Ghaith). Date of birth: 14.12.1965. Place of birth: Kuwait. Passport No: 849594 (Kuwaiti passport issued on 27.11.1998 in Kuwait, expired on 24.6.2003). Remark: Kuwaiti citizenship withdrawn in 2002.'

- (7) The entry 'Mubarak Mushkhas Sanad **Al-Bathali** (*alias* (a) Mubarak Mishkhis Sanad **Al-Bathali**, (b) Mubarak Mishkhis Sanad **Al-Badhali**, (c) Mubarak **Al-Bathali**, (d) Mubarak Mishkhas Sanad **Al-Bathali**, (e) Mubarak Mishkhas Sanad **Al-Bazali**, (f) Mubarak Meshkhas Sanad **Al-Bthaly**). Date of birth: 1.10.1961. Nationality: Kuwaiti. Passport No: 101856740 (Kuwaiti passport)' under the heading 'Natural persons' shall be replaced by:

'Mubarak Mushkhas Sanad **Mubarak Al-Bathali** (*alias* (a) Mubarak Mishkhis Sanad **Al-Bathali**, (b) Mubarak Mishkhis Sanad **Al-Badhali**, (c) Mubarak **Al-Bathali**, (d) Mubarak Mishkhas Sanad **Al-Bathali**, (e) Mubarak Mishkhas Sanad **Al-Bazali**, (f) Mubarak Meshkhas Sanad **Al-Bthaly**). Address: Al-Salibekhat area, Kuwait. Date of birth: 1.10.1961. Place of birth: Kuwait. Nationality: Kuwaiti. Passport No: 101856740 (Kuwaiti passport issued on 12.5.2005, expired on 11.5.2007).'

- (8) The entry 'Muhsin Al-Fadhli (*alias* (a) Muhsin Fadhil 'Ayyid al Fadhli (b) Muhsin Fadhil Ayid Ashur al Fadhli, (c) Abu Majid Samiyah, (d) Abu Samia). Address: Block Four, Street 13, House No 179 Kuwait City, Al-Riqqa area, Kuwait. Date of birth: 24.4.1981. Passport No: Kuwaiti passport No 106261543' under the heading 'Natural persons' shall be replaced by:

'Muhsin Fadhil Ayed **Ashour Al-Fadhli** (*alias* (a) Muhsin Fadhil 'Ayyid al Fadhli (b) Muhsin Fadhil Ayid **Ashur al Fadhli**, (c) Abu Majid Samiyah, (d) Abu Samia). Address: Block Four, Street 13, House No 179, Al-Riqqa area, Kuwait City, Kuwait. Date of birth: 24.4.1981. Place of birth: Kuwait. Nationality: Kuwaiti. Passport No: (a) 106261543 (Kuwaiti passport), (b) 1420529 (Kuwaiti passport issued in Kuwait, expired on 31.3.2006). Other information: Wanted by the Kuwaiti Security Authorities; Fugitive as of July 2008.'

- (9) The entry 'Mohammed Ahmed Shawki **Al Islambolly** (*alias* (a) Abu Khalid, (b) Abu Ja'far). Date of birth: 21.1.1952. Place of birth: El-Minya. Nationality: Egyptian. Other information: May be living in Pakistan, Afghanistan or Iran' under the heading 'Natural persons' shall be replaced by:

'Mohammed Ahmed Shawki **Al Islambolly** (*alias* (a) Abu Khalid, (b) Abu Ja'far). Date of birth: 21.1.1952. Place of birth: El-Minya, Egypt. Nationality: Egyptian. Other information: May be living in Pakistan, Afghanistan or Iran.'

- (10) The entry 'Jaber Abdallah Jaber **Al-Jalahmah** (*alias* (a) Jaber **Al-Jalamah**, (b) Abu Muhammad **Al-Jalahmah**, (c) Jabir Abdallah Jabir Ahmad **Jalahmah**, (d) Jabir 'Abdallah Jabir Ahmad **Al-Jalamah**, (e) Jabir **Al-Jalhami**, (f) Abdul-Ghani, (g) Abu Muhammad). Date of birth: 24.9.1959. Nationality: Kuwaiti. Passport No: 101423404' under the heading 'Natural persons' shall be replaced by:

'Jaber Abdallah Jaber **Ahmad Al-Jalahmah** (*alias* (a) Jaber **Al-Jalamah**, (b) Abu Muhammad **Al-Jalahmah**, (c) Jabir Abdallah Jabir Ahmad **Jalahmah**, (d) Jabir 'Abdallah Jabir Ahmad **Al-Jalamah**, (e) Jabir **Al-Jalhami**, (f) Abdul-Ghani, (g) Abu Muhammad). Date of birth: 24.9.1959. Place of birth: Al-Khitan area, Kuwait. Nationality: Kuwaiti. Passport No: (a) 101423404, (b) 2541451 (Kuwaiti passport which expires on 16.2.2017).'

- (11) The entry 'Al-Azhar Ben Ammar Ben Abdallah **Al-Tlili**. Address: Via Carlo Porta 97, Legnano, Italy. Date of birth: 1.11.1971. Place of birth: Ben Aoun, Tunisia. Nationality: Tunisian. Passport No: Z417830 (Tunisian passport issued on 4.10.2004 which expires on 3.10.2009). Other information: (a) Italian fiscal code: TLLLHR69C26Z352G. (b) Convicted in France on 14.10.2002. Extradited to Italy on 6.9.2006. Currently detained in Italy' under the heading 'Natural persons' shall be replaced by:

'Al-Azhar Ben Mohammed Ben El-Abed **Al-Tlili**. Address: Via Carlo Porta 97, Legnano, Italy. Date of birth: 26.3.1969. Place of birth: Feriana, Tunisia. Nationality: Tunisian. Passport No: M351140 (Tunisian passport expired on 16.6.2005). Other information: (a) Italian fiscal code: TLLLHR69C26Z352G; (b) Convicted in France on 14.10.2002; (c) Extradited to Italy on 6.9.2006; Detained in Italy until July 2007; (d) Sentenced in absentia in Tunisia to twenty years of imprisonment.'

- (12) The entry 'Jallalouddine **Haqani** (*alias* (a) Jalaluddin **Haqani**, (b) Jallalouddin **Haqqani**). Title: Maulavi. Function: Minister of Frontier Affairs of the Taliban regime. Date of birth: Approximately 1942. Place of birth: Khost province, Zadran district, Afghanistan. Nationality: Afghan. Other information: (a) Father of Sirajuddin Jallalouddine Haqqani, (b) He is an active Taliban leader, (c) Believed to be in the Afghanistan/Pakistan border area, (d) Reportedly deceased in June 2007' under the heading 'Natural persons' shall be replaced by:

'Jallalouddine **Haqani** (*alias* (a) Jalaluddin **Haqani**, (b) Jallalouddin **Haqqani**). Title: Maulavi. Function: Minister of Frontier Affairs of the Taliban regime. Date of birth: Approximately 1942. Place of birth: Khost province, Zadran district, Afghanistan. Nationality: Afghan. Other information: (a) Father of Sirajuddin Jallalouddine Haqqani, (b) He is an active Taliban leader, (c) Believed to be in the Afghanistan/Pakistan border area, (d) Although reported deceased in June 2007, still alive as of May 2008.'

- (13) The entry 'Armand Albert Friedrich **Huber** (*alias* Huber, Ahmed). Address: Rossimattstrasse 33, 3074 Muri b. Bern, Switzerland. Date of birth: 1927. Nationality: Swiss. Other information: no Swiss passport has been issued under this name' under the heading 'Natural persons' shall be replaced by:

'Armand Albert Friedrich **Huber** (*alias* **Huber**, Ahmed). Address: Rossimattstrasse 33, 3074 Muri b. Bern, Switzerland. Date of birth: 1927. Nationality: Swiss. Other information: (a) No Swiss passport has been issued under this name; (b) Deceased in May 2008.'

- (14) The entry 'Abdulhai **Salek**. Title: Maulavi. Function: Governor of Urouzgan Province (Afghanistan) under the Taliban regime. Nationality: Afghan' under the heading 'Natural persons' shall be replaced by:

'Abdulhai **Salek**. Title: Maulavi. Function: Governor of Uruzgan Province (Afghanistan) under the Taliban regime. Nationality: Afghan.'

- (15) The entry 'Ibrahim Ali Abu Bakr **Tantoush** (*alias* (a) Abd al-Muhsin, (b) Ibrahim Ali Muhammad Abu Bakr, (c) Abdul Rahman, (d) Abu Anas, (e) Ibrahim Abubaker Tantouche, (f) Ibrahim Abubaker Tantoush, (g) Abd al-Muhsi, (h) Abd al-Rahman, (i) Al-Libi). Address: Ganzour Sayad Mehala Al Far district. Date of birth: 1966. Place of birth: al Aziziyya. Nationality: Libyan. Passport No: 203037 (Libyan passport issued in Tripoli). Other information: (a) Affiliated with Afghan Support Committee (ASC) and Revival of Islamic Heritage Society (RIHS). (b) Civil status: divorced (Algerian ex-wife Manuba Bukifa)' under the heading 'Natural persons' shall be replaced by:

'Ibrahim Ali Abu Bakr **Tantoush** (*alias* (a) Abd al-Muhsin, (b) Ibrahim Ali Muhammad Abu Bakr, (c) Abdul Rahman, (d) Abu Anas, (e) Ibrahim Abubaker Tantouche, (f) Ibrahim Abubaker Tantoush, (g) Abd al-Muhsi, (h) Abd al-Rahman, (i) Al-Libi). Address: Ganzour Sayad Mehala Al Far district. Date of birth: 1966. Place of birth: al Aziziyya, Libya. Nationality: Libyan. Passport No: 203037 (Libyan passport issued in Tripoli). Other information: (a) Affiliated with Afghan Support Committee (ASC) and Revival of Islamic Heritage Society (RIHS). (b) Civil status: divorced (Algerian ex-wife Manuba Bukifa).'

- (16) The entry 'Mahdhat Mursi Al-Sayyid **Umar** (*alias* (a) Abu Hasan, (b) Abu Khabab, (c) Abu Rabbab). Date of birth: 19.10.1953. Place of birth: Alexandria. Nationality: Egyptian. Other information: May be living on the Pakistani-Afghan border' under the heading 'Natural persons' shall be replaced by:

'Mahdhat Mursi Al-Sayyid **Umar** (*alias* (a) Abu Hasan, (b) Abu Khabab, (c) Abu Rabbab). Date of birth: 19.10.1953. Place of birth: Alexandria, Egypt. Nationality: Egyptian. Other information: May be living on the Pakistani-Afghan border.'

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 24 July 2008

on guidelines to assist Member States in preparing the annual report on the single integrated multiannual national control plan provided for in Regulation (EC) No 882/2004 of the European Parliament and of the Council

(notified under document number C(2008) 3756)

(Text with EEA relevance)

(2008/654/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules ⁽¹⁾, and in particular Article 44(2) thereof,

Whereas:

- (1) Regulation (EC) No 882/2004 lays down general rules for the performance of official controls by the Community or the competent authority of the Member States to verify compliance with rules concerning feed and food law, animal health and animal welfare rules.
- (2) Pursuant to Article 1(3) of Regulation (EC) No 882/2004 that Regulation is to be without prejudice to specific Community provisions concerning official controls.

- (3) Article 41 of Regulation (EC) No 882/2004 provides that each Member State is to prepare a single integrated multiannual national control plan to ensure the effective implementation of Article 17(2) of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety ⁽²⁾, of animal health and animal welfare rules and of Article 45 of Regulation (EC) No 882/2004 ('the national control plan').

- (4) The purpose of the national control plans is also to establish a solid basis for Community controls in the Member States.

- (5) Article 27a of Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community ⁽³⁾ provides that Articles 41 to 46 of Regulation (EC) No 882/2004 concerning national control plans, annual reports, and Community controls in Member States and third countries are to apply, as appropriate, in order to ensure the effective implementation of that Directive.

⁽¹⁾ OJ L 165, 30.4.2004, p. 1; corrected version in OJ L 191, 28.5.2004, p. 1. Regulation as last amended by Council Regulation (EC) No 301/2008 (OJ L 97, 9.4.2008, p. 85).

⁽²⁾ OJ L 31, 1.2.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 202/2008 (OJ L 60, 5.3.2008, p. 17).

⁽³⁾ OJ L 169, 10.7.2000, p. 1. Directive as last amended by Commission Directive 2008/64/EC (OJ L 168, 28.6.2008, p. 31).

- (6) Article 43(1)(e) of Regulation (EC) No 882/2004 provides that the Commission is to draw up guidelines encouraging the adoption of best practices at all levels of the control systems.
- (7) Article 43(1)(j) of Regulation (EC) No 882/2004 provides that the Commission is to draw up guidelines laying down the structure of, and information to be included in the annual reports provided for in Article 44 of that Regulation
- (8) Article 44(1) of Regulation (EC) No 882/2004 provides that Member States are to submit to the Commission an annual report on the implementation of the national control plan. That report is to be submitted annually commencing one year after starting the implementation of the national control plans. In addition, Article 44(1) sets out the information to be provided in the annual reports.
- (9) Article 44(2) of Regulation (EC) No 882/2004 provides that the information to be submitted in the annual reports is to take account of guidelines, to be drawn up by the Commission in order to promote a consistent presentation of such reports. The guidelines are not binding but serve to provide useful guidance to the Member States in the implementation of that Regulation.
- (10) Article 45 of Regulation (EC) No 882/2004 provides that Community audits are to be carried out in the Member States on a regular basis mainly in order to verify that official controls are carried out in accordance with the national control plans and in compliance with Community law.
- (11) The Commission is to keep the guidelines set out in this Decision under review and update them, as necessary, following the receipt and examination of the Member States annual reports, taking account of conclusions and recommendations contained in the annual report to be established by the Commission pursuant to Article 44(4) of Regulation (EC) No 882/2004 and in the light of the experience of the Member States in implementing that Regulation.
- (12) For the purposes of the guidelines set out in this Decision, the ongoing work of Eurostat in the context of the Community statistical programme in developing a 'control and monitoring activities' database which comprises various classification schemes, including harmonised terms and definitions for feed and food data management should be taken into account.
- (13) 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

The guidelines provided for in Article 44(2) of Regulation (EC) No 882/2004 to be taken into account in the annual reports provided for in Article 44(1) of that Regulation ('the annual report') are set out in the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 24 July 2008.

For the Commission
Androulla VASSILIOU
Member of the Commission

ANNEX

Guidelines for annual reports on the implementation of Member States national control plans**1. PURPOSE OF THE GUIDELINES**

The purpose of these guidelines is to promote and assist the consistent presentation by the Member States of their annual reports on the implementation of their national control plans and in particular the results of their official controls.

2. PURPOSE OF THE ANNUAL REPORT

The purpose of the Member States annual report is to:

- (a) meet the legal obligations for reporting laid down in Article 44(1) of Regulation (EC) No 882/2004;
- (b) outline progress on the implementation of the national control plan and make an assessment of the effectiveness of the control arrangements and the control systems based on the results and outcomes of official controls in the Member State.

The process of compiling and analysing the control data for the purpose of the annual report may facilitate Member States in reviewing the effectiveness of their control systems and contribute towards development and continual improvement of their control systems.

The information provided in the annual reports should also be utilised by the Commission in:

- (a) developing its annual control programmes (desk analysis, audits, inspections); and
- (b) the preparation of the Commission's report to the European Parliament and the Council in accordance with Article 44(4) and (6) of Regulation (EC) No 882/2004.

3. LEGAL BASIS

Article 44 of Regulation (EC) No 882/2004 provides:

'1. One year after starting the implementation of multiannual national control plans, and subsequently every year, Member States shall submit to the Commission a report indicating:

- (a) any amendments made to the multiannual national control plans to take account of the factors referred to in Article 42(3);
- (b) the results of official controls and audits conducted in the previous year under the provisions of the multiannual control plan;
- (c) the type and number of cases of non-compliance identified;
- (d) actions to ensure the effective operation of multiannual national control plans, including enforcement action and its results.

2. In order to promote the consistent presentation of this report and in particular the results of official controls, the information referred to in paragraph 1 shall take account of guidelines to be drawn up by the Commission in accordance with the procedure referred to in Article 62(2).

3. Member States shall finalise their reports and transmit them to the Commission, within six months of the end of the year to which the reports relate.'

4. DEFINITIONS

For the purpose of these guidelines the definitions laid down in the relevant Community legislation and, in particular, the definitions in Article 2 of Regulation (EC) No 882/2004, Articles 2 and 3 of Regulation (EC) No 178/2002, Article 2 of Directive 2000/29/EC, Commission Decision 2006/677/EC of 29 September 2006 setting out the guidelines laying down criteria for the conduct of audits under Regulation (EC) No 882/2004 of the European Parliament and of the Council on official controls to verify compliance with feed and food law, animal health and animal welfare rules ⁽¹⁾, and Commission Decision 2007/363/EC of 21 May 2007 on guidelines to assist Member States in preparing the single integrated multiannual national control plan provided for in Regulation (EC) No 882/2004 of the European Parliament and the Council ⁽²⁾ shall apply.

In addition the following definitions apply for the purposes of these guidelines:

- (a) 'annual control programme' means the annual programme for Community controls referred to in Article 45(4) of Regulation (EC) No 882/2004;
- (b) 'control strategy' means the approach taken to determine the nature, frequency, time, point/stage of the production chain, method and techniques of official controls (refer to Section 3.7.2 of the Annex to Decision 2007/363/EC);
- (c) 'national control plan' means the single integrated multiannual national control plan provided for in Article 41 of Regulation (EC) No 882/2004.

5. SCOPE OF THE ANNUAL REPORT

The annual report should cover the scope of the national control plan, including plant health, in so far as Article 27a of Directive 2000/29/EC provides for plant health matters to be included in that plan.

6. REPORTING PERIOD AND SUBMISSION OF ANNUAL REPORTS

Pursuant to Article 42(1)(a) of Regulation (EC) No 882/2004 the latest date for implementing the national control plan for the first time is 1 January 2007. Pursuant to Article 44(3) of that Regulation Member States are to finalise their reports and transmit them to the Commission, within six month of the end of the year to which the reports relate. Therefore the first annual reports are to be transmitted to the Commission by 30 June 2008, at the latest, and for subsequent years those reports are to be submitted by 30 June at the latest.

7. RELATIONSHIP TO OTHER SPECIFIC REPORTS

Regulation (EC) No 882/2004 is without prejudice to specific Community provisions concerning official controls. Therefore, the annual reports do not replace the annual or other reports on specific control plans or other official controls provided for under other Community legislation. However, as the performance of the official controls under those specific control plans form an essential part of the overall implementation of the national control plans, the results of those official controls are relevant for the purposes of the annual reports.

When reporting on official controls relating to those specific control plans in the annual reports, it is not necessary to repeat the information contained in the specific reports thereon; a cross reference to the most recent specific report submitted is sufficient. However, the outcome of the official controls carried out in implementation of those specific control plans should be integrated into the analysis of results in general terms, in the context of reviewing the overall outcome of official controls in the relevant sector.

The dates specified for submission of such specific reports in the relevant Community legislation are not amended by either Article 44 of Regulation (EC) No 882/2004 or by these guidelines.

8. GENERAL GUIDANCE

Regulations (EC) No 178/2002 and (EC) No 882/2004 provide for a systems-based approach to official controls. An essential part of such an approach is the compilation and analysis of the results of official controls and drawing conclusions thereon, with a view to the determination of appropriate system-based corrective actions and adjustment or amendment of national control plans where necessary. The annual report should therefore be a synthesis of that activity and also take account of the conclusions of the audits carried out in accordance with Article 4(6) of Regulation (EC) No 882/2004.

⁽¹⁾ OJ L 278, 10.10.2006, p. 15.

⁽²⁾ OJ L 138, 30.5.2007, p. 24.

A simple statistical account of the number of official controls and audits will not satisfy that requirement. For the purpose of compiling the annual report Member States should provide an overview of the overall or aggregate national results on which the analysis of the results of official controls is based, presented on the basis of sectors and stages in the production chain. The choice of sectors and production stages to be reported on is a matter for the individual Member State to decide. The scope of each sector and production stage should be clearly defined and be consistent with the structure of the description of the control systems in the national control plan. In order to place the results and analysis in context, the relevant official control (including sampling) strategies, audit programmes and performance indicators, set out in the national control plan should be referred to by means of cross-references, and where such information is not included in the national control plan, a brief description of those strategies should be provided in the annual report.

The issues to be covered in the overview and analysis of the results of official controls are outlined in Section 9 of these guidelines. The analysis of those results should identify trends and comment on their significance and possible future consequences for official controls. The identification of trends may require the review of data on results of official controls covering a number of years and for the purpose of such analysis reference should be made to data relating to previous official controls where appropriate. Taking account of Article 43(1)(e) of Regulation (EC) No 882/2004 these guidelines provide some guidance as to how that analysis may be carried out.

For the purposes of compilation of the raw control data, where Community legislation prescribes the data to be collected for the purpose of specific reports, in relation to feed or food law, animal health, animal welfare or plant health, these data should form the basis of the analysis of the results of official controls for the sector in question. Where there are no such provisions Member States are free to decide the appropriate means of data collection and compilation appropriate to their national systems and may decide to continue with earlier arrangements for the compilation of data on official controls in relation to those activities.

For the purposes of classifying non-compliances, where Community legislation provides for such classification, this classification should be followed for the purposes of the annual reports. In the absence of any specific provision Member States are free to decide a classification system appropriate to their requirements and should briefly describe the system used in their annual reports.

Member States who wish to develop their systems for classifying and recording control data may take into account the ongoing work in Eurostat on 'food safety statistics' and in particular, the 'control and monitoring activities' database⁽¹⁾. In order to ensure coherence and avoid duplication of work, Member States are encouraged to closely cooperate with Eurostat in the development of those classification schemes. The results of such cooperation may be reflected in future amendments of these guidelines, as appropriate.

The background data supporting the results and analysis of official controls supplied in the annual report may be required by the Commission for the purposes of Community controls provided for in Article 45 of Regulation (EC) No 882/2004 and should therefore be retained and provided to the Commission on request.

9. GUIDANCE ON CONTENT AND FORMAT OF THE ANNUAL REPORT

The annual report should cover the following areas:

- (a) *official controls* performed by the Member State as provided for in Article 3 of Regulation (EC) No 882/2004 and national control plans — Section 9.1;
- (b) *overall compliance* with feed and food law, animal health and animal welfare rules — Section 9.2;
- (c) *audits* carried out as provided for in Article 4(6) of Regulation (EC) No 882/2004 including, where appropriate, the results of audits or inspections of control bodies as provided for in Article 5(3) of that Regulation — Section 9.3;
- (d) *actions to ensure effectiveness* in operating the national control plans — Section 9.4;
- (e) *statement on the overall performance* of the control system in operating the national control plans — Section 9.5;
- (f) *amendments* to the national control plans — Section 9.6.

⁽¹⁾ This work, carried on within the context of the Community Statistical Programme and its annual work programmes, comprises various classification schemes like the classification of control and monitoring activities, the data dictionaries of products and activities of the establishments, a common glossary, the definition of sampling strategies and indicators of control and monitoring activities.

The annual report should contain the overall results of the performance of official controls in the relevant areas, analysis of those results and conclusions at national level, which may be presented on the basis of sectors and production stages, and/or on the basis of the structure established in the national control plan of the Member State, as appropriate. A summary of the data supporting that analysis and those conclusions may be given as a separate Annex, if necessary, and the level of detail of such data is left to the Member State to decide bearing in mind that the background data should be retained as indicated in the seventh paragraph of Section 8. The corrective actions or amendments to the national control plan arising from those conclusions should be included as appropriate.

9.1. Official controls

The annual report should indicate the extent to which annual operational targets (where Member States have established such operational targets), and strategic objectives set out in the national control plan were achieved. A brief description of relevant performance indicators and/or operational targets applied should be included here, unless provided in the national control plan, in which case they should be referred to by means of cross-references. This should be presented on a sectoral basis in line with the national control plan.

The annual report should include both planned or ongoing official controls and, where applicable, specific control activities focused on a particular issue. For planned official controls the extent to which the frequency or intensity and nature of official controls set out in the national control plan were achieved should be addressed. In the event that operational targets for planned official controls are not achieved, an analysis of relevant mitigating and/or contributing factors should be provided. Unplanned official controls⁽¹⁾ should also be reported — particularly when they have diverted resources from planned official controls — and a brief explanation of the reason for the unplanned official controls should be provided.

With regard to official controls relating to animal health and plant health, this section of the annual report should include the results of official controls carried out for the purpose of disease monitoring, surveillance, eradication or control, including official controls to verify or determine health status with regard to a particular disease.

9.2. Overall compliance by operators and products

The annual report should provide a description on how the overall compliance with food and feed law, animal health and animal welfare rules and plant health law (by the food and feed business operators and other relevant producers and business operators or of products) was measured during the reporting period as well as an overview of the results. A statement or conclusion on the overall level of compliance should provide an overview of results on the basis of sectors, production stages and competent authorities. That statement or conclusion should be based on and supported by the information provided in Sections 9.2.1-9.2.2.

9.2.1. Frequency and type of non-compliance

The annual report should describe the non-compliances observed. The annual report should, where appropriate:

- (a) describe or define the classification used;
- (b) classify the non-compliances detected by type;
- (c) describe the type and number of non-compliances identified.

The annual report should compile the non-compliances identified nationally on a sectoral basis and these compiled data should feed into the analysis outlined in Section 9.2.2.

9.2.2. Analysis of non-compliance

Analysis of non-compliance is an integral part of determining the appropriate corrective measures to be taken to ensure effective operation of control systems. This section includes examples of factors which may be taken into account in the performance of such an analysis and which may contribute to determining the subsequent actions to be taken to ensure the effectiveness of the national control plans (refer to Section 9.4).

That analysis of non-compliance, in line with best practice, may for each sector consider the occurrence, the risk arising and where relevant the root causes of non-compliance. Conclusions may be provided on the basis of the following analyses, and may assess the potential significant consequences of the non-compliances in terms of risks to humans, animals or plants, and where relevant the root causes of these non-compliances. In order to carry out such analysis it may be necessary to consider data collected over a period of years, and if appropriate, reference may be made to previous official controls.

⁽¹⁾ Official controls that involve a significant temporary departure from the national control plan due to unforeseen circumstances.

9.2.2.1. Occurrence of non-compliance

The purpose of this section is to provide some guidance as to how an analysis of the frequency and type of non-compliances may be performed. The analysis may be broken down by sectors and/or competent authorities, as appropriate. The analysis may, where appropriate, provide answers to questions such as:

- (a) what was the frequency of non-compliances in various sectors? This is particularly relevant in cases where significant deviations from the overall compliance are evident in some sectors or in official controls carried out by certain competent authorities;
- (b) were the non-compliances randomly distributed in time and space or was there some clustering at particular points or production stages and were there indications of emerging trends?
- (c) the type of non-compliances, that is whether they were related to structural, operational or end-product related requirements? Other types may include non-compliances related to self-controls, administrative aspects or documentation (for example traceability). Non-compliances may also be categorised as major/minor, systematic/sporadic etc.;
- (d) were the non-compliances scattered all along the feed and food chain or concentrated at primary production or further down the chain?
- (e) were there possibly multiple clusters of non-compliances along certain chains?
- (f) does the pattern of non-compliances indicate that there are critical control stages along the production chain(s)?
- (g) are there any patterns indicating that different (types) of food and feed business operators and other relevant producers and business operators or production chains were more compliant than others?

9.2.2.2. Nature of the risk arising from non-compliance

The purpose of this section is to provide some guidance on the analysis required to provide information on the potential consequences of non-compliances. The analysis may include the following:

- (a) the identification of non-compliances that have a potentially significant impact on humans, animals or plants;
- (b) the description of the potential serious consequences or 'risk' of those non-compliances;
- (c) the description as to whether the risk is related to a specific hazard only or a general increase in risk arising from the incidence of multiple hazards or hazard-groups.

9.2.2.3. Root cause(s) of non-compliance

Where relevant, and in particular, where patterns of significant non-compliances or repeated offences are detected, an analysis of possible underlying causes may be carried out. Such analysis may contribute towards development and continual improvement of control systems in the Member State. While carrying out that analysis, consideration may be given to the following factors:

- (a) the lack of awareness by the food and feed business operators and other relevant producers and business operators and reasons therefor;
- (b) the lack of competence by the food and feed business operators and other relevant producers and business operators and reasons therefor;
- (c) the cost of compliance;
- (d) the insufficient tools and/or resources to enforce requirements;
- (e) the lack of effective and/or proportionate and/or dissuasive sanctions.

9.3. Audits

9.3.1. *Audits carried out as provided for in Article 4(6) of Regulation (EC) No 882/2004*

This guidance refers exclusively to the audits provided for in Article 4(6) of Regulation (EC) No 882/2004. The results of such audits should be presented on a national basis, by sector if appropriate, in accordance with the arrangements for such audits in the national control plan.

Taking account of the provisions of Decision 2006/677/EC the annual report should summarise the following:

- (a) the extent to which the audit programme, developed by the competent authority, for the reporting period was achieved;
- (b) the extent to which overall compliance with planned arrangements for official controls by the competent authorities was achieved;
- (c) the conclusions as to the overall effectiveness of the official controls applied by the competent authorities;
- (d) the conclusions as to the overall suitability of the official control systems operated by the competent authorities to achieve the objectives.

If the description of the audit arrangements set out in the national control plan, does not indicate the methods or performance indicators used for measuring compliance, effectiveness and suitability of the official controls a brief description should be included in the annual report.

9.3.2. *Audits and inspections of control bodies — Article 5(3) of Regulation (EC) No 882/2004*

Describe to what extent the programme for audits or inspections of control bodies, was achieved, and summarise the conclusions of these audits or inspections.

9.4. Actions to ensure effectiveness

This should be an account of the actions taken to ensure effective operation of the national control plan. The annual report should address actions taken in the following areas. This information may be presented on the basis of sectors or production stages.

- (a) Actions taken to ensure compliance by food and feed business operators and other relevant producers and business operators as provided for in Article 31(2)(e), Article 54(2) and Article 55 of Regulation (EC) No 882/2004.
- (b) Actions taken to ensure the effective operation of official control services as provided for in Article 4(2) and Article 8(3) of Regulation (EC) No 882/2004, including actions taken in response to audits carried out in accordance with Article 4(6) of Regulation (EC) No 882/2004, and audits or inspections carried out in accordance with Article 5(3) of that Regulation, where appropriate. In the case of actions taken in response to audit conclusions this may include corrective and preventive actions, or improvement actions based on the identification of best practice.

9.4.1. *Actions to ensure compliance by food and feed business operators and other relevant producers and business operators*

The annual report should include an overview of actions taken. These may include:

- (a) restrictions or prohibitions on the placing on the market, import, export or use of feed, food or animals;
- (b) withdrawal or suspension of approval or registration to operate a feed or food business;
- (c) administrative fines and other administrative sanctions;
- (d) prosecution of food and feed business operators and other relevant producers and business operators for non-compliance (criminal sanctions).

9.4.2. *Actions taken to ensure the effective operation of official control services*

Substantial actions taken to ensure effective operation of official control services may require amendment of the national control plan and should in such case be included in Section 9.6. However, some significant actions might not require an amendment of the national control plan and should in such cases be included in this point in the annual report, in order to indicate positive actions taken by the Member State. This information may be presented on the basis of sectors or production stages and should cover actions not included as amendments to the national control plan, such as:

- (a) new, updated or revised control procedures;
- (b) training initiatives;
- (c) provision of additional resources;
- (d) reallocation of existing resources following review of priorities;
- (e) special control initiatives;
- (f) changes to the organisation or management of competent authorities;
- (g) provision of guidance or information to feed and food business operators;
- (h) new legislation;
- (i) suspension or withdrawal of delegation in the case of control bodies.

9.5. **Statement on the overall performance**

Assess the overall:

- (a) progress towards achievement of the strategic objectives as described in the national control plan;
- (b) effectiveness of the official controls carried out under the national control plan and their suitability to achieve the objectives of Article 17(2) of Regulation (EC) No 178/2002, Regulation (EC) No 882/2004, animal health, animal welfare and, as applicable, plant health rules.

That self-assessment should also address issues like overall effectiveness, coordination between and within competent authorities, delivery of a farm-to-fork approach and overall risk-based targeting of official controls. The statement on the overall performance should be based on an analysis and synthesis of results of the previous sections and provide descriptions of:

- (a) the performance indicators applied to those objectives, where appropriate; and
- (b) results for each objective, where appropriate.

9.6. **Amendments to the national control plan**

The annual report should outline amendments made to the national control plan during the year to which that report relates. Particular attention should be paid to the need to ensure that amendments made in response to the factors referred to in Article 42(3), Article 44(5) and Article 45(5)(a) of Regulation (EC) No 882/2004 are addressed and explained. In particular relevant changes to the official control systems as described in the national control plan and relevant changes to the risk categorisation of activities (refer to Section 3.4 of the Annex to Decision 2007/363/EC) should be described.

The annual report should describe the nature and reasons for such amendments. For example, and where applicable:

- (a) new legislation;
- (b) the emergence of new diseases or other health risks;
- (c) significant changes to the structure, management or operation of the competent authorities;

- (d) significant changes to the agri-food production sector;
- (e) the results of Member States' official controls;
- (f) any amendment of the guidelines referred to in Article 43 of Regulation (EC) No 882/2004;
- (g) scientific findings;
- (h) the outcome of audits carried out in accordance with Article 4(6) of Regulation (EC) No 882/2004;
- (i) the outcome of Community controls carried out in accordance with Article 45 of Regulation (EC) No 882/2004 ⁽¹⁾;
- (j) the outcome of audits performed by a third country in a Member State;
- (k) outcome of root-cause analysis.

The amendments should be consistent with the analysis and conclusions provided for in Sections 9.3-9.5 of these guidelines and include cross-references to the relevant section(s), as appropriate.

⁽¹⁾ Community controls in Member States may identify issues for which the corrective or preventative actions taken in response to the Commission recommendations require amendment to the national control plan. Such amendments should be included in the annual report, notwithstanding that they may also be covered by a Member State's response to the recommendations.

COMMISSION DECISION

of 24 July 2008

approving the emergency vaccination plans against bluetongue of certain Member States and fixing the level of the Community's financial contribution for 2007 and 2008*(notified under document number C(2008) 3757)***(Only the Czech, Danish, Dutch, French, German, Italian, Portuguese and Spanish texts are authentic)**

(2008/655/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

and surveillance zones, and set out the conditions governing movements of animals from these zones.

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2000/75/EC of 20 November 2000 laying down specific provisions for the control and eradication of bluetongue ⁽¹⁾, and in particular Article 9(2) thereof,Having regard to Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field ⁽²⁾, and in particular Article 3(3), (4) and the second indent of (5) thereof,

Whereas:

(1) In 2007 outbreaks of bluetongue have occurred in several Member States, and more particularly bluetongue serotype 8 in Belgium, the Czech Republic, Denmark, Germany, Spain, France, Luxembourg, the Netherlands and bluetongue serotype 1 in France, Spain and Portugal. In 2008 outbreaks of bluetongue serotype 8 occurred for the first time in Italy.

(2) Bluetongue is a vector-borne disease, for which slaughter of animals of susceptible species is not in general an appropriate measure except in the case of animals clinically affected with bluetongue. The emergence of this disease may represent a serious risk to the Community's livestock population.

(3) Commission Regulation (EC) No 1266/2007 of 26 October 2007 on implementing rules for Council Directive 2000/75/EC as regards the control, monitoring, surveillance and restrictions on movements of certain animals of susceptible species in relation to bluetongue ⁽³⁾ was adopted by the Commission in order to demarcate the restricted zones, including the protection

(4) Vaccination is the most efficient veterinary measure that may be used to fight bluetongue, and a mass emergency vaccination campaign is the best option to achieve the objectives of reducing clinical disease and losses, containing the spread of the disease, protecting free territories in the Member States and facilitating safe trade in live animals. The vaccination of animals against bluetongue in the Member States concerned should therefore be approved in accordance with Article 9(2) of Directive 2000/75/EC.

(5) Vaccination against a particular bluetongue serotype has to be considered an emergency measure when it is implemented for the first time in a territory after the incursion of a new serotype. However, subsequent vaccination campaigns against the same serotype in the same territories are not anymore to be considered as emergency measures but should be considered in the context of eradication programmes.

(6) In order to prevent the spread of the disease as rapidly as possible, the Community should contribute financially to the eligible expenditure incurred by the Member States concerned in the context of the emergency measures taken to combat the disease, as provided for in Decision 90/424/EEC. Since the Community is not in a position to supply the vaccines, the purchase of the vaccine doses should be considered eligible expenditure.

(7) The Member States concerned have informed the Commission and the other Member States of the measures applied in accordance with the Community legislation to combat the recent outbreaks of bluetongue. Those Member States have presented their plans for emergency vaccination indicating the approximate number of vaccine doses to be used in 2007 and 2008 and the estimated costs of carrying out those vaccinations. The Commission has assessed these plans from both the veterinary and the financial point of view and the plans were found to comply with relevant Community veterinary legislation.

⁽¹⁾ OJ L 327, 22.12.2000, p. 74. Directive as last amended by Commission Decision 2007/729/EC (OJ L 294, 13.11.2007, p. 26).

⁽²⁾ OJ L 224, 18.8.1990, p. 19. Decision as last amended by Decision 2006/965/EC (OJ L 397, 30.12.2006, p. 22).

⁽³⁾ OJ L 283, 27.10.2007, p. 37. Regulation as last amended by Regulation (EC) No 708/2008 (OJ L 197, 25.7.2008, p. 18).

(8) Article 3(5) of Decision 90/424/EEC provides that the financial contribution from the Community must be 100 % of the cost of supply of the vaccine and 50 % of the costs incurred in carrying out the vaccination. However, given the need to avoid excessive expenditure for the Community budget, maximum amounts must be established which reflect the reasonable payment for cost of supply of the vaccine and costs incurred in carrying out the vaccination. A reasonable payment is a payment for a material or a service at a proportionate price compared to the market price. Pending the results of any on-the-spot checks carried out by the Commission, it is now necessary to approve specific financial contribution from the Community to the Member States concerned and fix the amount for payment of the first instalment of the Community financial contribution.

(9) The Community financial contribution is to be paid on the basis of the official request for reimbursement submitted by Member States and supporting documents referred to in Article 7 of Commission Regulation (EC) No 349/2005 of 28 February 2005 laying down rules on the Community financing of emergency measures and of the campaign to combat certain animal diseases under Council Decision 90/424/EEC ⁽¹⁾.

(10) Under Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy ⁽²⁾, programmes for veterinary emergency measures undertaken in accordance with Community rules are to be financed under the European Agricultural Guarantee Fund. For financial control purposes, Articles 9, 36 and 37 of that Regulation are to apply.

(11) The financial contribution from the Community should be subject to the condition that the actions planned are efficiently carried out and that the competent authorities supply all the necessary information within the time limits laid down in this Decision.

(12) For reasons of administrative efficiency, all expenditure submitted for a financial contribution by the Community should be expressed in euros. In accordance with Regulation (EC) No 1290/2005, the conversion rate for expenditure in a currency other than the euro should be the most recent exchange rate set by the European Central Bank prior to the first day of the month in which the application is submitted by the Member State concerned.

(13) 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

Approval of the emergency vaccination plans

The vaccination plans, composed of technical and financial provisions, submitted by Belgium, the Czech Republic, Denmark, Germany, Spain, France, Italy, Luxembourg, the Netherlands and Portugal are hereby approved for the period from 1 November 2007 to 31 December 2008.

That vaccination of animals against bluetongue shall be carried out in accordance with Directive 2000/75/EC.

Article 2

Granting of a specific financial contribution from the Community

1. In the context of the emergency measures taken to combat bluetongue in 2007 and 2008 Belgium, the Czech Republic, Denmark, Germany, Spain, France, Italy, Luxembourg, the Netherlands and Portugal shall be entitled to a specific contribution from the Community for the bluetongue emergency vaccination plans referred to in Article 1 amounting to:

(a) 100 % of the cost (not including VAT) of supply of the vaccine;

(b) 50 % of the costs of salaries and fees paid to personnel carrying out the vaccinations, and 50 % of the cost (not including VAT) of the expenditure directly associated with the vaccinations (including consumables and specific equipment).

2. The maximum amounts to be reimbursed to the Member States concerned for the costs referred to in paragraph 1 shall not exceed:

(a) for the purchase of inactivated vaccine, EUR 0,6 per dose;

(b) for the vaccination of bovine animals, EUR 2 per bovine animal vaccinated regardless the number and types of vaccine doses used;

(c) for the vaccination of ovine or caprine animals, EUR 0,75 per ovine or caprine vaccinated regardless the number and types of vaccine doses used.

Article 3

Payment arrangements

1. Subject to the results of any on-the-spot checks carried out in accordance with Article 9(1) of Decision 90/424/EEC, a first tranche payment shall be paid as follows:

(a) up to EUR 4 500 000 for Belgium;

(b) up to EUR 1 250 000 for the Czech Republic;

⁽¹⁾ OJ L 55, 1.3.2005, p. 12.

⁽²⁾ OJ L 209, 11.8.2005, p. 1. Regulation as last amended by Regulation (EC) No 479/2008 (OJ L 148, 6.6.2008, p. 1).

- (c) up to EUR 800 000 for Denmark;
- (d) up to EUR 17 000 000 for Germany;
- (e) up to EUR 8 000 000 for Spain;
- (f) up to EUR 27 000 000 for France;
- (g) up to EUR 3 500 000 for Italy;
- (h) up to EUR 200 000 for Luxembourg;
- (i) up to EUR 3 500 000 for the Netherlands;
- (j) up to EUR 1 700 000 for Portugal;

as part of the specific financial contribution from the Community provided for in Article 2.

That payment shall be made on the basis of an official request for reimbursement and supporting documents submitted by Belgium, the Czech Republic, Denmark, Germany, Spain, France, Italy, Luxembourg, the Netherlands and Portugal.

2. The balance of the Community financial contribution mentioned in Article 2 shall be fixed in a subsequent decision to be adopted in accordance with the procedure established in Article 41 of Decision 90/424/EEC.

Article 4

Payment conditions and supporting documents

1. The specific financial contribution from the Community as referred to in Article 2 shall be paid on the basis of:
 - (a) an intermediate technical report on the technical execution of the surveillance measures, including the results attained during the period from 1 November 2007 to 31 August 2008;
 - (b) an intermediate financial report, in computerised form in accordance with the Annex, on the costs paid by the Member State during the period from 1 November 2007 to 31 August 2008;

- (c) a final technical report on the technical execution of the surveillance measures, including the results attained during the period from 1 November 2007 to 31 December 2008;
- (d) a final financial report, in computerised form in accordance with the Annex, on the costs paid by the Member State during the period from 1 November 2007 to 31 December 2008;
- (e) the results of any on-the-spot checks carried out in accordance with Article 9(1) of Decision 90/424/EEC.

The documents referred to in points (a) to (d) shall be made available for on-the-spot checks referred to in point (e) carried out by the Commission.

2. The intermediate technical report and the intermediate financial report referred to in paragraph 1(a) and (b) shall be submitted by 31 October 2008 at the latest. If that time limit is not observed, the specific financial contribution from the Community shall be reduced by 25 % for every calendar month of delay.

3. The final technical report and the final financial report referred to in paragraph 1(c) and (d) shall be submitted by 31 March 2009 at the latest. If that time limit is not observed, the specific financial contribution from the Community shall be reduced by 25 % for every calendar month of delay.

Article 5

Addressees

This Decision is addressed to the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of Netherlands and the Portuguese Republic.

Done at Brussels, 24 July 2008.

For the Commission
Androulla VASSILIOU
Member of the Commission

COMMISSION DECISION

of 28 July 2008

on the admissibility of the notifications concerning the renewal of the inclusion in Annex I to Council Directive 91/414/EEC of the active substances azimsulfuron, azoxystrobin, fluroxypyr, imazalil, kresoxim-methyl, prohexadion-calcium and spiroxamin, and establishing the list of the notifiers concerned

(notified under document number C(2008) 3855)

(Text with EEA relevance)

(2008/656/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market ⁽¹⁾,

Having regard to Commission Regulation (EC) No 737/2007 of 27 June 2007 on laying down the procedure for the renewal of the inclusion of a first group of active substances in Annex I to Council Directive 91/414/EEC and establishing the list of those substances ⁽²⁾, and in particular Article 5 thereof,

Whereas:

- (1) Directive 91/414/EEC provides that on request, the inclusion of an active substance may be renewed once or more for a period not exceeding 10 years.
- (2) The producers of the active substances listed in Annex I to Regulation (EC) No 737/2007 have submitted notifications to the rapporteur Member States concerned requesting the renewal of the inclusions of those active substances in Annex I to Directive 91/414/EEC.
- (3) The rapporteur Member States concerned have assessed the notifications and communicated their assessments to

the Commission. Based on those assessments the notifications should be found admissible.

- (4) The names and addresses of the producers whose notification has been found admissible should be published by the Commission in order to ensure that contacts can be made for presenting joint dossiers,

HAS ADOPTED THIS DECISION:

Article 1

The notifications submitted by the producers listed in the Annex are admissible.

The names and addresses of those producers are as set out in the Annex.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 28 July 2008.

For the Commission
Androulla VASSILIOU
Member of the Commission

⁽¹⁾ OJ L 230, 19.8.1991, p. 1. Directive as last amended by Commission Directive 2008/70/EC (OJ L 185, 12.7.2008, p. 40).

⁽²⁾ OJ L 169, 29.6.2007, p. 10.

ANNEX

Active substance	Producers' names	Address
Azimsulfuron	DuPont de Nemours (Deutschland) GmbH	Du-Pont-Strasse 1, D-61352 Bad Homburg, Germany Tel. (49) 6172 87 0, fax (49) 6172 87 1402
Azoxystrobin	Syngenta Limited	Priestley Road, Surrey Research Park, Guildford, Surrey GU2 7YH, United Kingdom Tel. (44) 1483 260000, fax (44) 870 240 3019
	Hermoo Belgium NV	Lichtenberglaan 2045, B-3800 Sint-Truiden, Belgium Tel. (32) (0) 11 88 03 91, fax (32) (0) 11 70 74 84
	Makhteshim Agan International Coordination Center	283 Avenue Louise, B-1050 Brussels, Belgium Tel. (32) 2 646 86 06, fax (32) 2 646 91 52
Fluroxypyr	Inter-Trade R & D APS	Ålevej 9, DK-9881 Bindslev, Denmark Tel. (45) 98 93 89 77, fax (45) 98 93 80 01
	Hermoo Belgium NV	Lichtenberglaan 2045, B-3800 Sint-Truiden, Belgium Tel. (32) (0) 11 88 03 91, fax (32) (0) 11 70 7484
	Makhteshim Agan International Coordination Center	283 Avenue Louise, B-1050 Brussels, Belgium Tel. (32) 2 646 86 06, fax (32) 2 646 91 52
	DowAgroSciences	3 Milton Park, Abingdon, Oxon OX 14 4RN, United Kingdom Tel. (44) 1235 437920, fax (44) 1235-737998
	AgriChem BV	Koopvaardijweg 9, 4906 CV Oosterhout, The Netherlands Tel. (31) (0) 162 431 931, fax (31) (0) 162 456 797
	United Phosphorus Limited	Chadwick House, Birchwood Park, Warrington, Cheshire WA3 6AE, United Kingdom Tel. (44) (0) 1925 81 9999, fax (44) (0) 1925 81 7425
Imazalil	Inter-Trade R & D APS	Ålevej 9, DK-9881 Bindslev, Denmark Tel. (45) 98 93 89 77, fax (45) 98 93 80 01
	Makhteshim Agan International Coordination Center	283 Avenue Louise, B-1050 Brussels, Belgium Tel. (32) 2 646 86 06, fax (32) 2 646 91 52
	AgriChem BV	Koopvaardijweg 9, 4906 CV Oosterhout, The Netherlands Tel. (31) (0) 162 431 931, fax (31) (0) 162 456 797
	Certis Europe BV	Boulevard de la Woluwe/Woluwedal 60, B-1200 Brussels, Belgium Tel. (32) 2 331 38 94, fax (32) 2 331 38 60
	United Phosphorus Limited	Chadwick House, Birchwood Park, Warrington, Cheshire WA3 6AE, United Kingdom Tel. (44) (0) 1925 81 9999, fax (44) (0) 1925 81 7425
	Janssen Pharmaceutica NV	Janssen PMP, Turnhoutseweg 30, B-2340 Beerse, Belgium Tel. (32) (0) 14 60 21 11, fax (32) (0) 14 60 59 51
	Laboratorios Agrochem SL	Laboratorios Agrochem SL, Technical and regulatory affairs department Tres Rieres 10, E-08292 Esparraguera (Barcelona), Espana Tel. (34) 93 777 48 53, fax (34) 93 777 50 59

Active substance	Producers' names	Address
Kresoxim-methyl	Hermoo Belgium NV	Lichtenberglaan 2045, B-3800 Sint-Truiden, Belgium Tel. (32) (0) 11 88 03 91, fax (32) (0) 11 70 74 84
	BASF Agro SAS	21, chemin de la Sauvegarde, F-69134 Ecully Cedex, France Tel. (33) 4 72 32 45 45, fax (33) 4 72 32 53 41
Prohexadion-calcium	BASF Agro SAS	21, chemin de la Sauvegarde, F-69134 Ecully Cedex, France Tel. (33) 4 72 32 45 45, fax (33) 4 72 32 53 41
	Fine Agrochemicals Ltd	Hill End House, Whittington, Worcester WR5 2RQ, United Kingdom Tel. (44) 1905 361800, fax (44) 1905 361818
Spiroxamin	Bayer CropScience AG	Alfred-Nobel-Strasse 50, D-40789 Monheim-am-Rhein, Germany Tel. (49) 2173 38 7583, fax (49) 2173 38 3735