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Contents

[1] Text with EEA relevance

(Continued overleaf)

EN

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

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

II *Acts whose publication is not obligatory*

Commission

EN

[1] Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1247/2006

of 18 August 2006

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 Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables [1], and in particular Article 4(1) thereof,

Whereas:

(1) Regulation (EC) No 3223/94 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 the Annex thereto.

(2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 19 August 2006.

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

Done at Brussels, 18 August 2006.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

[1] OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 386/2005 (OJ L 62, 9.3.2005, p. 3).

ANNEX

to Commission Regulation of 18 August 2006 establishing the 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
0707 00 05	052	87,5
	999	87,5
0709 90 70	052	91,7
	999	91,7
0805 50 10	388	62,5
	524	53,0
	528	55,5
	999	57,0
0806 10 10	052	101,1
	220	108,4
	624	164,6
	999	124,7
0808 10 80	388	89,1
	400	86,2
	404	87,6
	508	88,9
	512	83,6
	528	79,6
	720	81,3
	800	149,6
	804	92,5
	999	93,2
0808 20 50	052	126,5
	388	86,6
	999	106,6
0809 30 10, 0809 30 90	052	134,8
	999	134,8
0809 40 05	052	39,5
	098	49,8
	624	150,2
	999	79,8

(1) Country nomenclature as fixed by Commission Regulation (EC) No 750/2005 (OJ L 126, 19.5.2005, p. 12). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC, EURATOM) No 1248/2006

of 7 August 2006

amending Regulation (EC, Euratom) No 2342/2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities [1], and in particular Article 183 thereof,

Having consulted the European Parliament, the Council, the Court of Justice of the European Communities, the Court of Auditors, the European Economic and Social Committee, the Committee of the Regions, the Ombudsman and the European Data Protection Supervisor,

Whereas:

(1) The obligation for the Commission to inform the budgetary authority by 15 April of the cancellation of carried over appropriations which have not been committed by 31 March has proven to be too strict and it should therefore be extended by two weeks to 30 April.

(2) It should be specified that where the system of provisional twelfths is to be applied, the total allotted appropriations of the previous financial year are to be understood as referring to appropriations for the financial year after adjustment for any transfers made during that financial year.

(3) It should be made clear that the rules on the rate of conversion between the euro and another currency set out in Articles 7 and 8 of Commission Regulation (EC, Euratom) No 2342/2002 [2] apply only to conversions carried out by authorising officers and not to those carried out by contractors or beneficiaries, on the basis of the specific rules agreed in contracts or grant agreements. For reasons of efficiency, the Commission's accounting officer should be authorised to establish the monthly accounting exchange rate of the euro to be used for accounts purposes. In addition, for reasons of transparency and equal treatment of Community officials, a specific rule on conversion rates should be established for staff expenditure paid in a currency other than the euro.

(4) As regards the principle of sound financial management, the content of the *ex ante* evaluation should be clarified and the scope of the *ex ante*, interim or *ex post* evaluation should be better targeted, having due regard to the principle of proportionality. The priorities of evaluation should thus be redirected in order to focus on proposals with an impact on business and/or citizens and to cover pilot projects and preparatory actions to be continued. In addition, complementarity should be ensured when projects or actions are already subject to evaluation (for example, tasks shared between the Commission and Member States).

(5) For the purpose of *ex ante* verification for the authorisation of expenditure, a series of similar individual transactions relating to routine staff expenditure on salaries, pensions, reimbursement of mission expenses and medical expenses may be considered by the authorising office responsible to constitute a single operation. In that case, the authorising officer responsible, in accordance with his risk assessment, should carry out appropriate *ex post* verification.

(6) It is appropriate to include in the report on negotiated procedures only the cases of the use of negotiated procedures which constitute exceptions to the normal procurement procedures.

(7) Following the introduction of accrual accounting on 1 January 2005, and the availability of accounting data at any moment in the informatics system, it is more logical and quicker to draw up the trial balance on the day on which the accounting officer terminates his duty. If he terminates his duty on 31 December, the trial balance could be prepared the same day without waiting for the provisional accounts to be finalised.

[1] OJ L 248, 16.9.2002, p. 1.
[2] OJ L 357, 31.12.2002, p. 1. Regulation as amended by Regulation (EC, Euratom) No 1261/2005 (OJ L 201, 2.8.2005, p. 3).

(8) In order to render effective the accounting officer's responsibility for treasury management, he should be authorised to communicate to financial institutions with which he has opened accounts the names and specimen signatures of the officials authorised to sign banking operations.

(9) The maximum amount which can be paid by the imprest administrator should be increased from EUR 30 000 to EUR 60 000 when payments by budgetary procedures are materially impossible or less effective.

(10) In the light of Article 21a of the Staff Regulations of Officials and the Conditions of Employment of other Servants of the European Communities, the authorising officer by delegation or sub-delegation should, in the case of confirmation of instruction, be allowed not to carry out the instruction if it is manifestly illegal.

(11) Given the complementary roles of the authorising officers and the accounting officer in the process of recovery by offsetting, providing for consultation between them before offsetting is justified.

(12) When the debtor is a national authority or one of its administrative entities, in order to take account of the procedures existing at national levels, the accounting officer should inform the Member States concerned at least 10 working days in advance of his intention to resort to recovery by offsetting. However, in agreement with the Member State or administrative entity concerned, the accounting officer should be able to proceed with the recovery by offsetting before that deadline.

(13) Where the debt is paid before the deadline no default interest will be due (period of grace) and recovery by offsetting before that deadline should be limited to cases where the accounting officer has justified reasons for considering the financial interests of the Communities to be at stake.

(14) In order to protect the financial interests of the Communities, bank guarantees that secure a Community claim pending appeal against a fine should be completely independent of the obligation laid down in the contract.

(15) The content of the financing decision should be further specified. For grants and procurement, the notion of 'essential elements' of an action involving expenditure from the budget should be defined in more detail. Moreover, it should be made clear that the work programme referred to in Article 110 of Regulation (EC, Euratom) No 1605/2002, hereinafter 'the Financial Regulation', may constitute a financing decision provided that it contains a sufficiently detailed framework.

(16) Where a global budgetary commitment is made, any authorising officer — not only the authorising officer by delegation — may be responsible for the legal commitments implementing the global commitment.

(17) The payment time-limits for contracts and grant agreements which depend on the approval of a report or certificate should be revised in order to make certain that payments are made on the basis of an approved report or certificate. Moreover, the time-limit for approval of a report related to a grant agreement involving actions which are particularly complex to evaluate should be brought into line with the current time-limit for complex service contracts.

(18) Without modifying the existing time-limits or affecting the beneficiaries' rights, the authorising officer responsible should also, for simplification reasons, be able to decide that approval of the report or certificate and payment can be made within a single time-limit.

(19) The thresholds for low-value contracts, fixed in 1994, should be updated and raised from EUR 50 000 to EUR 60 000 and from EUR 13 800 to EUR 25 000 respectively. Moreover, it should be specified that all contracts with a value equal to or less than EUR 60 000 may be awarded after a negotiated procedure.

(20) In addition, the implementing rules should define more precisely the procedure to be followed for certain research and development service contracts and certain service contracts intended for broadcasting which are excluded from the scope of the Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public work contracts, public supply contracts and public service contracts [1]. In the light of the principle of transparency, those contracts may be awarded following a negotiated procedure after publication of a tender notice.

[1] OJ L 134, 30.4.2004, p. 114. Directive as last amended by Commission Regulation (EC) No 2083/2005 (OJ L 333, 20.12.2005, p. 28).

(21) With a view to further simplifying the management of the procurement procedures, economic operators should be able to participate in a procedure on the basis of a declaration on their honour stating that they are not in one of the situations giving grounds for exclusion from that procurement procedure, except in the case of restricted procedures, competitive dialogue and negotiated procedures after publication of a contract notice whenever the contracting authority limits the number of candidates to be invited to negotiate or submit a tender. However, in line with the principles of Directive 2004/18/EC and in order better to protect the financial interests of the Communities, for contracts covered by Directive 2004/18/EC and high value contracts in the external field, the economic operator to whom the contract is to be awarded should nevertheless have to provide evidence confirming the initial declaration. Whenever a candidate or tenderer is required to provide evidence, the contracting authority should also consider evidence provided by that candidate or tenderer in another procurement procedure launched by the same contracting authority, provided that the evidence is not more than one year old starting from its issuing date and that it is still valid.

(22) In external actions, the competitive negotiated procedure should be rendered more efficient and the negotiated procedure should be allowed in the event of two failures of a competitive negotiated procedure and in the event of one failure when the competitive negotiated procedure follows the unsuccessful use of a framework contract. The option of not requiring proof of technical and economic capacity should be allowed up to the thresholds appropriate in that specific policy area for each type of contract. In that case also, the authorising officer responsible should be able to justify his choice. The evaluation committee or the contracting authority should have the option of asking candidates or tenderers to supply additional documents or clarify information, as provided for in the case of contracts awarded by the institutions on their own account.

(23) In external actions, the legal framework for the procurement should also be simplified as regards the publication of the pre-information notice for international calls for tenders and the requirement for a performance guarantee. The pre-information notice should be published as early as possible and not necessarily before 31 January. Moreover, the performance guarantee should be required only in the event of procurement with a high value and the authorising officer responsible should have the option of waiving the requirement for a guarantee in the case of pre-financing to a public body, depending on his risk assessment.

(24) With regard to the award of grants, in order to reduce the administrative burden, it should be accepted that the *de jure* or de facto monopoly of the beneficiary can be substantiated in the award decision.

(25) The requirement to attach an external audit to the application should apply only to applications for grants with a value equal to or more than EUR 500 000 for actions and to operating grants with a value equal to or more than EUR 100 000.

(26) Co-financing in kind by beneficiaries should be made easier, if appropriate or necessary, and the notion of bodies which pursue an aim of European general interest and which may receive operating grants should include European bodies involved in promoting citizenship or innovation.

(27) Applicants should be informed as soon as possible of the rejection of their application.

(28) In the case of operating grants to bodies which pursue an aim of general European interest, the implementation of the non-profit rule should be limited to the percentage of co-financing corresponding to the Community's contribution to the operating budget in order to take account of the rights of the other public contributors which are also required to recover the percentage of annual profit corresponding to their contribution. For the purpose of calculating the amount to be recovered, the percentage of the contributions in kind to the operating budget should not be taken into account.

(29) In order to protect the Communities' financial interests, the requirement of guarantees for pre-financing should apply to any pre-financing exceeding 80 % of the amount of the grant and EUR 60 000.

(30) Where pre-financing is split, where the consumption of any earlier pre-financing is less than 70 %, a new pre-financing should be possible but the amount of the new payment should be reduced by the unused amounts of the previous payment.

(31) It should be specified that in the case of public bodies, external audit or certification to be attached to grant applications or requests for payments, may be carried out by a competent and independent public officer.

(32) Following the adoption by the Commission's accounting officer in December 2004, pursuant to Article 133 of the Financial Regulation, of the accounting rules and methods and the harmonised chart of accounts, the Title on presentation of the accounts and accounting should be updated by deleting provisions which are no longer necessary.

(33) In order to take account of Decision 2005/118/EC of the European Parliament, the Council, the Commission, the Court of Justice, Court of Auditors, the European Economic and Social Committee, the Committee of the Regions and the Ombudsman of 26 January 2005 setting up a European Administrative School [1], the list of European offices should be adjusted to reflect that the European Administrative School is presently attached administratively to the European Communities Personnel Selection Office.

(34) Regulation (EC, Euratom) No 2342/2002 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC, Euratom) No 2342/2002 is amended as follows:

1. In Article 6(3), second subparagraph, '15 April' is replaced by '30 April'.

2. The following Article 6a is inserted:

'*Article 6a*

Provisional twelfths

(Article 13(2) of the Financial Regulation)

The total allotted appropriations of the previous financial year, as specified in Article 13(2) of the Financial Regulation, shall be understood to refer to the appropriations for the financial year referred to in Article 5 of this Regulation, after adjustment for the transfers made during that financial year.'

3. Articles 7 and 8 are replaced by the following:

'*Article 7*

Rate of conversion between the euro and other currencies

(Article 16 of the Financial Regulation)

1. Without prejudice to specific provisions arising from the application of sector-specific regulations, conversion between the euro and another currency by the responsible authorising officer shall be made using the daily euro exchange rate published in the C series of the *Official Journal of the European Union*.

Where conversion between the euro and another currency is to be made by the contractors or beneficiaries, the specific arrangements for conversion contained in procurement contracts, grant agreements or financing agreements shall apply.

2. If no daily euro exchange rate is published in the *Official Journal of the European Union* for the currency in question, the responsible authorising officer shall use the accounting rate referred to in paragraph 3.

3. For the purposes of the accounts provided for in Articles 132 to 137 of the Financial Regulation and subject to Article 213 of this Regulation, conversion between the euro and another currency shall be made using the monthly accounting exchange rate of the euro. That accounting exchange rate shall be established by the Commission's accounting officer by means of any source of information he regards as reliable, on the basis of the exchange rate on the penultimate working day of the month preceding that for which the rate is established.

Article 8

Rate to be used for conversion between the euro and other currencies

(Article 16 of the Financial Regulation)

1. Without prejudice to specific provisions deriving from the application of sector-specific regulations, or from specific procurement contracts, grant agreements and financing agreements, the rate to be used for conversion between the euro and other currencies shall, in cases where the conversion is carried out by the responsible authorising officer, be that of the day on which the payment order or recovery order is drawn up by the authorising department.

2. In the case of euro imprest accounts, the rate to be used for the conversion between the euro and other currencies shall be determined by the date of payment by the bank.

3. For the regularisation of imprest accounts in national currencies, as referred to in Article 16 of the Financial Regulation, the rate to be used for the conversion between the euro and other currencies shall be that of the month of the expenditure from the imprest account concerned.

4. For the reimbursement of flatrate expenditure, or expenditure arising from the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities (hereinafter: Staff Regulations) which is fixed at a ceiling, and which is paid in a currency other than the euro, the rate to be used shall be that which is in force when the entitlement arises.'

[1] OJ L 37, 10.2.2005, p. 14.

4. Article 21 is replaced by the following:

'*Article 21*

Evaluation

(Article 27 of the Financial Regulation)

1. All proposals for programmes or activities occasioning budget expenditure shall be the subject of an *ex ante* evaluation, which shall address:

(a) the need to be met in the short- or long-term;

(b) the added value of Community involvement;

(c) the objectives to be achieved;

(d) the policy options available, including the risks associated with them;

(e) the results and impacts expected, in particular economic, social and environmental impacts, and the indicators and evaluation arrangement needed to measure them;

(f) the most appropriate method of implementation for the preferred option(s);

(g) the internal coherence of the proposed programme or activity and its relations with other relevant instruments;

(h) the volume of appropriations, human resources and other administrative expenditure to be allocated with due regard for the cost-effectiveness principle;

(i) the lessons learned from similar experiences in the past.

2. The proposal shall set out the arrangements for monitoring, reporting and evaluation, taking due account of the respective responsibilities of all levels of government that will be involved in the implementation of the proposed programme or activity.

3. All programmes or activities, including pilot projects and preparatory actions, where the resources mobilised exceed EUR 5 000 000 shall be the subject of an interim and/or *ex post* evaluation of the human and financial resources allocated and the results obtained in order to verify that they were consistent with the objectives set, as follows:

(a) the results obtained in carrying out a multiannual programme shall be periodically evaluated in accordance with a timetable which enables the findings of that evaluation to be taken into account for any decision on the renewal, modification or suspension of the programme;

(b) activities financed on an annual basis shall have their results evaluated at least every six years.

Points (a) and (b) of the first subparagraph shall not apply to each of the projects or actions conducted within the activities for which the requirement may be met by the final reports sent by the bodies which carried out the action.

4. The evaluations referred to in paragraphs 1 and 3 shall be proportionate to the resources mobilised for and the impact of the programme or activity concerned.'

5. Article 45 is amended as follows:

(a) In paragraph 1, the first sentence is replaced by the following:

'The authorising officer responsible may be assisted in his duties by persons covered by the Staff Regulations (hereinafter: staff) entrusted, under his responsibility, with certain operations required for the implementation of the budget and production of the financial and management information.'

(b) Paragraph 2 is replaced by the following:

'2. Each institution shall inform the budgetary authority whenever an authorising officer by delegation takes up his duties, changes duties or terminates his duties.'

6. Article 47 is amended as follows:

(a) In paragraph 3, the following subparagraphs are added:

'For the purpose of *ex ante* verification, a series of similar individual transactions relating to routine expenditure on salaries, pensions, reimbursement of mission expenses and medical expenses may be considered by the authorising officer responsible to constitute a single operation.

In the case referred to in the second subparagraph, the authorising officer responsible shall, depending on his risk assessment, carry out an appropriate *ex post* verification, in accordance with paragraph 4.'

(b) Paragraph 5 is replaced by the following:

'5. The members of staff responsible for the verifications referred to in paragraphs 2 and 4 shall be different from those members of staff performing the tasks of initiation referred to in paragraph 1 and they shall not be subordinate to the latter.'

7. In Article 54, the first sentence is replaced by the following:

'Authorising officers by delegation shall record, for each financial year, contracts concluded under the negotiated procedures referred to in Articles 126(1)(a) to (g), 127(1)(a) to (d), 242, 244 and 246.'

8. Article 56 is replaced by the following:

'*Article 56*

Termination of duties of the accounting officer

(Article 61 of the Financial Regulation)

1. A trial balance shall be drawn up without delay in the event of termination of the duties of the accounting officer.

2. The trial balance accompanied by a handing-over report shall be transmitted by the accounting officer who is terminating his duties or, if this is not possible, by an official in his department to the new accounting officer.

The new accounting officer shall sign the trial balance in acceptance within one month from the date of transmission and he may make reservations.

The handing-over report shall also contain the result of the trial balance and any reservations made.

3. Each institution shall inform the budgetary authority of the appointment or termination of duties of its accounting officer.'

9. In Article 60, the second paragraph is replaced by the following:

'To that end, the accounting officer of each institution shall communicate to all financial institutions with which the institution concerned has opened accounts the names and specimen signatures of the authorised members of staff.'

10. Article 64 is amended as follows:

(a) The title is replaced by the following:

'*Article 64*

Legal Entities File

(Article 61 of the Financial Regulation)'

(b) Paragraph 1 is replaced by the following:

'1. The accounting officer may make payments by bank credit transfer only if the payee's bank account details and information confirming the payee's identity, or any modification, have first been entered in a common file by the institution.

Any such entry in the file of the payee's legal and bank account details or modification of those details shall be based on a supporting document, the form of which shall be defined by the Commission's accounting officer.'

(c) In paragraph 2, the second subparagraph is replaced by the following:

'Authorising officers shall inform the accounting officer of any change in the legal and bank account details communicated to them by the payee and shall check that these details are valid before a payment is made.'

11. In Article 66, paragraph 2 is replaced by the following:

'2. The imprest administrator may provisionally validate and pay expenditure, on the basis of a detailed framework set out in the instructions from the authorising officer responsible. Those instructions shall specify the rules and conditions under which the provisional validation and payments shall be carried out and, where appropriate, the terms for signing legal commitments within the meaning of Article 94(1)(e).'

12. In Article 67(2), the second subparagraph is replaced by the following:

'The maximum amount which may be paid by the imprest administrator where it is materially impossible or inefficient to carry out payment operations by budgetary procedures shall not exceed EUR 60 000 for each item of expenditure.'

13. In Article 68, the first and second sentences are replaced by the following:

'Imprest administrators shall be chosen from officials or, should the need arise and only in duly substantiated cases, from other members of staff.'

14. Article 70 is amended as follows:

(a) In paragraph 1, the second sentence is replaced by the following:

'Statements of that account shall be accessible at all times to the authorising officer responsible and a list of transactions shall be established at least once a month and be sent the following month together with supporting documents by the imprest administrator to the authorising officer responsible for settlement of the imprest operations.'

(b) In paragraph 2, the first sentence is replaced by the following:

'The accounting officer shall carry out, or have carried out by a staff member in his own department or in the authorising department specially empowered for that purpose, checks, which must as a general rule be effected on the spot and without warning, to verify the existence of the funds allocated to the imprest administrators and the bookkeeping and to check that imprest transactions are settled within the time-limit set.'

15. In Article 73(1), the second sentence is replaced by the following:

'If that instruction is confirmed in writing and that confirmation is received in good time and is sufficiently clear, in that it refers explicitly to the points which the authorising officer by delegation or subdelegation has challenged, the authorising officer may not be held liable; he shall carry out the instruction, unless it is manifestly illegal or constitutes a breach of the relevant safety standards.'

16. In Article 78(3), points (b) to (e) are replaced by the following:

'(b) if payment of the debt is made before the deadline specified, no default interest will be due;

(c) failing payment by the deadline referred to in point (b) the debt shall bear interest at the rate referred to in Article 86, without any prejudice to any specific regulations applicable;

(d) failing payment by the deadline referred to in point (b) the institution shall effect recovery either by offsetting or by enforcement of any guarantee lodged in advance;

(e) the accounting officer may effect recovery by offsetting before the deadline referred to in point (b), where it is necessary to protect the Communities' financial interests when he has justified reasons for believing that the amount due to the Commission would be lost, after the debtor has been informed of the reasons and date of the recovery by offsetting.'

17. In Article 81(1), point (f) is replaced by the following:

'(f) the deadline referred to in Article 78(3)(b).'

18. Article 83 is replaced by the following:

'Article 83

Recovery by offsetting

(Article 73 of the Financial Regulation)

1. Where the debtor has a claim on the Communities that is certain, of a fixed amount and due, relating to a sum established by a payment order, the accounting officer shall, once the deadline referred to in Article 78(3)(b) has passed, recover established amounts receivable by offsetting.

In exceptional circumstances, where it is necessary to safeguard the financial interests of the Communities, when the accounting officer has justified reasons for believing that the amount due to the Communities would be lost, the accounting officer shall recover by offsetting before the deadline referred to in Article 78(3)(b).

2. Before proceeding with any recovery in accordance with paragraph 1, the accounting officer shall consult the authorising officer responsible and inform the debtors concerned.

Where the debtor is a national authority or one of its administrative entities, the accounting officer shall also inform the Member State concerned at least 10 working days in advance of his intention to resort to recovery by offsetting. However, in agreement with the Member State or administrative entity concerned, the accounting officer may proceed with the recovery by offsetting before that deadline has passed.

3. The offsetting referred to in paragraph 1 shall have the same effect as a payment and discharge the Communities for the amount of the debt and, where appropriate, of the interest due.'

19. In Article 84, paragraph 1 is replaced by the following:

'1. Without prejudice to Article 83, if the full amount has not been recovered by the deadline referred to in Article 78(3)(b) and specified in the debit note, the accounting officer shall inform the authorising officer responsible and shall without delay launch the procedure for effecting recovery by any means offered by the law, including, where appropriate, by enforcement of any guarantee lodged in advance.'

20. In Article 85, point (a) of the first paragraph is replaced by the following:

'(a) the debtor undertakes to pay interest at the rate specified in Article 86 for the entire additional period allowed, starting from the deadline referred to in Article 78(3)(b).'

21. The following Article 85a is inserted:

'*Article 85a*

Recovery of fines, periodic penalty payments and other penalties

(Articles 73 and 74 of the Financial Regulation)

1. Where an action is brought before a Community court against a Commission decision imposing a fine, periodic penalty payment or other penalty under the EC Treaty or Euratom Treaty and until such time as all legal remedies have been exhausted, the accounting officer shall provisionally collect the amounts concerned from the debtor or request him to provide a financial guarantee. The guarantee requested shall be independent of the obligation to pay the fine, periodic penalty payment or other penalty and shall be enforceable upon first call. It shall cover the claim as to principal and the interest due as specified in Article 86(5).

2. After all legal remedies have been exhausted, the provisionally collected amounts and the interest they have yielded shall be entered into the budget or repaid to the debtor. In the event of a financial guarantee, the latter shall be enforced or released.'

22. Article 86 is amended as follows:

(a) Paragraphs 1, 2 and 3 are replaced by the following:

'1. Without prejudice to any specific provisions deriving from the application of sector-specific regulations, any amount receivable not repaid on the deadline referred to in Article 78(3)(b) shall bear interest in accordance with paragraphs 2 and 3 of this Article.

2. The interest rate for amounts receivable not repaid on the deadline referred to in Article 78(3)(b) shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the deadline falls, increased by:

(a) seven percentage points where the obligating event is a public supply and service contract referred to in Title V;

(b) three and a half percentage points in all other cases.

3. Interest shall be calculated from the calendar day following the deadline referred to in Article 78(3)(b) and specified in the debit note up to the calendar day on which the debt is repaid in full.'

(b) Paragraph 5 is replaced by the following:

'5. In the case of fines, where the debtor provides a financial guarantee which is accepted by the accounting officer in lieu of a provisional payment, the interest rate applicable from the deadline referred to in Article 78(3)(b) shall be the rate referred to in paragraph 2 of this Article increased by only one and a half percentage points.'

23. Article 90 is replaced by the following:

'*Article 90*

Financing decision

(Article 75 of the Financial Regulation)

1. The financing decision shall set out the essential elements of an action involving expenditure from the budget.

2. For grants, the decision adopting the annual work programme referred to in Article 110 of the Financial Regulation shall be considered to be the financing decision within the meaning of Article 75 of the Financial Regulation, provided that it constitutes a sufficiently detailed framework.

As regards procurement, where the implementation of the corresponding appropriations is provided for by an annual work programme constituting a sufficiently detailed framework, this work programme shall also be considered to be the financing decision for the procurement contracts involved.

3. In order to be considered a sufficiently detailed framework, the work programme adopted by the Commission shall set out the following:

(a) For grants:

(i) the reference to the basic act and the budgetary line;

(ii) the priorities of the year, the objectives to be fulfilled and the foreseen results with the appropriations authorised for the financial year;

(iii) the essential selection and award criteria to be used to select the proposals;

(iv) the maximum possible rate of co-financing and if different rates are envisaged the criteria to be followed for each rate;

(v) the timetable and the indicative amount of the calls for proposals.

(b) For procurement:

(i) the global budgetary envelope reserved for the procurements during the year;

(ii) the indicative number and type of contracts envisaged and if possible their subject in generic terms;

(iii) the indicative time frame for launching the procurement procedures.

If the annual work programme does not provide this detailed framework for one or more actions, it must be modified accordingly or a specific financing decision must be adopted containing the information referred to in points (a) and (b) of the first subparagraph for the actions concerned.

4. Without prejudice to any specific provision of a basic act, any substantial change in a financing decision already adopted shall follow the same procedure as the initial decision.'

24. In Article 94(1), points (d) and (e) are replaced by the following:

'(d) where the global commitment is implemented by a number of legal commitments, for which different authorising officers are responsible;

(e) where, in connection with imprest accounts available for external action, legal commitments must be signed by members of staff of the local units referred to in Article 254 on the instructions of the authorising officer responsible, who remains, however, fully responsible for the underlying transaction.'

25. Article 100 is amended as follows:

(a) Points (b) and (c) are replaced by the following:

'(b) in respect of other remunerations such as staff paid on an hourly or daily basis: a statement signed by the authorised member of staff showing the days and hours worked;

(c) in respect of overtime: a statement signed by the authorised member of staff certifying the amount of overtime worked;'

(b) In point (d), point (ii) is replaced by the following:

'(ii) the statement of mission expenses, signed by the member of staff on mission and by the administrative superior to whom the appropriate powers have been delegated, and showing, in particular, the place of mission, the dates and times of departure and arrival at the place of mission, travel expenses, subsistence expenses, and other expenses duly authorised on production of supporting documents.'

26. Article 101 is replaced by the following:

'Article 101

Material form of 'passed for payment'

(Article 79 of the Financial Regulation)

In a non-computerised system, 'passed for payment' shall take the form of a stamp incorporating the signature of the authorising officer responsible or of a technically competent member of staff, empowered by the authorising officer responsible in accordance with Article 97. In a computerised system, 'passed for payment' shall take the form of an electronically secured validation by the authorising officer responsible or by a technically competent member of staff, empowered by the authorising officer responsible.'

27. In Article 106, paragraph 3 is replaced by the following:

'3. For contracts and grant agreements under which payment depends on the approval of a report or a certificate, the time-limit for the purposes of the payment periods referred to in paragraphs 1 and 2 shall not begin to run until the report or certificate in question has been approved. The beneficiary shall be informed without delay.

The time allowed for approval may not exceed:

(a) 20 calendar days for straightforward contracts relating to the supply of goods and services;

(b) 45 calendar days for other contracts and grant agreements;

(c) 60 calendar days for contracts and grant agreements involving technical services or actions which are particularly complex to evaluate.

The authorising officer responsible shall inform the beneficiary by means of a formal document of any suspension of the period allowed for approval of the report or certificate.

The authorising officer responsible may decide that a single time-limit for the approval of the report or the certificate and payment shall apply. This single time-limit cannot exceed the aggregated maximum applicable periods for approval of the report or certificate and for payment.'

28. In Article 114, the fourth paragraph is replaced by the following:

'On the basis of the report and the hearing, the institution shall adopt either a reasoned decision terminating the proceedings or a reasoned decision in accordance with Articles 22 and 86 of, and Annex IX to, the Staff Regulations. Decisions imposing disciplinary measures or financial penalties shall be notified to the interested party and communicated, for information purposes, to the other institutions and the Court of Auditors.'

29. In Article 116, paragraph 1 is replaced by the following:

'1. Building contracts cover the purchase, long lease, usufruct, leasing, rental or hire purchase, with or without option to buy, of land, existing buildings or other real estate.'

30. In Article 118(3), the second sentence of the first subparagraph is replaced by the following:

'Without prejudice to contracts concluded after a negotiated procedure as referred to in Article 126, the contract notice shall be compulsory for the following contracts: contracts with an estimated value equal to or above the thresholds laid down in points (a) and (c) of Article 158(1); research and development contracts listed in category 8 of Annex II A to Directive 2004/18/EC with an estimated value of equal to or above the threshold laid down in point (b) of Article 158(1) of this Regulation for research and development contracts listed.'

31. In Article 119(1), point (b) is replaced by the following:

'(b) the annual publication of a list of contractors, specifying the subject and the value of the contract awarded, for contracts with a value equal to or greater than EUR 25 000.'

32. In Article 126(1), the second subparagraph is replaced by the following:

'Contracting authorities may also use the negotiated procedure without prior publication of a contract notice in the case of contracts with a value less than or equal to EUR 60 000.'

33. In Article 127(1), the following points (f) and (g) are added:

'(f) for research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority;

(g) for service contracts for the acquisition, development, production or co-production of programme material intended for broadcasting by broadcasters and contracts for broadcasting time.'

34. In Article 128, paragraph 1 is replaced by the following:

'1. A call for expressions of interest shall constitute a means of pre-selecting candidates who will be invited to submit tenders in response to future restricted invitations to tender for contracts with a value of more than EUR 60 000, subject to Articles 126 and 127.'

35. Article 129 is replaced by the following:

'*Article 129*

Lowvalue contracts

(Article 91 of the Financial Regulation)

1. A negotiated procedure with consultation of at least five candidates may be used for contracts with a value less than or equal to EUR 60 000.

If, following consultation of the candidates, the contracting authority receives only one tender that is administratively and technically valid, the contract may be awarded provided that the award criteria are met.

2. For contracts with a value less than or equal to EUR 25 000, the procedure referred to in paragraph 1 with consultation of at least three candidates may be used.

3. Contracts with a value less than or equal to EUR 3 500 may be awarded on the basis of a single tender.

4. Payments in respect of items of expenditure for an amount less than or equal to EUR 200 may consist simply in payment against invoices, without prior acceptance of a tender.'

36. Article 134 is replaced by the following:

'*Article 134*

Evidence

(Articles 93 and 94 of the Financial Regulation)

1. Candidates and tenderers shall provide a declaration on their honour, duly signed and dated, stating that they are not in one of the situations referred to in Article 93 or 94 of the Financial Regulation.

However, in the case of restricted procedures, competitive dialogue and negotiated procedures after publication of a contract notice, whenever the contracting authority limits the number of candidates to be invited to negotiate or submit a tender, all the candidates shall provide the certificates referred to in paragraph 3.

2. The tenderer to whom the contract is to be awarded shall provide, within a time-limit defined by the contracting authority and preceding the signature of the contract, the evidence referred to in paragraph 3, confirming the declaration referred to in paragraph 1 in the following cases:

(a) for contracts awarded by the institutions on their own account, with a value equal to or greater than the thresholds referred to in Article 158;

(b) for contracts in the field of external actions with a value equal to or greater than the thresholds laid down in Article 241(1)(a), Article 243(1)(a), or Article 245(1)(a).

For contracts with a value less than the thresholds referred to in points (a) and (b), the contracting authority may, where it has doubts as to whether the tenderer to whom the contract is to be awarded is in one of the situations of exclusion, require him to provide the evidence referred to in paragraph 3.

3. The contracting authority shall accept as satisfactory evidence that the candidate or tenderer to whom the contract is to be awarded is not in one of the situations described in point (a), (b) or (e) of Article 93(1) of the Financial Regulation, a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. The contracting authority shall accept, as satisfactory evidence that the candidate or tenderer is not in the situation described in point (d) of Article 93(1) of the Financial Regulation, a recent certificate issued by the competent authority of the State concerned.

Where the document or certificate referred to in the first subparagraph is not issued in the country concerned and for the other cases of exclusion referred to in Article 93 of the Financial Regulation, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

4. Depending on the national legislation of the country in which the candidate or tenderer is established, the documents referred to in paragraphs 1 and 3 shall relate to legal persons and/or natural persons including, where considered necessary by the contracting authority, company directors or any person with powers of representation, decision-making or control in relation to the candidate or tenderer.

5. Where they have doubts as to whether candidates or tenderers are in one of the situations of exclusion, contracting authorities may themselves apply to the competent authorities referred to in paragraph 3 to obtain any information they consider necessary about that situation.

6. The contracting authority may waive the obligation of a candidate or tenderer to submit the documentary evidence referred to in paragraph 3 if such evidence has already been submitted to it for the purposes of another procurement procedure and provided that the documents are not more than one year old starting from their issuing date and that they are still valid.

In such a case, the candidate or tenderer shall declare on his honour that the documentary evidence has already been provided in a previous procurement procedure and confirm that no changes in his situation have occurred.'

37. Article 135 is amended as follows:

(a) Paragraph 2 is replaced by the following:

'2. The selection criteria shall be applied in every procurement procedure for the purpose of assessing the financial, economic, technical and professional capacity of the candidate or the tenderer.

The contracting authority may lay down minimum capacity levels below which candidates may not be selected.'

(b) Paragraph 6 is replaced by the following:

'6. The contracting authority may, depending on its assessment of the risks, decide not to require proof of the financial, economic, technical and professional capacity of candidates or tenderers in the case of the following contracts:

(a) contracts awarded by the institutions on their own account, with a value of less than or equal to EUR 60 000;

(b) contracts awarded in the field of external actions, with a value below the thresholds referred to in Article 241(1)(a), Article 243(1)(a), or Article 245(1)(a).

Where the contracting authority decides not to require proof of the financial, economic, technical and professional capacity of candidates or tenderers, no pre-financing shall be made unless a financial guarantee of an equivalent amount is provided.'

38. In Article 138(1), the introductory words are replaced by the following:

'Without prejudice to Article 94 of the Financial Regulation, contracts shall be awarded in one of the following two ways:'.

39. In Article 145(2), the first subparagraph is replaced by the following:

'Where the value of a contract exceeds the threshold laid down in Article 129(1), the authorising officer responsible shall appoint a committee to open the tenders.'

40. In Article 146(1), the second subparagraph is replaced by the following:

'That committee shall be appointed by the authorising officer responsible to give an advisory opinion on contracts with a value above the threshold referred to in Article 129(1).'

41. Article 152 is replaced by the following:

'Article 152

Guarantee for pre-financing

(Article 102 of the Financial Regulation)

A guarantee shall be required in return for the payment of pre-financing exceeding EUR 150 000 or in the case referred to in Article 135(6), second subparagraph.

However, where the contractor is a public body, the authorising officer responsible may, depending on his risk assessment, waive that obligation.

The guarantee shall be released as and when the pre-financing is deducted from interim payments or payments of balances to the contractor in accordance with the terms of the contract.'

42. In Article 155, the title is replaced by the following:

'Article 155

Separate contracts and contracts with lots

(Articles 91 and 105 of the Financial Regulation)'

43. In Article 157, point (b) is replaced by the following:

'(b) EUR 5 278 000 for works contracts.'

44. Article 158(1) is replaced by the following:

'1. The thresholds referred to in Article 105 of the Financial Regulation shall be:

(a) EUR 137 000 for the supply and service contracts listed in Annex IIA to Directive 2004/18/EC, with the exception of the research and development contracts listed in category 8 of that Annex;

(b) EUR 211 000 for the service contracts listed in Annex IIB to Directive 2004/18/EC and for the research and development service contracts listed in category 8 of Annex IIA to Directive 2004/18/EC;

(c) EUR 5 278 000 for works contracts.'

45. In Article 162, point (a) is replaced by the following:

'(a) a European body involved in education, training, information, innovation or research and study on European policies, any activities contributing to the promotion of citizenship or human rights, or a European standards body.'

46. In Article 164, the following paragraph 1a is inserted:

'1a. The grant agreement may lay down the arrangements and time-limits for suspension in accordance with Article 183.'

47. In Article 165, the following paragraph 3 is added:

'3. In the case of operating grants to bodies which pursue an aim of general European interest, the Commission shall be entitled to recover the percentage of the annual profit corresponding to the Community contribution to the operating budget of the bodies concerned where these bodies are also funded by public authorities which are themselves required to recover the percentage of the annual profit corresponding to their contribution. For the purpose of calculating the amount to be recovered, the percentage corresponding to the contributions in kind to the operating budget shall not be taken into account.'

48. In Article 168(1), point (c) is replaced by the following:

'(c) to bodies with a *de jure* or de facto monopoly, duly substantiated in the award decision;'.

49. Article 172 is amended as follows:

(a) In paragraph 2, the first sentence is replaced by the following:

'The authorising officer responsible may accept co-financing in kind, if considered necessary or appropriate.'

(b) The following paragraph 3 is added:

'3. For grants with a total value of less than or equal to EUR 25 000, the authorising officer responsible may, depending on his risk assessment, waive the obligation to provide the evidence for co-financing referred to in paragraph 1.

Where a single beneficiary is awarded several grants in a financial year, the threshold of EUR 25 000 shall apply to the total of those grants.'

50. Article 173 is amended as follows:

(a) Paragraph 2 is replaced by the following:

'2. The application shall show the legal status of the applicant and his financial and operational capacity to carry out the proposed action or work programme, subject to Article 176(4).

For that purpose, the applicant shall submit a declaration on his honour and, for applications for a grant exceeding EUR 25 000, any supporting documents requested, on the basis of his risk assessment, by the authorising officer responsible. The request for such documents shall be indicated in the call for proposals.

The supporting documents may consist in particular in the profit and loss account and the balance sheet for the last financial year for which the accounts were closed.'

(b) Paragraph 4 is amended as follows:

(i) The first subparagraph is replaced by the following:

'Where the application concerns grants for an action for which the amount exceeds EUR 500 000 or operating grants which exceed EUR 100 000, an audit report produced by an approved external auditor shall be submitted. That report shall certify the accounts for the last financial year available.'

(ii) The fourth and fifth subparagraphs are replaced by the following:

'In the case of partnerships as referred to in Article 163, the audit report referred to in the first subparagraph, covering the last two financial years available, must be produced before the framework agreement is concluded.

The authorising officer responsible may, depending on his risk assessment, waive the obligation of audit referred to in the first subparagraph for secondary and higher education establishments and beneficiaries who have accepted joint and several liabilities in the case of agreements with a number of beneficiaries.'

(iii) The following subparagraph is added:

'The first subparagraph shall not apply to public bodies and the international organisations referred to in Article 43(2).'

51. Article 176 is amended as follows:

(a) Paragraph 3 is replaced by the following:

'3. Financial and operational capacity shall be verified in particular on the basis of an analysis of any of the supporting documents referred to in Article 173 and requested by the authorising officer responsible in the call for proposals.'

(b) In paragraph 4, the first subparagraph is replaced by the following:

'The verification of financial capacity in accordance with paragraph 3 shall not apply to natural persons in receipt of scholarships, to public bodies or to the international organisations referred to in Article 43(2).'

52. Article 179 is replaced by the following:

'*Article 179*

Information for applicants

(Article 116 of the Financial Regulation)

Applicants shall be informed as soon as possible and in any case within 15 calendar days after the award decision has been sent to the beneficiaries.'

53. Article 180 is amended as follows:

(a) Paragraph 1 is replaced by the following

'1. For each grant, pre-financing may be split into several instalments.

The payment in full of the new pre-financing payment shall be subject to the consumption of at least 70 % of the total amount of any earlier pre-financing.

Where the consumption of the previous pre-financing is less than 70 %, the amount of the new pre-financing payment shall be reduced by the unused amounts of the previous pre-financing payment.

The statement of the beneficiary's outlay shall be produced in support of any request for a new payment.'

(b) Paragraph 2 is amended as follows:

(i) The first subparagraph is replaced by the following:

'A certificate on the financial statements and underlying accounts, produced by an approved auditor, or, in the case of public bodies, by a competent and independent public officer, may be demanded by the authorising officer responsible in support of any payment on the basis of his risk assessment. In the case of a grant for an action or of an operating grant, the certificate shall be attached to the request for payment. The certificate shall certify, in accordance with a methodology approved by the authorising officer responsible, that the costs declared by the beneficiary in the financial statements on which the request for payment is based are real, accurately recorded and eligible in accordance with the grant agreement.'

(ii) In the second subparagraph, the introductory words are replaced by the following:

'Except in the case of lump sums and flat rate financing, the certificate on the financial statements and underlying accounts shall be compulsory for interim payments per financial year and for payments of balances in the following cases.'

(iii) In the third subparagraph, the introductory words are replaced by the following:

'Depending on his risk assessment, the authorising officer responsible may also waive the obligation to provide such certificate on the financial statements and underlying accounts in the case of.'

54. Article 182 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'1. In order to limit the financial risks connected with the payment of pre-financing, the authorising officer responsible may, on the basis of his risk assessment either require the beneficiary to lodge a guarantee in advance, for up to the same amount as the pre-financing, or split the payments into several instalments.

However, for grants with a value of less than or equal to EUR 10 000, the authorising officer responsible may require the beneficiary to lodge a guarantee in advance only in duly substantiated cases.

Such a guarantee may also be required by the authorising officer responsible, depending on his risks assessment, in the light of the method of funding laid down in the grant agreement.

Whenever a guarantee is required, it is subject to the assessment and acceptance of the authorising officer responsible.'

(b) In paragraph 2, the first subparagraph is replaced by the following:

'Where the pre-financing represents over 80 % of the total amount of the grant and provided it exceeds EUR 60 000, a guarantee shall be required.'

55. Articles 195, 196, 197, 198, 200 and 202 are deleted.

56. Article 211 is replaced by the following:

'*Article 211*

Accounting reconciliations

(Article 135 of the Financial Regulation)

1. The data in the general ledger shall be kept and organised in such a way as to justify the content of each of the accounts included in the trial balance.

2. As regards the inventory of fixed assets, the provisions of Articles 220 to 227 shall apply.'

57. Article 212 is deleted.

58. Article 213 is amended as follows:

(a) In paragraph 2, the fourth subparagraph is replaced by the following:

'The rate to be used for conversion between the euro and another currency to draw up the balance sheet at 31 December of year N shall be that of the last working day of year N.'

(b) The following paragraph 3 is added:

'3. The accounting rules adopted under Article 133 of the Financial Regulation shall specify the conversion and re-evaluation rules to be provided for the purposes of accrual accounting.'

59. Article 222 is replaced by the following:

'*Article 222*

Entry of items in the inventory

(Article 138 of the Financial Regulation)

All items acquired with a period of use greater than one year, which are not consumables, and whose purchase price or production cost is higher than that indicated in the accounting rules adopted under Article 133 of the Financial Regulation shall be entered in the inventory and recorded in the fixed assets accounts.'

60. In Article 240, paragraph 1 is replaced by the following:

'1. The pre-information notice for international calls for tender shall be sent to the office for Official Publications of the European Communities as early as possible for supply and service contracts and as quickly as possible after the decision authorising the programme for works contracts.'

61. Article 241 is amended as follows:

(a) Paragraph 1 is amended as follows:

(i) In the first subparagraph, point (a) is replaced by the following:

'(a) for contracts with a value of EUR 200 000 or more: an international restricted invitation to tender within the meaning of Article 122(2) and point (a) of Article 240(2).'

(ii) The second subparagraph is replaced by the following:

'Contracts with a value less than or equal to EUR 5 000 may be awarded on the basis of a single tender.'

(b) In paragraph 2, the following subparagraph is added:

'If the number of candidates satisfying the selection criteria or the minimum capacity levels is less than the minimum number, the contracting authority may invite to submit a tender only those candidates who satisfy the criteria to submit a tender.'

(c) Paragraph 3 is replaced by the following:

'3. Under the procedure referred to in point (b) of paragraph 1, the contracting authority shall draw up a list of at least three tenderers of its choice. The procedure involves limited competitive tendering, without publication of a notice and shall be known as a competitive negotiated procedure not covered by Article 124.

Tenders shall be opened and evaluated by an evaluation committee with the necessary technical and administrative expertise. The members of the evaluation committee must sign a declaration of impartiality.

If, following consultation of the tenderers, the contracting authority receives only one tender that is administratively and technically valid, the contract may be awarded provided that the award criteria are met.'

62. Article 242 is amended as follows:

(a) Paragraph 1 is amended as follows:

(i) The first subparagraph is amended as follows:

— The introductory words are replaced by the following:

'For service contracts, contracting authorities may use the negotiated procedure with a single tender in the following cases:'

— The following point (g) is added:

'(g) where one attempt for the use of the competitive negotiated procedure following the unsuccessful use of a framework contract has failed. In this case, after cancelling the competitive negotiated procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered.'

(ii) The following subparagraph is added:

'Where the Commission is not the contracting authority, the use of the negotiated procedure is subject to the prior agreement of the responsible authorising officer.'

(b) Paragraph 2 is amended as follows:

(i) Point (b) of the first subparagraph is replaced by the following:

'(b) additional services consisting in the repetition of similar services entrusted to the contractor providing services under a first contract, provided that:

(i) a contract notice was published for the first service and the possibility of using the negotiated procedure for new services for the project and the estimated cost were clearly indicated in the contract notice published for the first service;

(ii) the extension of the contract is a single one and for a value and duration not exceeding the value and the duration of the initial contract.'

(ii) The second subparagraph is deleted.

63. Article 243 is amended as follows:

(a) Paragraph 1 is amended as follows:

(i) In the first subparagraph, points (a) and (b) are replaced by the following:

'(a) for contracts with a value of EUR 150 000 or more: an international open invitation to tender within the meaning of Article 122(2) and point (a) of Article 240(2);

(b) for contracts with a value of EUR 30 000 or more but less than EUR 150 000: a local open invitation to tender within the meaning of Article 122(2) and point (b) of Article 240(2).'

(ii) The second subparagraph is replaced by the following:

'Contracts with a value less than or equal to EUR 5 000 may be awarded on the basis of a single tender.'

(b) Paragraph 2 is replaced by the following:

'2. Under the procedure referred to in point (c) of paragraph 1, the contracting authority shall draw up a list of at least three suppliers of its choice. The procedure involves limited competitive tendering, without publication of a notice and shall be known as a competitive negotiated procedure not covered by Article 124.

Tenders shall be opened and evaluated by an evaluation committee with the necessary technical and administrative expertise. The members of the evaluation committee must sign a declaration of impartiality.

If following consultation of the suppliers, the contracting authority receives only one tender that is administratively and technically valid, the contract may be awarded provided that the award criteria are met.'

64. Article 244(1) is amended as follows:

(a) The introductory words are replaced by the following:

'Supply contracts may be awarded by negotiated procedure with a single tender in the following cases:'

(b) The following point (e) is added:

'(e) where after two attempts the competitive negotiated tender procedure has been unsuccessful, that is to say, where no administratively and technically valid tender or no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the competitive negotiated procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered.'

(c) The following subparagraph is added:

'Where the Commission is not the contracting authority, the use of the negotiated procedure is subject to the prior agreement of the responsible authorising officer.'

65. Article 245 is amended as follows:

(a) Paragraph 1 is amended as follows:

(i) In the first subparagraph, points (a) and (b) are replaced by the following:

'(a) for contracts with a value of EUR 5 000 000 or more:

(i) in principle an international open invitation to tender within the meaning of Article 122(2) and point (a) of Article 240(2);

(ii) exceptionally, in view of the characteristics of certain works and after the agreement of the authorising officer responsible if the Commission is not the contracting authority, an international restricted invitation to tender within the meaning of Article 122(2) and point (a) of Article 240(2).

(b) for contracts with a value of EUR 300 000 or more but less than EUR 5 000 000: a local open invitation to tender within the meaning of Article 122(2) and point (b) of Article 240(2);'

(ii) The second subparagraph is replaced by the following:

'Contracts with a value less than or equal to EUR 5 000 may be awarded on the basis of a single tender.'

(b) Paragraph 2 is replaced by the following:

'2. Under the procedure referred to in point (c) of paragraph 1, the contracting authority shall draw up a list of at least three contractors of its choice. The procedure involves limited competitive tendering, without publication of a notice and shall be known as a competitive negotiated procedure not covered by Article 124.

Tenders shall be opened and evaluated by an evaluation committee with the necessary technical and administrative expertise. The members of the evaluation committee must sign a declaration of impartiality.

If following consultation of the contractors, the contracting authority receives only one tender that is administratively and technically valid, the contract may be awarded provided that the award criteria are met.'

66. Article 246(1) is amended as follows:

(a) The first subparagraph is amended as follows:

(i) the introductory words are replaced by the following:

'Works contracts may be awarded by negotiated procedure with a single tender in the following cases:'

(ii) the following point (d) is added:

'(d) where the competitive negotiated tender procedure, after two attempts, has been unsuccessful, that is to say, where no administratively and technically valid tender or no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the competitive negotiated procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered.'

(b) The following subparagraph is added:

'Where the Commission is not the contracting authority, the use of the negotiated procedure is subject to the prior agreement of the responsible authorising officer.'

67. In Article 250, paragraphs 3 and 4 are replaced by the following:

'3. Where the pre-financing exceeds EUR 150 000, a guarantee shall be required. However, where the contractor is a public body, the responsible authorising officer may, depending on his risks assessment, waive that obligation.

The guarantee shall be released as and when the pre-financing is deducted from interim payments or payments of balances made to the contractor in accordance with the terms of the contract.

4. A performance guarantee may be required by the contracting authority for an amount set in the tender file and corresponding to between 5 and 10 % of the total value of the contract. That guarantee shall be determined on the basis of objective criteria such as the type and value of the contract.

However, a performance guarantee shall be required where the following thresholds are exceeded:

(i) EUR 345 000 for works contracts;

(ii) EUR 150 000 for supply contracts.

The guarantee shall remain valid at least until final acceptance of the supplies and works. If the contract is not properly performed the entire guarantee shall be retained.'

68. In Article 252(3) the following subparagraph is added:

'However, the evaluation committee or the contracting authority may ask candidates or tenderers to supply additional material or to clarify the supporting documents submitted in connection with the exclusion and selection criteria, within the time-limit they specify and having respect to the principle of equal treatment.'

69. In Article 257, in the first paragraph, point (c) is replaced by the following:

'(c) The European Communities Personnel Selection Office and the European Administrative School administratively attached to it.'

70. In Article 260, the second paragraph is deleted.

71. In Article 262, the following paragraphs are added:

'Budgetary commitments corresponding to administrative appropriations of a type common to all titles and which are managed globally may be recorded globally in the budgetary accounting following the summary classification by type as set out in Article 27.

The corresponding expenditure shall be booked to the budget lines of each title according to the same distribution as for appropriations.'

72. In Article 264, the following paragraph is added:

'However, where, for transactions in third countries, it is not possible to use any of those forms of rent guarantees, the authorising officer responsible may accept other forms provided that those forms ensure equivalent protection of the Communities' financial interests.'

73. In Article 271, paragraphs 1 and 2 are replaced by the following:

'1. The thresholds and amounts laid down in Articles 54, 67, 119, 126, 128, 129, 130, 135, 151, 152, 164, 172, 173, 180, 181, 182, 226, 241, 243, 245 and 250 shall be updated every three years in line with movements in the consumer price index in the Community.

2. The thresholds referred to in point (b) of Article 157 and in Article 158(1) in respect of procurement contracts shall be adjusted every two years pursuant to Article 78(1) of Directive 2004/18/EC.'

Article 2

Public procurement and grant award procedures launched before the entry into force of this Regulation shall continue to be subject to the rules applicable at the time when those procedures were launched.

Article 3

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

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

Done at Brussels, 7 August 2006.

For the Commission
Dalia GRYBAUSKAITĖ
Member of the Commission

COMMISSION REGULATION (EC) No 1249/2006

of 18 August 2006

fixing the complementary quantity of raw cane-sugar originating in the ACP States and India for supply to refineries in the period from 1 July 2006 to 30 September 2007

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], and in particular the second subparagraph of Article 29(4) thereof,

Whereas:

(1) Article 29(4) of Regulation (EC) No 318/2006 lays down that, during the 2006/2007, 2007/2008 and 2008/2009 marketing years and in order to ensure adequate supply to Community refineries, import duties on a complementary quantity of imports of raw cane-sugar originating in the States referred to in Annex VI to that Regulation are to be suspended.

(2) That complementary quantity should be calculated in accordance with Article 19 of Commission Regulation (EC) No 950/2006 of 28 June 2006 laying down detailed rules of application for the 2006/2007, 2007/2008 and 2008/2009 marketing years for the import and refining of products of the sugar sector under certain tariff quotas and preferential agreements [2], on the basis of a Community forecast supply balance of raw sugar. For the 2006/2007 marketing year, the balance indicates the need to import a complementary quantity of raw sugar so that the Community refineries' supply needs can be met.

(3) To ensure that refineries within the Community have a sufficient supply of raw sugar to fulfil their traditional supply needs, the complementary quantity should be allocated between the third countries concerned in a way to ensure full delivery. For India, it is considered appropriate to maintain an annual quantity of 10 000 tonnes, extrapolated to 12 500 tonnes to take into account the 15-month period of the 2006/2007 marketing year. As regards the remaining supply need, a global quantity should be fixed for the ACP States, which have collectively undertaken to implement between themselves procedures for the allocation of the quantities in order to ensure the appropriate supply of the refineries.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

For the period from 1 July 2006 to 30 September 2007, the complementary quantity of raw cane-sugar for refining falling within CN code 1701 11 10, as referred to in Article 29(4) of Regulation (EC) No 318/2006, shall be:

(a) 70 000 tonnes expressed as white sugar originating in the States listed in Annex VI to Regulation (EC) No 318/2006 except India;

(b) 12 500 tonnes expressed as white sugar originating in India.

Article 2

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

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

Done at Brussels, 18 August 2006.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

[1] OJ L 58, 28.2.2006, p. 1.
[2] OJ L 178, 1.7.2006, p. 1.

COMMISSION REGULATION (EC) No 1250/2006

of 18 August 2006

amending Regulation (EC) No 1973/2004 laying down detailed rules for the application of Council Regulation (EC) No 1782/2003 as regards the support schemes provided for in Titles IV and IVa of that Regulation and the use of land set aside for the production of raw materials

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 [1], and in particular Article 145 thereof,

Whereas:

(1) Commission Regulation (EC) No 1973/2004 [2] lays down the implementing rules for the coupled support schemes provided for in Titles IV and IVa of Regulation (EC) No 1782/2003 and as regards the use of land set aside for the production of raw materials under the single payment scheme provided for in Title III of that Regulation and under arable crops area payment provided for in Chapter 10 of Title IV of that Regulation.

(2) Article 3 of Regulation (EC) No 1973/2004 provides for the data to be communicated to the Commission by the Member States and for the different dates for the sending of this information. Regulation (EC) No 1973/2004 also requires additional information to be sent on the different support schemes. In the interest of simplification, it is appropriate to clarify the necessary information to be sent to the Commission throughout the year.

(3) Article 64 of Regulation (EC) No 1973/2004 defines 'set-aside' as leaving fallow an area eligible for area payments pursuant to Article 108 of Regulation (EC) No 1782/2003. In order to cover all set-aside schemes covered by Article 107 of that Regulation, it is appropriate to extend the scope of this definition beyond paragraph 1 of Article 107.

(4) Article 171cj of Regulation (EC) No 1973/2004 provides that the weight of tobacco on the basis of which aid is calculated is to be adjusted where the moisture content differs from the levels laid down in Annex XXVIII to that Regulation for the variety concerned. Those levels should be adapted to include the correct version as facilitated by the Member States concerned.

(5) Regulation (EC) No 1973/2004 should therefore be amended accordingly.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Direct Payments,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1973/2004 is amended as follows:

1. Article 3 is replaced by the following:

'*Article 3*

Communications

1. The Member States shall communicate the following data to the Commission by electronic transmission:

(a) by 1 September of the year concerned at the latest:

(i) the total area for which the aid has been claimed in the case of:

— the specific quality premium for durum wheat provided for in Article 72 of Regulation (EC) No 1782/2003,

— the protein crop premium provided for in Article 76 of Regulation (EC) No 1782/2003,

— the crop-specific payment for rice provided for in Article 79 of Regulation (EC) No 1782/2003, broken down for the indica and japonica varieties,

[1] OJ L 270, 21.10.2003, p. 1. Regulation as last amended by Commission Regulation (EC) No 1156/2006 (OJ L 208, 29.7.2006, p. 3).

[2] OJ L 345, 20.11.2004, p. 1. Regulation as last amended by Regulation (EC) No 660/2006 (OJ L 116, 27.4.2006, p. 27).

— the area payment for nuts provided for in Article 83 of Regulation (EC) No 1782/2003, expressed by categories of nut trees,

— the aid for energy crops provided for in Article 88 of Regulation (EC) No 1782/2003,

— the arable crops area payment provided for in Article 100 of Regulation (EC) No 1782/2003, by base area as referred to in Annex IV to this Regulation and in the standardised format described in Annex IX to this Regulation,

— the crop-specific payment for cotton provided for in Article 110a of Regulation (EC) No 1782/2003,

— the aid for olive groves provided for in Article 110g of Regulation (EC) No 1782/2003, by categories,

— the hops area aid provided for in Article 110n of Regulation (EC) No 1782/2003,

— the single area payment scheme (SAPS) provided for in Article 143b of Regulation (EC) No 1782/2003;

(ii) the total quantity for which the aid has been claimed in the case of:

— the dairy premium provided for in Article 95 of Regulation (EC) No 1782/2003,

— the additional payments to producers of dairy products provided for in Article 96 of Regulation (EC) No 1782/2003;

(iii) the total number of applications in the case of the sheep and goat premiums provided for in Article 111 of Regulation (EC) No 1782/2003, using the model form set out in Annex XI to this Regulation;

(b) by 15 October of the year concerned at the latest, the total determined area in the case of:

— the protein crop premium provided for in Article 76 of Regulation (EC) No 1782/2003,

— the aid for energy crops provided for in Article 88 of Regulation (EC) No 1782/2003;

(c) by 15 November of the year concerned at the latest:

(i) the total determined area used for the calculation of the coefficient of reduction in the case of:

— the specific quality premium for durum wheat provided for in Article 72 of Regulation (EC) No 1782/2003,

— the crop-specific payment for rice provided for in Article 79 of Regulation (EC) No 1782/2003, broken down for the indica and japonica varieties, and also the detailed information by variety of rice and by base area and sub-base area using the model form set out in Annex III to this Regulation,

— the area payment for nuts provided for in Article 83 of Regulation (EC) No 1782/2003, expressed by categories of nut trees,

— the arable crops area payment provided for in Article 100 of Regulation (EC) No 1782/2003, by base area as referred to in Annex IV to this Regulation and in the standardised format described in Annex IX to this Regulation,

— the crop-specific payment for cotton provided for in Article 110a of Regulation (EC) No 1782/2003,

— the aid for olive groves provided for in Article 110g of Regulation (EC) No 1782/2003, by categories,

— the hops area aid provided for in Article 110n of Regulation (EC) No 1782/2003,

— the single area payment scheme (SAPS) provided for in Article 143b of Regulation (EC) No 1782/2003;

(ii) the total determined quantity used for the calculation of the coefficient of reduction, in the case of the dairy premium provided for in Article 95 of Regulation (EC) No 1782/2003;

(iii) the total determined quantity in the case of:

— the additional payments to producers of dairy products provided for in Article 96 of Regulation (EC) No 1782/2003,

— the tobacco aid provided for in Article 110j of Regulation (EC) No 1782/2003, by tobacco varieties as listed in Annex XXV to this Regulation;

(iv) the amount of aid per hectare to be granted for each category of olive groves in the case of the aid for olive groves provided for in Article 110g of Regulation (EC) No 1782/2003;

(d) by 31 March of the following year at the latest, the indicative aid amount per kg in the case of the tobacco aid provided for in Article 110j of Regulation (EC) No 1782/2003, by group of tobacco varieties as listed in Annex XXV to this Regulation and, where applicable, per quality grade;

(e) by 31 July of the following year at the latest:

(i) the total area for which the aid has actually been paid in the case of:

— the specific quality premium for durum wheat provided for in Article 72 of Regulation (EC) No 1782/2003,

— the protein crop premium provided for in Article 76 of Regulation (EC) No 1782/2003,

— the crop-specific payment for rice provided for in Article 79 of Regulation (EC) No 1782/2003, broken down for the indica and japonica varieties,

— the area payment for nuts provided for in Article 83 of Regulation (EC) No 1782/2003, expressed by categories of nut trees,

— the aid for energy crops provided for in Article 88 of Regulation (EC) No 1782/2003,

— the arable crops area payment provided for in Article 100 of Regulation (EC) No 1782/2003, by base area as referred to in Annex IV to this Regulation and in the standardised format described in Annex IX to this Regulation,

— the crop-specific payment for cotton provided for in Article 110a of Regulation (EC) No 1782/2003,

— the aid for olive groves provided for in Article 110g of Regulation (EC) No 1782/2003, by categories,

— the hops area aid provided for in Article 110n of Regulation (EC) No 1782/2003,

— the single area payment scheme (SAPS) provided for in Article 143b of Regulation (EC) No 1782/2003;

(ii) the total quantity for which the aid has actually been paid in the case of:

— the aid for starch potato (in starch-equivalent) provided for in Article 93 of Regulation (EC) No 1782/2003,

— the dairy premium provided for in Article 95 of Regulation (EC) No 1782/2003,

— the additional payments to producers of dairy products provided for in Article 96 of Regulation (EC) No 1782/2003,

— the seed aid provided for in Article 99 of Regulation (EC) No 1782/2003, by seed species as listed in Annex XI to Regulation (EC) No 1782/2003,

— the tobacco aid provided for in Article 110j of Regulation (EC) No 1782/2003, by tobacco varieties as listed in Annex XXV to this Regulation and by quality,

— the transitional sugar payment provided for in Article 110p of Regulation (EC) No 1782/2003;

(iii) the final aid amount per kg in the case of the tobacco aid provided for in Article 110j of Regulation (EC) No 1782/2003, by group of tobacco varieties as listed in Annex XXV to this Regulation and, where applicable, per quality grade;

(iv) the total number of sheep and goat premiums paid in the case of the sheep and goat premiums provided for in Article 111 of Regulation (EC) No 1782/2003, using the model form set out in Annex XII to this Regulation.

2. In the communications provided for in paragraph 1, the areas shall be expressed in hectares to two decimal places, the quantities shall be expressed in tonnes to three decimal places, and the number of applications shall be expressed with no decimal places.

3. Where the information required under paragraph 1 changes, in particular as a result of the checks or corrections or improvements of previous figures, an update shall be communicated to the Commission within one month after the occurrence of the change.'

2. Article 4 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The coefficient of reduction of area in the case referred to in Articles 75, 78(2), 82, 85, 89(2), 98, 143 and 143b(7) of Regulation (EC) No 1782/2003 or of the quantities and the objective criteria in the case referred to in Article 95(4) of that Regulation shall be fixed at the latest by 15 November of the year concerned on the basis of the data communicated in accordance with Article 3(b) and (c) of this Regulation.';

(b) paragraph 2 is deleted.

3. In Article 14, paragraphs 1 and 2 are replaced by the following:

'1. Member States shall communicate to the Commission by 1 September at the latest the list of the varieties registered in the national catalogue, classified according to the criteria defined in item 2 of Annex I to Council Regulation (EC) No 1785/2003 (*) in case of amendments to that list.

2. For French Guiana, the information concerning the areas referred to in Article 3(1)(c)(i) shall be communicated on the basis of the average of the areas sown during the two sowing cycles as referred to in the second paragraph of Article 12.

(*) OJ L 270, 21.10.2003, p. 96.'

4. In Article 44, the second paragraph is replaced by the following:

'Such information shall include, in particular:

(a) the areas corresponding to each species of raw material;

(b) the quantities of each type of raw material and end product obtained.'

5. In Article 62, the introductory terms are replaced by the following:

'For the purposes of Article 102(5) of Regulation (EC) No 1782/2003, the Member States shall, by 1 September of the year in respect of which the area payment is applied for at the latest, determine the following:'.

6. Article 64 is replaced by the following:

'*Article 64*

Definition

For the purposes of Article 107 of Regulation (EC) No 1782/2003, 'set-aside' shall mean leaving fallow an area eligible for area payments pursuant to Article 108 of that Regulation.'

7. Article 69 is replaced by the following:

'*Article 69*

Communications

Where the areas referred to in Articles 59 and 60 are found to have been exceeded, the Member State concerned shall fix the definitive rate of the overshoot immediately and by 15 November of the year concerned at the latest and shall communicate it to the Commission by 1 December of the year concerned at the latest. The data used to calculate the rate by which a base area is exceeded shall be forwarded using the form set out in Annex VI.'

8. Article 76 is replaced by the following:

'*Article 76*

Notification

Member States shall notify the Commission, by 31 October of each year at the latest, of any changes in the list of geographical areas practising transhumance referred to in Article 114(2) of Regulation (EC) No 1782/2003 and Article 73 of this Regulation.'

9. Article 84 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Member States shall notify the Commission, before 1 January each year , of any amendment to the part of the premiums rights transferred which shall be surrendered to the national reserve in accordance with Article 117(2) of Regulation (EC) No 1782/2003 and, where applicable, of the measures taken under Article 117(3) of that Regulation.';

(b) paragraph 2 is amended as follows:

(i) the introductory terms are replaced by the following:

'Using the table set out in Annex XIII, Member States shall notify the Commission by 30 April at the latest for each year of:';

(ii) point (e) is deleted.

10. Article 106 is replaced by the following:

'*Article 106*

Notification

1. Member States shall notify the Commission before 1 January each year:

(a) of any change to the reduction referred to in the second subparagraph of Article 127(1) of Regulation (EC) No 1782/2003;

(b) where applicable, of any amendments to the measures taken pursuant to Article 127(2)(a) of that Regulation.

2. Using the table set out in Part 3 of Annex XVIII, Member States shall notify the Commission by 31 July at the latest for each calendar year of:

(a) the number of premium rights returned without compensatory payment to the national reserve following transfers of rights without transfers of holdings during the preceding calendar year;

(b) the number of unused premium rights as referred to in Article 109(2) transferred to the national reserve during the preceding calendar year;

(c) the number of rights granted under Article 128(3) of Regulation (EC) No 1782/2003 during the preceding calendar year.'

11. Article 131 is amended as follows:

(a) in paragraph 1, point (a) is replaced by the following:

'(a) by 1 March at the latest for information relating to the previous year, of the number of calves in respect of which the slaughter premium has been applied for and indicating whether the animals were slaughtered or exported;';

(b) in paragraph 2, the introductory terms of point (a) are replaced by the following:

'by 1 February at the latest for information relating to the previous year, of:';

(c) in paragraph 3, point (a) is replaced by the following:

'(a) by 1 March at the latest for information relating to the previous year, of the number of bovine animals other than calves in respect of which the slaughter premium has been applied for and indicating whether the animals were slaughtered or exported;';

(d) in paragraph 4, point (a) is replaced by the following:

'(a) by 1 February at the latest for information relating to the previous year, of the number of male bovines in respect of which the special premium has been applied for, broken down by age bracket and type of animal (bull or steer);';

(e) in paragraph 6, point (a) is replaced by the following:

'(a) where applicable, annually by 1 February at the latest for information relating to the previous year, of the number of animals for which the desea-sonalisation premium was actually granted, broken down according to whether they benefited from the first or second tranche of the special premium, and the number of farmers corresponding to each of the two age brackets;'.

12. Article 169 is amended as follows:

    (a) point (b) is replaced by the following:

    '(b) the quantities of each type of raw material and end product obtained.';

    (b) points (c), (d) and (e) are deleted.

13. In Article 171ai, the introductory terms of paragraph 1 are replaced by the following:

    'Before January 31 of the year in question, Member States shall notify cotton growers of:'.

14. Article 171bd is deleted.

15. Annex III is replaced by the text in Annex I to this Regulation.

16. Annex VI is replaced by the text in Annex II to this Regulation.

17. Annex IX is replaced by the text in Annex III to this Regulation.

18. Annexes XI and XII are replaced by the text in Annex IV to this Regulation.

19. Annex XIV is deleted.

20. Annex XVIII is replaced by the text in Annex V to this Regulation.

21. Annex XXVIII is replaced by the text in Annex VI to this Regulation.

Article 2

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

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

Done at Brussels, 18 August 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

ANNEX I

'ANNEX III

CROP-SPECIFIC PAYMENT FOR RICE

referred to in Article 3(1)(c)(i)

TOTAL DETERMINED AREA, used for the calculation of the coefficient of reduction

TRANSMISSION DEADLINE: 15 NOVEMBER EACH YEAR

CLAIMED YEAR: .....

MEMBER STATE: .....

(for France only) base area: .....

Sub-area	Reference area (in hectares) (*)	Variety	Total determined area (in hectares) (**)
Name of sub-area 1		Variety 1	
		Variety 2	
		Variety 3	
		…	
		Total	
Name of sub-area 2		Variety 1	
		Variety 2	
		Variety 3	
		…	
		Total	
Name of sub-area 3		Variety 1	
		Variety 2	
		Variety 3	
		…	
		Total	
…		Variety 1	
		Variety 2	
		Variety 3	
		…	
		Total	
Total			

(*) Article 81 of Regulation (EC) No 1782/2003.
(**) Article 80(1) of Regulation (EC) No 1782/2003.'

ANNEX II

'ANNEX VI

referred to in Articles 59, 60 and 69

ARABLE CROPS AREA PAYMENTS

CALCULATION OF OVERRUN ON BASE AREA

TRANSMISSION DEADLINE: 15 NOVEMBER EACH YEAR

CLAIMED YEAR: .....

MEMBER STATE: .....

Base area: ☐

Product:

All crops	☐
Irrigated	☐
Non-irrigated	☐
Maize	☐
Crops other than maize	☐

Area actually found:

All producers	Durum wheat, Article 105(1)		1	☐ ha
	Maize (separate base area)		2	☐ ha
	Other crops, as listed in Annex IX of Council Regulation (EC) No 1782/2003		3	☐ ha
	Voluntary set-aside		4	☐ ha
	Total	= 1 + 2 + 3 + 4	5	☐ ha
Forage (bovine animals — sheep)	Total for products concerned		6	☐ ha
Total	**for applications**	= 5 + 6	7	☐ ha
	BASE AREA (*)		8	☐ ha
	Any balance from another base area		9	☐ ha
	Total base area applicable	= 8 + 9	10	☐ ha
	Overrun or deficit	= 7 – 10	11	☐ ha
	Overrun as percentage	= (7/10 – 1,00)	12	☐ %

(*) Base area as referred to in Annex VI.'

ANNEX III

'ANNEX IX

referred to in Article 3(1)(a)(i), (c)(i) and (e)(i)

ARABLE CROPS AREA PAYMENTS

The information is to be presented in the form of a series of tables drawn up in accordance with the model described below:

— a set of tables giving information in respect of each base area region within the meaning of Annex IV to this Regulation,

— a single table summarising the information for each Member State.

The tables are to be sent in hard copy and in computerised form.

Notes:

Each table must quote the region in question.

Line 1 relates only to durum wheat eligible for the supplement to the area payment provided for in Article 105(1) of Regulation (EC) No 1782/2003.

Line 5, "Arable crops declared as fodder areas for premiums for bovine animals and sheep", corresponds to the areas referred to in Article 102(3) of Regulation (EC) No 1782/2003.

Model:

Crop	Area (hectares)
Durum wheat, Article 105(1)	
Maize (separate base asea)	
Other crops, as listed in Annex IX to Council Regulation (EC) No 1782/2003	
Voluntary set-aside, Article 107(6)	
Arable crops declared as fodder areas for premiums for bovine animals and sheep	
Total'	

ANNEX IV

'ANNEX XI

referred to in Article 3(1)(e)(iv)

APPLICATIONS FOR EWE AND SHE-GOAT PREMIUMS

TRANSMISSION DEADLINE: 1 SEPTEMBER EACH YEAR

CLAIMED YEAR: .....

MEMBER STATE: .....

	Type of female			Total females
	Non-milking ewes	Milking ewes	She-goats	
Number of premiums claimed (Article 113 of Regulation (EC) No 1782/2003)				
Number of supplementary premiums claimed [1] (Article 114 of Regulation (EC) No 1782/2003)				

[1] In accordance with Articles 72 and 73 of this Regulation (Less favoured areas).

ANNEX XII

referred to in Article 3

PAYMENTS FOR EWE AND SHE-GOAT PREMIUMS

TRANSMISSION DEADLINE: 31 JULY EACH YEAR

CLAIMED YEAR: .....

MEMBER STATE: .....

		Type of female			Total females
		Non-milking ewes	Milking ewes	She-goats	
Number of premiums paid (Heads)	**Number of additional payments per head** (*)				
	Number of supplementary premiums (**)				
	Number of ewe or goat premiums				

(*) Where Article 71 of Regulation (EC) No 1782/2003 applies (transitional period).
(**) In accordance with Articles 72 and 73 of this Regulation (Less favoured areas).'

ANNEX V

'ANNEX XVIII

referred to in Articles 106(3) and 131

BEEF AND VEAL PAYMENTS

CLAIMED YEAR: .....

MEMBER STATE: .....

1. SPECIAL PREMIUM

Number of animals

	Deadline for submission	Ref.	Information required	General scheme			Slaughter scheme
				Single age bracket or first age bracket		Second age bracket	Both age brackets together
				Bulls	Steers	Steers	Steers
Article 131(4)(a)	1 February 2007	1.2	Number of animals applied for (full year)				
Article 131(4)(b)(i)	31 July 2007	1.3	Number of animals accepted (full year)				
Article 131(4)(b)(ii)	31 July 2007	1.4	Number of animals not accepted on account of the application of the ceiling				

Number of producers

	Deadline for submission	Ref.	Information required	General scheme			Slaughter scheme
				Single age bracket or first age bracket only	Second age bracket	Both age brackets together	Both age brackets together only
Article 131(4)(b)(i)	31 July 2007	1.5	Number of producers granted premium				

2. DESEASONALISATION PREMIUM

	Deadline for submission	Ref.	Information required	Single age bracket or first age bracket	Second age bracket	Both age brackets together
Article 131(6)(a)	15 September 2006	2.1	Number of animals applied for			
		2.2	Number of producers			
	1 March 2007	2.3	Number of animals accepted			
		2.4	Number of producers			

3. SUCKLER COW PREMIUM

	Deadline for submission	Ref.	Information required	Pure suckler herds	Mixed herds
Article 131(2)(a)(i)	1 February 2007	3.2	Number of animals applied for (full year)		
Article 131(2)(b)(i) Article 131(6)(b)(ii)	31 July 2007	3.3	Number of cows accepted (full year)		
		3.4	Number of heifers accepted (full year)		
		3.5	Number of producers granted premium (full year)		
				Amount per head	
Article 131(2)(b)(iii)	31 July 2007	3.6	National premium		
Article 131(2)(b)(ii)	31 July 2007	3.7	Number of animals not accepted on account of the application of the national ceiling for heifers		

4. EXTENSIFICATION PAYMENT

4.1 **Application of the single stocking density** (first subparagraph of Article 132(2) of Regulation (EC) No 1782/2003)

	Deadline for submission	Ref.	Information required	Special premium	Suckler cow premium	Dairy cows	Total
Article 131(6)(b)(i) Article 131(6)(b)(ii) Article 131(6)(b)(iii)	31 July 2007	4.1.1	Number of animals accepted				
		4.1.2	Number of producers granted payments				

4.2 **Application of the two stocking density** (second subparagraph of Article 132(2) of Regulation (EC) No 1782/2003)

	Deadline for submission	Ref.	Information required	Special premium		Suckler cow premium		Dairy cows		Total	
				1,4-1,8	< 1,4	1,4-1,8	< 1,4	1,4-1,8	< 1,4	1,4-1,8	< 1,4
Article 131(6)(b)(i) Article 131(6)(b)(ii) Article 131(6)(b)(iii)	31 July 2007	4.2.1	Number of animals accepted								
		4.2.2	Number of producers granted payments								

5. PREMIUM EXEMPT THE DENSITY FACTOR

	Deadline for submission	Ref.	Information required	Animals	Producers
Article 131(6)(b)(iv)	31 July 2007	5	Number of animals and producers in respect of which the premium exempt from the application of the density factor was granted		

6. SLAUGHTER PREMIUM

Number of animals

	Deadline for submission	Ref.	Information required	Slaughter		Export	
				Adults	Calves	Adults	Calves
Article 131(1)(a) Article 131(2)(a)(ii) Article 131(3)(a)	1 March 2007	6.2	Number of animals applied for (full year)				
Article 131(1)(b)(i) Article 131(2)(b)(iv) Article 131(3)(b)(i)	31 July 2007	6.3	Number of animals accepted (full year)				
Article 131(1)(b)(ii) Article 131(2)(b)(v) Article 131(3)(b)(ii)	31 July 2007	6.4	Number of animals not accepted on account of the application of the ceiling				

Number of producers

	Deadline for submission	Ref.	Information required	Slaughter		Export	
				Adults	Calves	Adults	Calves
Article 131(1)(b)(i) Article 131(2)(b)(iv) Article 131(3)(b)(i)	31 July 2007	6.5	Number of producers granted premium				

AMOUNT OF THE PREMIUMS ACTUALLY PAID

TRANSMISSION DEADLINE: 31 JULY EACH YEAR

	Up to 100 % Slaughter premium (calves)	Up to 100 % Suckler cow premium	Up to 40 % Slaughter premium (bovine animals other than calves)	Up to 100 % Slaughter premium (bovine animals other than calves)	Up to 75 % Special premium
Reference to Regulation (EC) No 1782/2003	Article 68(1)	Article 68(2)(a)(i)	Article 68(2)(a)(ii)	Article 68(2)(b)(i)	Article 68(2)(b)(ii)
Amount actually paid in EUR (after reduction laid down in Article 139 — coefficient of reduction)'					

ANHANG VI

'ANNEX XXVIII

MOISTURE CONTENT

as referred to in Article 171cj

Group of varieties	Moisture content (%)	Tolerances (%)
I. Flue-cured	16	4
II. Light air-cured		
Germany, France, Belgium, Austria, Portugal — Autonomous Region of the Azores	22	4
Other Member States and other recognised production areas in Portugal	20	6
III. Dark air-cured		
Belgium, Germany, France, Austria	26	4
Other Member States	22	6
IV. Fire-cured	22	4
V. Sun-cured	16	4
VI. Basmas	16	4
VII. Katerini	16	4
VIII. Kaba Koulak (classic) Elassona, Myrodata Agrinion, Zichnomyrodata	16	4'

COMMISSION REGULATION (EC) No 1251/2006

of 18 August 2006

amending the representative prices and additional duties for the import of certain products in the sugar sector fixed by Regulation (EC) No 1002/2006 for the 2006/2007 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 2006/2007 marketing year are fixed by Commission Regulation (EC) No 1002/2006 [3]. These prices and duties have been last amended by Commission Regulation (EC) No 1236/2006 [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 1002/2006 for the 2006/2007 marketing year are hereby amended as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 19 August 2006.

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

Done at Brussels, 18 August 2006.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

[1] OJ L 55, 28.2.2006, p. 1.
[2] OJ L 178, 1.7.2006, p. 24.
[3] OJ L 178, 1.7.2006, p. 36.
[4] OJ L 225, 17.8.2006, p. 24.

ANNEX

Amended representative prices and additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99 applicable from 19 August 2006

(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)	24,74	3,93
1701 11 90 (1)	24,74	9,16
1701 12 10 (1)	24,74	3,74
1701 12 90 (1)	24,74	8,73
1701 91 00 (2)	29,66	10,40
1701 99 10 (2)	29,66	5,88
1701 99 90 (2)	29,66	5,88
1702 90 99 (3)	0,30	0,35

(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 1252/2006

of 18 August 2006

amending Regulation (EC) No 796/2006 as regards the list of Member States where buying-in of butter by tendering is open for the period expiring on 31 August 2006

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products [1],

Having regard to Commission Regulation (EC) No 796/2006 of 29 May 2006 suspending the buying-in of butter at 90 % of the intervention price and opening the buying-in by tendering for the period expiring on 31 August 2006 [2], and in particular Article 2(2) thereof,

Whereas:

(1) Regulation (EC) No 796/2006 has opened the buying-in of butter by tendering for the period expiring on 31 August 2006 in accordance with the third subparagraph of Article 6(1) of Regulation (EC) No 1255/1999.

(2) On the basis of most recent communications by Latvia and the Czech Republic, the Commission has observed that the butter market prices have been below 92 % of the intervention price for two consecutive weeks. Intervention buying-in by tendering should therefore be opened in these Member States. These Member States should therefore be added to the list set out in Regulation (EC) No 796/2006.

(3) Regulation (EC) No 796/2006 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 2 of Regulation (EC) No 796/2006, paragraph 1 is replaced by the following:

'1. Buying-in of butter by tendering, as provided for in the third subparagraph of Article 6(1) of Regulation (EC) No 1255/1999, is hereby open from 19 to 31 August 2006 in the following Member States, under the conditions provided for in Section 3a of Regulation (EC) No 2771/1999: Czech Republic, Spain, Ireland, Latvia, Poland and Portugal.'

Article 2

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

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

Done at Brussels, 18 August 2006.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

[1] OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

[2] OJ L 142, 30.5.2006, p. 4.

COMMISSION REGULATION (EC) No 1253/2006

of 18 August 2006

on import licences in respect of beef and veal products originating in Botswana, Kenya, Madagascar, Swaziland, Zimbabwe and Namibia

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal [1],

Having regard to Council Regulation (EC) No 2286/2002 of 10 December 2002 on the arrangements applicable to agricultural products and goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States (ACP States) and repealing Regulation (EC) No 1706/98 [2],

Having regard to Commission Regulation (EC) No 2247/2003 of 19 December 2003 laying down detailed rules for the application in the beef and veal sector of Council Regulation (EC) No 2286/2002 on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States (ACP States) [3], and in particular Article 5 thereof,

Whereas:

(1) Article 1 of Regulation (EC) No 2247/2003 provides for the possibility of issuing import licences for beef and veal products originating in Botswana, Kenya, Madagascar, Swaziland, Zimbabwe and Namibia. However, imports must take place within the limits of the quantities specified for each of these exporting non-member countries.

(2) The applications for import licences submitted between 1 to 10 August 2006, expressed in terms of boned meat, in accordance with Regulation (EC) No 2247/2003, do not exceed, in respect of products originating from Botswana, Kenya, Madagascar, Swaziland, Zimbabwe and Namibia, the quantities available from those States. It is therefore possible to issue import licences in respect of the quantities applied for.

(3) The quantities in respect of which licences may be applied for from 1 September 2006 should be fixed within the scope of the total quantity of 52 100 t.

(4) This Regulation is without prejudice to Council Directive 72/462/EEC of 12 December 1972 on health and veterinary inspection problems upon importation of bovine, ovine and caprine animals and swine, fresh meat or meat products from third countries [4],

HAS ADOPTED THIS REGULATION:

Article 1

The following Member States shall issue on 21 August 2006 import licences for beef and veal products, expressed as boned meat, originating in certain African, Caribbean and Pacific States, in respect of the following quantities and countries of origin:

Germany:

— 1 000 t originating in Botswana,

— 300 t originating in Namibia;

United Kingdom:

— 800 t originating in Botswana,

— 350 t originating in Namibia.

Article 2

Licence applications may be submitted, pursuant to Article 4(2) of Regulation (EC) No 2247/2003, during the first 10 days of September 2006 for the following quantities of boned beef and veal:

Botswana:	14 959 t,
Kenya:	142 t,
Madagascar:	7 579 t,
Swaziland:	3 363 t,
Zimbabwe:	9 100 t,
Namibia:	8 152 t.

Article 3

This Regulation shall enter into force on 19 August 2006.

[1] OJ L 160, 26.6.1999, p. 21. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).
[2] OJ L 348, 21.12.2002, p. 5.
[3] OJ L 333, 20.12.2003, p. 37. Regulation as last amended by Regulation (EC) No 1118/2004 (OJ L 217, 17.6.2004, p. 10).
[4] OJ L 302, 31.12.1972, p. 28. Directive as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

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

Done at Brussels, 18 August 2006.

For the Commission
Jean-Luc DEMARTY
Director-General for Agriculture and Rural Development

COMMISSION DIRECTIVE 2006/72/EC

of 18 August 2006

amending for the purposes of adapting to technical progress Directive 97/24/EC of the European Parliament and of the Council on certain components and characteristics of two or three-wheel motor vehicles

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2002/24/EC of the European Parliament and of the Council of 18 March 2002 relating to the type-approval of two- and three-wheel motor vehicles and repealing Council Directive 92/61/EEC [1], and in particular Article 17 thereof,

Having regard to Directive 97/24/EC of the European Parliament and of the Council of 17 June 1997 on certain components and characteristics of two- or three-wheel motor vehicles [2], and in particular Article 7 thereof,

Whereas:

(1) Directive 97/24/EC is a separate Directive for the purposes of the EC type-approval procedure laid down by Directive 2002/24/EC.

(2) Directive 2002/51/EC of the European Parliament and of the Council of 19 July 2002 on the reduction of the level of pollutant emissions from two- and three-wheel motor vehicles and amending Directive 97/24/EC [3] introduced new emission limit values for two-wheel motorcycles that are applicable in two stages.

(3) United Nations Economic Commission for Europe (UN/ECE) Global Technical Regulation (GTR) No 2 'Measurement procedure for two wheeled motorcycles equipped with a positive or compression ignition engine with regard to the emissions of gaseous pollutants, CO_2 emissions and fuel consumption' has been adopted in view of creating the global market for motorcycles. It aims at harmonising at worldwide level the emission test procedure used for the type-approval of motorcycles. Furthermore, it is adapted to the last development of technical progress taking into account the specific characteristics of motorcycles.

(4) In accordance with Article 8(5) of Directive 2002/51/EC the test procedure of GTR No 2 should be introduced together with a new set of limit values. That test procedure should be introduced as an alternative type-approval procedure at the choice of the manufacturer for the second mandatory stage of Directive 2002/51/EC. The new limit values should be set in correlation with the second mandatory stage of Directive 2002/51/EC. Therefore, the stringency of the requirements on motorcycle emissions will not diminish.

(5) Directive 97/24/EC should therefore be amended accordingly.

(6) The measures provided for in this Directive are in accordance with the opinion of the Committee for Adaptation to Technical Progress established by Council Directive 70/156/EEC [4],

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex II of Chapter 5 to Directive 97/24/EC is amended in accordance with the text set out in the Annex to this Directive.

Article 2

1. Member States shall adopt and publish, before 1 July 2007, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 1 July 2007.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

[1] OJ L 124, 9.5.2002, p. 1. Directive as last amended by Commission Directive 2005/30/EC (OJ L 106, 27.4.2005, p. 17).
[2] OJ L 226, 18.8.1997, p. 1. Directive as last amended by Commission Directive 2006/27/EC (OJ L 66, 8.3.2006, p. 7).
[3] OJ L 252, 20.09.2002, p. 20.
[4] OJ L 42, 23.2.1970, p. 1. Directive as last amended by Directive 2006/40/EC of the European Parliament and of the Council (OJ L 161, 14.6.2006, p. 12).

2. Member States shall communicate to the Commission the text of the main provisions of national law, which they adopt in the field covered by this Directive.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 18 August 2006.

For the Commission
Günter VERHEUGEN
Vice-President

ANNEX

Annex II of Chapter 5 to Directive 97/24/EC is amended as follows:

(1) In point 2.2.1.1 the following paragraph is added:

'At the choice of the manufacturer the test procedure laid down in UN/ECE Global Technical Regulation (GTR) No 2 (*) may be used for motorcycles as an alternative to the test procedure referred to above. In case the procedure laid down in GTR No 2 is used, the vehicle shall respect the emission limits provided in row C of the table in section 2.2.1.1.5 and all the other provisions of this directive except 2.2.1.1.1 to 2.2.1.1.4 of this Annex.

(*) UN/ECE Global Technical Regulation No 2 "Measurement procedure for two wheeled motorcycles equipped with a positive or compression ignition engine with regard to the emissions of gaseous pollutants, CO_2 emissions and fuel consumption" (ECE/TRANS/180/Add2 of 30 August 2005).'

(2) In the table of point 2.2.1.1.5, within the section 'Limit values for motorcycles (two-wheel) for type-approval and conformity of production', the following row C is inserted after row B:

'C (2006 — UN/ECE GTR No 2)	v_{max} < 130 km/h	2,62	0,75	0,17
	v_{max} ≥ 130 km/h	2,62	0,33	0,22'

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 14 December 2004

on a German aid scheme for Bavarian machinery rings

(notified under document number C(2004) 4771)

(Only the German text is authentic)

(2006/570/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 88(2)(1) thereof,

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

Having called on interested parties to submit their comments in accordance with the Articles cited above [1] and having regard to those comments,

Whereas:

I. PROCEDURE

(1) By letter of 31 January 2001 Germany notified the Commission of a measure in favour of Bavarian machinery rings. Additional information was provided by letter of 11 May 2001, registered on 16 May 2001, and by letter of 9 October 2001, registered on 11 October 2001.

(2) By letter of 9 October 2001 Germany informed the Commission that the measure dated back to 1970 and had not been notified before. The aid was therefore placed on the list of non-notified aid schemes.

(3) By letter of 7 February 2003, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of this measure. In its decision to initiate the formal investigation procedure the Commission stated that it had no objections to raise on one part of the measure (social assistance), since it fell within the scope of section 14 of the Community Guidelines for State aid in the agriculture sector [2] (hereinafter the Guidelines) and was therefore compatible with the common market in accordance with Article 87(3)(c) of the EC Treaty.

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* [3]. The Commission called on interested parties to submit their comments on this aid scheme.

(5) The Commission received comments from interested parties in letters of 29 April 2003 (registered on 2 May 2003), 5 May 2003 (registered on 6 May 2003) and 26 May 2003 (registered on 28 May 2003), and in an e-mail of 12 February 2003 (registered on 14 February 2003).

(6) Germany sent its comments to the Commission by letter dated 4 April 2003, registered on 8 April 2003. In a further letter of 29 August 2003 registered on 3 September 2003, Germany submitted its comments on the comments from interested parties.

[1] OJ C 82, 5.4.2003, p. 12.

[2] OJ C 28, 1.2.2000, p. 2.

[3] See footnote 1.

(7) On 19 May 2004, the file was split, and the Commission adopted a final decision [4] authorising *pro futuro* the notified aid Germany intended to grant over the period 2001 to 2005.

(8) By letter of 14 September 2004, registered on 16 September 2004, Germany sent additional information on the non-notified part of the measure, as requested by the Commission by letter of 24 May 2004.

(9) This Decision relates only to aid unlawfully granted by Germany to Bavarian machinery rings in the period preceding 2001 (excluding aid for social assistance).

II. DESCRIPTION OF THE AID

II.1. Objective and legal basis

(10) The aim of the measure is to facilitate cooperation between agricultural and forestry holdings in Bavaria by subsidising machinery and relief service organisations called 'machinery rings'. The legal basis for the measure is the *Gesetz zur Förderung der bayerischen Landwirtschaft* (LwFöG) of 8 August 1974 (Bavarian Agricultural Promotion Act).

II.2. Recipients

(11) The recipients are the Bavarian machinery rings and the *Kuratorium Bayerischer Maschinen- und Betriebshilferinge e.V.* (KBM).

The Bavarian machinery rings

(12) Machinery rings are farmers' self-help organisations operating at local or regional level. Under Article 9 of the LwFöG, they may only engage in the following activities:

(a) Social assistance (already approved by the Commission, see recital 3: the machinery rings organise relief farm personnel in the event of illness, accident and other such emergencies.

(b) Farming and forestry relief services: the machinery rings organise exchanges of farm and forestry labour in particular to cope with seasonal demand and to meet the needs for specialised, in some cases highly skilled, personnel often not available on the holding.

(c) Coordinating the provision of tourist accommodation on agricultural and forestry undertakings.

(d) Sharing of machinery between holdings: the machinery rings organise and coordinate machinery exchanges between holdings. This saves farmers having to purchase their own specialist equipment which in many cases would be uneconomical, particularly for small-scale farms.

(13) Machinery rings act merely as intermediaries. The actual services — provision of machinery and labour — are rendered by the farmers, who receive marketprice remuneration from the undertakings (i.e. other farmers) availing themselves of the services. In return for the service offered by the machinery ring, farmers pay a membership fee and fees per service rendered by the machinery ring.

(14) Not all the activities of the machinery rings are subsidised by the State. In particular, the coordination of tourist accommodation provision is excluded from support, and is subject to a separate accounting requirement.

(15) The Act LwFöG limits the activities of the machinery rings to the 'core tasks' [5] referred to in recital 12, which are (with limited exceptions) subsidised. However, if the machinery rings set up legally independent subsidiaries, they may also engage in other activities (Article 10(c) of the LwFöG) in so far as these do not jeopardise fulfilment of the aforementioned 'core tasks'. These 'non-core tasks', for which a separate accounting requirement exists (Article 12 of the LwFöG), include:

(a) maintenance of green spaces;

(b) collection, processing and re-use of organic waste;

(c) provision of transport services in the agricultural and forestry sectors;

(d) forestry work;

(e) provision to local authorities of services such as snow clearing, cleaning services and similar activities.

[4] C(2004) 1629 final.

[5] For the purposes of this Decision, 'core tasks' means those activities which are eligible for aid under German law.

KBM

(16) The KBM is the umbrella organisation of machinery rings in Bavaria. Between 1994 and 2000, KBM had a membership of 83 to 90 machinery rings, representing around 100 000 agricultural and forestry holdings. KBM received payments for performing the following tasks:

(a) acting as the central contact with the Bavarian Ministry of Agriculture and Forestry;

(b) managing the public funds made available to machinery rings;

(c) recruiting full-time managers and other staff for the machinery rings;

(d) advising and supporting the machinery rings in all matters relating to the pooling of equipment and labour;

(e) providing a wide range of services to machinery rings throughout Bavaria;

(f) general and specialist supervision of machinery ring managers;

(g) organising training and further training for machinery ring personnel.

II.3. **Budget**

(17) The German authorities said that aid was paid to KBM and the machinery rings from 1974. Under Article 15(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [6], the powers of the Commission to recover aid are subject to a limitation period of 10 years. The Commission investigation started in 2001, which means that, in line with Article 15(2) of that Regulation, this 10-year period goes back to 1991. Therefore, aid paid before this period will not be investigated further.

(18) The budgetary data provided by Germany and set out in the table below relate to payments to KBM and the machinery rings during the period 1992 to 2000 only.

(in EUR)

Year	Aid paid out to KBM	of which: aid to machinery rings
1992	5 268 000,00	
1993	5 882 000,00	
1994	6 120 163,82	5 774 370,02
1995	6 005 123,14	5 661 987,48
1996	6 005 123,14	5 636 740,37
1997	5 112 918,81	4 777 826,08
1998	5 252 757,14	4 912 490,12
1999	5 007 205,07	4 734 342,77
2000	4 387 906,92	4 035 399,63

II.4. **Nature and scope of the aid**

(19) The measure was financed by the *Land* of Bavaria. The aid was paid in the form of direct grants to the umbrella organisation of machinery rings, the KBM, which partly distributed the funds to its affiliate machinery rings in the form of financial transfers and services. Aid to machinery rings was calculated as the percentage of the overall expenditure accounted for by the expenditure required to carry out their statutory core tasks.

II.5. **Reasons for initiating the formal investigation procedure**

(20) It was not clear, after initial examination, whether public payments to KBM remunerated it for its services to the machinery rings without going beyond the market price for such services, or whether such payments exceeded the market price and thus subsidised KBM's operating costs. It was unclear whether such possible aid fell within the scope of Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid [7]. Nor did the Commission have any information to indicate that such aid was linked to investment or other eligible expenditure, or fell within the scope 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 [8]. The aid was therefore possibly classifiable as operating aid incompatible with the common market [9].

[6] OJ L 83, 27.3.1999, p. 1. Regulation as amended by the 2003 Act of Accession.

[7] OJ L 10, 13.1.2001, p. 30.

[8] OJ L 10, 13.1.2001, p. 33. Regulation as last amended by Regulation (EC) No 364/2004 (OJ L 63, 28.2.2004, p. 22).

[9] As the Court of Justice and the Court of First Instance of the European Communities have ruled, operating aid, i.e. aid intended to relieve an undertaking of the expenses which it would itself normally have had to bear in its day-to-day management or its usual activities, in principle distorts competition (judgment of the Court of First Instance in Case T-459/93 *Siemens SA v Commission* [1995] ECR II-1675, paragraphs 48 and 77 and the case law cited therein).

(21) A similar objection applied to payments in favour of machinery rings. In particular, it was unclear whether the public funds channelled to the machinery rings by KBM were used exclusively to reduce the costs to farmers of the services offered, meaning that it was only the farmers who were subsidised, or whether the machinery rings themselves as enterprises were among the final beneficiaries of the funds and thus received State aid themselves.

(22) Furthermore, initial examination of the measure indicated that the aid benefited, at least partially, farms and forestry holdings. The Commission had serious doubts as to whether the aid for farm relief services and machine pooling could be authorised on the basis of section 14 of the Guidelines or whether such aid was not in fact operating aid to agricultural producers.

(23) It also needed to be established whether the machinery rings' various areas of activity could be clearly separated from one another and whether State aid payments to the machinery rings led to distortions of competition in other economic sectors (i.e. in areas of activity outside the official core tasks of the machinery rings).

III. COMMENTS FROM INTERESTED PARTIES

III.1. Objections to the measure

(24) The Commission services have received a number of complaints. The complainants allege that the machinery rings were not only involved in the core tasks described in recital 12, but also provided other communal services such as snow clearing, road building/repairs, waste-water treatment plant construction, etc., plus garden/landscape maintenance and building golf courses and other sports facilities, in competition with other commercial undertakings.

(25) The complainants argued that, because of the close relationship in staffing and geographical terms between the machinery rings and their subsidiaries, and the insufficient separation between the rings' core tasks and their other economic activities, it was not possible to make a clear distinction between those tasks which were supported through public funds and those which were not. The complainants felt that the aid could be used to cross-subsidise other economic activities, and therefore distorted competition also outside the agriculture sector.

III.2. Comments of interested parties during the formal investigation procedure

(26) The Commission received comments from four interested parties during the formal investigation procedure. The interested parties do not raise objections against the subsidised core tasks of the machinery rings, i.e. social assistance, farming and forestry relief services and machine pooling.

(27) Their comments concern the 'non-core tasks' carried out by machinery rings through their subsidiaries, such as clearing snow in winter and gardening and landscaping under contract for outside companies. In some cases these subsidiaries cannot be distinguished from the machinery rings since they use the same name and employ the same staff. The information submitted by the interested parties also suggests that the machinery rings offer certain services (e.g. sale of equipment) on the market. One interested party submitted detailed information demonstrating that one machinery ring had sold plant protection products at a price below the market price, perhaps even below the manufacturer's selling price. In other cases, in the view of the interested parties, although it was the commercial subsidiaries that submitted tenders in response to open invitations to tender, provision of the services was sub-contracted out, *inter alia*, to the machinery rings. The interested parties therefore feel that it is impossible to make a clear distinction between the core tasks of machinery rings and their other commercial activities.

(28) Because of the unified nature, in staffing and geographical terms, of the machinery rings — or KBM — and their subsidiaries, the interested parties argue that it is not possible to prevent the cross-subsidisation of the commercial activities referred to in recital 25. One interested party also considers that machinery rings abuse their dominant position within the meaning of Article 82 of the EC Treaty, make agreements and engage in practices that distort competition within the meaning of Article 81 of the Treaty.

(29) It should be noted that the evidence provided by the interested parties to substantiate their claims does not refer specifically to the period preceding 2001, which is the object of this decision. The Commission is of the opinion that such evidence is nonetheless relevant for the purposes of assessing whether there was scope for cross-subsidisation and distortion of competition outside the agriculture sector also in the period preceding 2001.

IV. **COMMENTS FROM GERMANY**

(30) In its letter of 4 April 2003, Germany holds that neither KBM nor the machinery rings are enterprises within the meaning of State aid legislation. Germany argues that KBM has not offered goods or services on a specific market and the State-subsidised areas of activity (core tasks) of machinery rings should not be classified as economic activities, since they are not intended to turn a profit.

(31) In the additional information submitted by letter of 14 September 2004, Germany contends that, since the statute of the machinery rings bars them from carrying out economic activities, it is sufficiently proven that the aid could only benefit farmers, and no further evidence is necessary in this respect. Germany submitted figures showing that social assistance alone accounts for a very large proportion of the financial contribution to be passed on to farmers by the machinery rings. Germany concludes that the entire amount paid by the *Land* of Bavaria to KBM and the machinery rings can be deemed to have been passed on to farmers as sole final beneficiaries.

(32) In its letter of 4 April 2003, Germany maintains that aid granted to farmers through the machinery rings falls within the definition of 'soft aids' of section 14 of the Guidelines, and complies with the requirements of that section. Therefore, it can be considered compatible with the common market.

(33) In its letter of 4 April 2003, Germany quotes the judgment of the European Court of Justice of 24 July in Case C-280/00 (*Altmark Trans GmbH and Regierungspräsidium Magdeburg*) ([10]), which rules that State compensatory measures, provided they are merely compensation for the services provided in order to discharge public service obligations, do not, under certain conditions, fall under the heading of State aid. Germany considers that, in the case in hand, those conditions can be considered to be fulfilled.

([10]) [2003] ECR I-7747.

(34) Germany makes the following Statements in respect of the interested parties' objections concerning the impact of the measure on certain non-agricultural activities of the machinery rings and the allegation of cross-subsidisation affecting other sectors of the economy.

(35) In its letter of 14 September 2004, Germany points out that, between 1994 and 2000, thirteen independent subsidiaries were set up to carry out the activities outlined in recital 15.

(36) KBM, the machinery rings and each of their subsidiaries have always been under an obligation to keep separate accounts, as laid down in Article 12, fifth sentence, of the LwFöG. The Bavarian authorities have duly checked for compliance with this obligation.

(37) On the other hand, since KBM and the machinery rings could carry out only the core tasks laid down in their statutes, whilst the commercial subsidiaries could only carry out the five 'non-core tasks' enumerated in the Act, Germany did not deem it necessary to have records of working time.

(38) Germany claims that a comprehensive package of measures and a supervision mechanism were in place to ensure that the aid was used exclusively for the three core tasks of the machinery rings, ruling out any danger of cross-subsidisation of non-agricultural sectors, as follows:

(a) Separate accounting and budgeting requirement for KBM, machinery rings and their subsidiaries;

(b) Clear delimitation of areas of activity (core tasks for the machinery rings, non-core tasks for the subsidiaries);

(c) Limitation of non-core tasks to five clearly identified areas in the LwFöG;

(d) Payable aid was calculated based on 'necessary cost' (Article 12, first sentence of the LwFöG). For the purposes of establishing such 'necessary cost', the Bavarian authorities checked each item of expenditure and ascertained whether it was related to the machinery rings' core tasks.

(e) Explicit exclusion from support of non-core tasks (Article 12, third sentence of the LwFöG);

(f) 10 % reduction in support for machinery rings having commercial subsidiaries (Article 12, sixth sentence of the LwFöG).

V. **ASSESSMENT OF THE AID**

V.1. **Existence of aid**

(39) Under Article 87(1) of the EC Treaty, any aid granted by a Member State or through State resources in any form whatsoever is prohibited if it distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods in so far as it affects trade between Member States.

(40) These conditions are fulfilled, as shown below.

(41) The measure is financed through State resources.

V.1.1. *Aid to KBM*

(42) KBM's activities do not relate to the production, processing and marketing of products listed in Annex I to the EC Treaty.

(43) Germany has provided a list of activities carried out by KBM (see recital 16). Some of these activities are not of an economic nature. In particular, KBM's activities as central contact for the Bavarian Ministry of Agriculture and Forestry, its administrative and technical supervision of machinery ring managers and its management of the public funds made available to the machinery rings are not services rendered on a given market. Therefore, they are not classifiable as economic activities, and KBM cannot be considered an undertaking within the meaning of Article 87(1) of the EC Treaty in respect of those activities.

(44) Payments covering KBM's administrative costs do not have all the features specified in Article 87(1) of the EC Treaty, and therefore do not constitute State aid within the meaning of that Article.

(45) However, KBM also carries out activities of an economic nature, as it

(a) offers certain consultancy services for machinery rings;

(b) offers training and further training of machinery rings staff;

(c) develops computer programmes which are then sold to farmers.

(46) Since the goods and services in question are provided on a specific market and constitute economic activities, KBM must be considered an undertaking within the meaning of Article 87(1) ([11]) of the EC Treaty.

(47) As regards KBM's consultancy and training activities, these services should benefit mainly the machinery rings and their subsidiaries, as these receive the services free of charge or against a contribution to costs which is below the market price. However, Germany has not provided any information as to whether the amounts paid yearly to KBM correspond to the costs actually incurred by KBM in the exercise of these activities, and therefore can be taken to be payments at market price for a service provided, on behalf of the *Land* of Bavaria, by KBM to machinery rings, or whether they may in fact exceed the market price. Furthermore, the provision of public funds to KBM is not explicitly linked to the condition that all elements of aid contained therein should be integrally passed on to the machinery rings or their subsidiaries. It is therefore not possible, on the basis of the available information, to completely rule out the possibility that the measure in question includes an aid component to KBM.

(48) Besides, it cannot be established whether such aid is so small that, under Regulation (EC) No 69/2001, it does not constitute State aid because not all the conditions of Article 87(1) of the EC Treaty are fulfilled.

([11]) The Court of Justice of the European Communities has consistently held that, in the context of competition law, the concept of an undertaking covers any entity engaged in an economic activity, regardless of the legal status of the entity or the way in which it is financed (see, *inter alia*, the judgment in joined Cases C-180/98 to C-184/98 *Pavlov and others v Stichting Pensionsfonds Meidische Specialisten* [2000] ECR I-6451, paragraph 74). It has also been consistently held that any activity consisting in offering goods and services on a given market is an economic activity (judgements in Case C-118/85 *Commission v Italy* [1987] ECR 2599, paragraph 7 and in Case C-35/96 *Commission v Italy* [1998] ECR I-3851, paragraph 36, as well as the previously cited Pavlov judgment, paragraph 75).

(49) It must be assumed that the measure benefiting KBM's economic activities is liable to have an impact on trade between Member States. According to the case law of the European Court of Justice in the case *Altmark Trans GmbH and Regierungspräsidium Magdeburg* ([12]), there is no threshold and no percentage under which it may be considered that trade between Member States is not affected. Neither the relatively small amount of the aid, nor the relatively small size of the beneficiary undertaking enable to rule out, in principle, the possibility of an impact on trade between Member States.

(50) Therefore, financial contributions granted to KBM must be classified as State aid within the meaning of Article 87(1) of the EC Treaty in favour of KBM.

V.1.2. *Aid to machinery rings*

(51) Machinery rings carry out economic activities in that they provide services (e.g. coordinating provision of machinery, exchange of labour, etc.) in return for payment on an actual or potential market. Therefore, machinery rings should be considered undertakings within the meaning of Article 87(1) of the EC Treaty.

(52) Machinery rings do not own the machinery and do not provide the staff themselves. Their core activity is entirely confined to an intermediary role, comparable with that of an estate agent or employment agency, which bring together supply and demand. They are not active in the production, processing and marketing of products listed in Annex I to the EC Treaty.

(53) The machinery rings' core tasks typically give rise to operational and personnel costs, such as staff salaries, rent for premises and other office expenditure. In the absence of State aid, these costs are financed from membership contributions and ad hoc payments made by farmers for the provision of labour and/or machinery. State aid granted to the machinery rings leads, in principle, to a reduction in membership fees and ad hoc payments. Aid to machinery rings can be expected to be at least partially passed on to the farmers who are members of the rings, and available evidence shows that a large amount of the financial transfers received by the machinery rings through KBM was indeed transferred to farmers.

(54) However, Germany has not provided conclusive evidence to rule out the existence of a component of State aid remaining with the machinery rings, as the machinery rings were not under a legal obligation to pass on the full amount of aid received to farmers in the form of services at reduced price.

(55) The machinery rings and their subsidiaries also received economic benefits stemming from the services put at their disposal by KBM for consultancy, training and further training of machinery ring staff, since such services were provided either free of charge or below the market price.

(56) Germany has not provided the Commission with information enabling it to quantify the amount of aid granted to machinery rings in this form.

(57) It is therefore impossible to assess whether aid possibly received by machinery rings in the form of payments and services from KBM is so small that it can be classified as *de minimis* aid under Regulation (EC) No 69/2001.

(58) On the basis of the available information, it must therefore be assumed that the measure favours certain undertakings (the machinery rings) in Bavaria.

(59) It must also be assumed that the measure benefiting machinery rings is liable to distort competition and affect trade between Member States, since some of the machinery rings' services could also be offered across borders. According to the case law of the Court of Justice, there is no threshold and no percentage under which it may be considered that trade between Member States is not affected. Neither the relatively small amount of the aid, nor the relatively small size of the beneficiary undertaking enable to rule out, in principle, the possibility of an impact on trade between Member States ([13]).

(60) Therefore, the measure constitutes aid within the meaning of Article 87(1) of the EC Treaty in favour of machinery rings.

([12]) See footnote 10.

([13]) See footnote 10.

V.I.3. *Aid to the machinery rings' subsidiaries*

(61) The examination of issues of commercial or fiscal law in Member States and of complaints made in that connection by economic operators falls, in principle, within the sphere of competence of the Member States. However, in this case the aid granted by Germany could distort competition. The Commission has therefore examined the measure from that angle.

(62) The comments from interested parties point to the possibility that aid to the machinery rings and KBM may have resulted in cross-subsidisation of the 'non-core tasks' carried out by the machinery rings' subsidiaries.

(63) Indeed, unless it can be proven beyond reasonable doubt that a clear factual and legal separation existed between the activities of the parent machinery ring and its subsidiary, it cannot be ruled out that some of the public funds granted to the parent machinery ring flowed to the subsidiaries.

(64) It is therefore necessary to examine the factual and legal situation in the period between 1994 and 2000 with respect to the obligations and precautions introduced by Germany to avoid the cross-subsidisation of the machinery rings' subsidiaries.

(65) In its observations, Germany claims that the machinery rings and their subsidiaries were completely independent in terms of accounting/budgeting, premises, staff and operations. However, the available evidence points in a different direction.

(66) Article 12, first sentence, of the LwFöG lays down that machinery rings and their subsidiaries must keep separate accounting and balance sheets. This requirement appears to have been fulfilled and verified by Bavaria.

(67) However, there seems to have been close logistic contiguity between the machinery rings and their subsidiaries. Premises appear to have been shared in many cases. For example, KBM and its subsidiaries *MR Bayern GmbH* and *meinhof.de AG* subsidiaries had the same postal address and telephone number, and shared the same offices.

(68) The LwFöG imposes no obligation concerning the separation of staff, and indeed KBM, the machinery rings and their subsidiaries habitually shared the same staff. In particular, machinery ring staff was mostly employed by the subsidiaries. The chairman of the KBM board of directors was and is also the chairman of the supervisory board of *meinhof.de AG*, and the manager of *MR Bayern GmbH* was also the manager of *meinhof.de AG*.

(69) Germany appears to have been aware of such contiguity between the machinery rings and their subsidiaries. In 1997, a letter of the Bavarian Ministry of Agriculture and Forestry set out the principles to be followed in checking the machinery rings' accounts. In particular, the letter laid down that work carried out by machinery rings' staff on behalf of the commercial subsidiaries should be invoiced at market prices, and that such compensation for services rendered by machinery rings should be deducted from the 'necessary cost' which formed the basis for State aid to the machinery rings.

(70) However, in the absence of detailed work records showing the number of hours worked by staff on behalf of the machinery rings and on behalf of their subsidiaries, and considering that premises could be shared, it would have been impossible to check exactly how much work was carried out by the machinery rings' staff for the benefit of the subsidiaries.

(71) The fact that State aid was automatically reduced by 10 % if a machinery ring also exercised non-core tasks through a commercial subsidiary also suggests that the separation of activities could not have been complete, since the existence of a truly separate commercial subsidiary would have had no impact on the 'necessary cost' borne by machinery rings to carry out their core tasks.

(72) Besides, in 2001 Germany adopted a system of detailed work records whereby, for six months and in turn, each machinery ring would record the number of hours worked by staff on behalf of the machinery ring itself (core tasks) and on behalf of their commercial subsidiaries (non-core tasks). This system was introduced to establish roughly what proportion of working time was spent by the machinery rings' staff on 'non-core tasks'. The introduction of such a mechanism also appears to indirectly substantiate the Commission's doubt that prior to 2001, staff and operations were not fully separate.

(73) Advertising in the press and on websites was also shared, and the available evidence shows that the commercial subsidiaries made free use of the machinery rings' logo. For example, the subsidiary *meinhof.de AG* used the logo 'MR' (i.e. the logo of the machinery rings) on its order forms, member information sheets and website. The advertisements published in the local press do not enable readers to distinguish between machinery rings and their subsidiaries. It is also not clear how advertising costs were split between machinery rings and subsidiaries.

(74) Therefore, the Commission considers that Germany did not have a system capable of effectively precluding cross-subsidisation between the machinery rings and their subsidiaries. Therefore, it cannot be ruled out that part of the State aid received by the machinery rings or KBM flowed to the subsidiaries, for example in the form of staff or services put at the subsidiary's disposal free of charge or below the market price.

(75) On the basis of the available information, it is not possible to ascertain whether such possible aid to the benefit of the subsidiaries is so small that, under Regulation (EC) No 69/2001, it cannot be classified as State aid.

V.I.4. *Services of general economic interest*

(76) As regards the reservation put forward by Germany in its comments that, in view of the ruling of the European Court of Justice in the *Altmark Trans GmbH und Regierungspräsidium Magdeburg* case [14], the measure in question could not be classified as State aid, the Commission would like to underline that, prima facie, not all the conditions set out in the *Altmark* ruling are fulfilled. Firstly, organising loans of machinery and labour between farmers is — as described — a normal commercial activity and not a service in the general economic interest with well-defined public service obligations. Secondly, the parameters on the basis of which compensation is calculated were not established beforehand. Thirdly, Germany has not demonstrated that the level of compensation does not exceed what is necessary to cover all or part of the costs incurred, taking into account the relevant receipts and a reasonable profit for discharging the public service obligations.

[14] See footnote 10.

V.I.5. *Aid to farmers*

(77) The measure also benefited agricultural holdings. They could benefit from a network of machinery rings throughout Bavaria which organised the provision of machinery and labour against payment of a membership contribution and fees which did not correspond to the full cost of such services.

(78) The German authorities have reported intensities of aid to machinery rings of about 50 % of the 'necessary cost' throughout the period considered. Given the overall amounts of aid involved (around EUR 5 million/year) and the number of farmers who, as members of a machinery ring, were entitled to use their services (around 100 000), even if the entire amount of aid was passed on to farmers, the amounts received, on average, by individual farmers would not exceed EUR 50/year.

(79) Article 3 of Commission Regulation (EC) No 1860/2004 of 6 October 2004 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the agriculture and fisheries sectors [15], which is based on the Commission's experience in this field, lays down that very small amounts of aid granted in the agriculture sector do not fulfil all the criteria of Article 87(1) of the Treaty, provided certain conditions are complied with. In particular, the Commission has established that aid which does not exceed EUR 3 000 per beneficiary over three years, provided the total amount of aid granted to agricultural undertakings over three years is not more than 0,3 % of the annual value of agricultural production (EUR 133 470 000 for Germany in 2001) does not distort or threaten to distort competition, and is therefore outside the scope of Article 87(1) of the EC Treaty.

(80) Article 5(2) of Regulation (EC) No 1860/2004 lays down that that Regulation also applies to aid granted before its entry into force, provided that all its conditions are complied with. In the case in hand, the Commission considers that such conditions are met, given the very small amounts of individual aid involved and the total sum disbursed by Germany (only approximately EUR 5 million per year), that the aid was not linked to exports or the use of domestic over imported products, nor linked to the price or quantity of products placed on the market. The economic analysis required under the Regulation has already been carried out by the Commission, notably in the context of the decision on State aid N 145/04 [16].

[15] OJ L 325, 28.10.2004, p. 4.

[16] C(2004) 2669 of 14 July 2004 — France — aid to milk producers who suffered losses as a result of the bankruptcy of Parmalat.

(81) It must be noted that, in its decision authorising such aid to farmers *pro futuro* ([17]), the Commission assessed the same measure in the light of section 14 of the Guidelines and found it compatible on that basis, taking into account the specific circumstances of that case. However, in the case under consideration here, application of the principles laid down in Regulation (EC) No 1860/2004 makes it unnecessary to carry out an assessment on the basis of section 14 of the Guidelines.

(82) Therefore, aid granted to farmers in the form of services provided by machinery rings at lower cost does not constitute State aid within the meaning of Article 87(1) of the EC Treaty.

V.I.6. *Conclusion*

(83) The Commission therefore concludes that this measure constitutes aid within the meaning of Article 87(1) of the EC Treaty, benefiting KBM, individual machinery rings and their subsidiaries. The measure does not constitute aid in favour of farmers.

V.2. **Application of Article 87(3) of the EC Treaty**

(84) The question therefore arises as to whether one of the exceptions or exemptions from the basic prohibition of State aid under Article 87(2) and (3) of the EC Treaty can apply. This particular measure is neither aid having a social character within the meaning of Article 87(2)(a) of the EC Treaty nor aid to make good the damage caused by natural disasters or exceptional occurrences within the meaning of Article 87(2)(b) of the EC Treaty, nor aid relating to the division of Germany within the meaning of Article 87(2)(c) of the EC Treaty. Nor are the special factors referred to in Article 87(3)(a), (b), (d) or (e) of the EC Treaty applicable. Nor has Germany cited any of these provisions. The only possibly applicable exceptional circumstances are those set out in Article 87(3)(c) of the EC Treaty.

([17]) See footnote 4.

V.2.1. *Compatibility of aid to KBM*

(85) As described in recitals 42 to 50, it is unclear whether aid to KBM falls within the scope of Regulation (EC) No 69/2001. According to the available information, the aid granted is not linked to investment and does not fall within the scope of Regulation (EC) No 70/2001. Nor have any other eligible activities been brought to the Commission's attention.

(86) Therefore, according to the consistent judgments in case law, financial contributions paid out to KBM are to be classified as operating aid, incompatible with the common market ([18]), in so far as they have not been passed on to the machinery rings, and in so far as they exceed the maximum limits laid down in Regulation (EC) No 69/2001.

V.2.2. *Compatibility of aid to the machinery rings and their subsidiaries*

(87) As described in recitals 42 to 60, machinery rings and their subsidiaries received benefits in the form of services provided by KBM for consultancy, training and further training of their staff. Such measures are to be considered training and further training aid in accordance with 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 ([19]). As regards consultancy, Regulation (EC) No 70/2001 may be applicable. However, the information which Germany has provided the Commission with is not sufficient to enable it to assess whether the requirements of these Regulations have been met.

(88) As concerns the financial contributions directly transferred by KBM to the machinery rings, the same considerations set out in recitals 85 and 86 apply *mutatis mutandis*. It cannot be ruled out that a component of aid was retained by the machinery rings, and possibly passed on to their subsidiaries, as a result of an insufficient separation of their respective activities.

([18]) See footnote 11.

([19]) OJ L 10, 13.1.2001, p. 20. Regulation as amended by Regulation (EC) No 363/2004 (OJ L 63, 28.2.2004, p. 20).

(89) On the other hand, the German authorities have provided figures showing that a large proportion of this aid was indeed passed on to farmers. The Commission is of the opinion that it can be assumed that payments made by Bavaria through KBM to the machinery rings were passed on to farmers to the extent that they correspond to the average costs of the service as demonstrated by the German authorities.

(90) Therefore, any sums exceeding the amount demonstrably passed on to farmers on the basis of a calculation of the average costs of the relevant service, and exceeding the ceiling of EUR 100 000 per beneficiary over any period of three years laid down in Regulation (EC) No 69/2001 constitute operating aid incompatible with the common market.

V.3. **Selection of KBM**

(91) The Bavarian Agricultural Promotion Act provides that only one such organisation can be approved and supported in Bavaria. KBM was already approved in 1972. Germany stated in its comments that the organisation is a self-help organisation of Bavarian farmers which occupies a special position since there are no comparable organisations with which it could be in competition.

(92) At first sight, the selection of KBM does not appear to contravene Community rules on the coordination of procedures for the award of public service contracts. However, the Commission reserves the right to carry out a further analysis of the measure from the angle of Community procurement law.

VI. **CONCLUSIONS**

(93) The Commission finds that Germany has unlawfully implemented the aid measure at issue, in breach of Article 88(3) of the Treaty. For the reasons set out above the Commission considers that:

(94) Aid granted to farmers for the coordination of the provision of machinery and labour does not constitute State aid within the meaning of Article 87(1) of the EC Treaty.

(95) Aid granted to KBM, in so far as it has not been passed on to the machinery rings, is incompatible with the common market. Germany must therefore be required, in accordance with Article 14(1) of Regulation (EC) No 659/1999, to recover such incompatible aid in so far as it does not fall within the scope of Regulation (EC) No 69/2001.

(96) Aid granted to the machinery rings and/or their subsidiaries is incompatible with the common market, in so far as it has not been passed on to farmers. The amount passed on to farmers will have to be demonstrated by the German authorities. The calculation should be based on the average cost of services provided by machinery rings without their commercial subsidiaries, since otherwise those costs may incorporate amounts which may have flowed to the subsidiaries.

(97) Germany must be required, under Article 14(1) of Regulation (EC) No 659/1999, to recover such incompatible aid in so far as it does not fall within the scope of Regulation (EC) No 69/2001,

HAS ADOPTED THIS DECISION:

Article 1

The financial contributions granted by Germany to Bavarian farmers through the Bavarian machinery rings in the form of subsidised services involving the coordination of provision of machinery and labour do not constitute aid within the meaning of Article 87(1) of the Treaty.

Article 2

The State aid which Germany has granted to the *Kuratorium bayerischer Maschinen- und Betriebshilferinge e.V.*, in so far as it has not been passed on to the machinery rings, and in so far as it exceeds the ceiling of EUR 100 000 per beneficiary over any period of three years laid down in Regulation (EC) No 69/2001, is incompatible with the common market.

Article 3

The State aid which Germany has granted to machinery rings and their subsidiaries, in so far as it has not been passed on to farmers as demonstrated by the German authorities in accordance with Article 4, and in so far as it exceeds the ceiling of EUR 100 000 per beneficiary over any period of three years laid down in Regulation (EC) No 69/2001, is incompatible with the common market.

Article 4

For the purposes of establishing the incompatible aid referred to in Articles 2 and 3, the German authorities shall submit a calculation of the average cost of services provided to farmers by machinery rings having no commercial subsidiary.

Article 5

Germany shall take all necessary measures to recover from the beneficiaries the aid unlawfully paid to them referred to in Articles 2 and 3.

Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of this Decision. The aid to be recovered shall include interest from the date on which it was at the disposal of the beneficiaries up to the date of its recovery. Interest shall be calculated as laid down in Chapter V of Commission Regulation (EC) No 794/2004 ([20]).

Article 6

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 14 December 2004.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

([20]) OJ L 140, 30.4.2004, p. 1.

COMMISSION DECISION

of 14 August 2006

amending Decision 2005/648/EC concerning protection measures in relation to Newcastle disease in Bulgaria

(notified under document number C(2006) 3622)

(Text with EEA relevance)

(2006/571/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC [1], and in particular Article 18(7) thereof,

Having regard to Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries [2], and in particular Article 22(6) thereof,

Whereas:

(1) Newcastle disease is a highly contagious viral disease in poultry and birds and there is a risk that the disease agent might be introduced via international trade in live poultry and poultry products.

(2) Commission Decision 2005/648/EC of 8 September 2005 concerning protection measures in relation to Newcastle disease in Bulgaria [3] was adopted following an outbreak of Newcastle disease in the administrative region of Vratsa. That Decision suspends the importation of live poultry, ratites, farmed and wild feathered game and hatching eggs, fresh meat and meat preparations and meat products from these species.

(3) Bulgaria confirmed an outbreak of Newcastle disease in the administrative district (county) of Kardzhali in Bulgaria.

(4) Taking account of the current epidemiology situation in Bulgaria in relation to Newcastle disease and the fact that this country has applied certain disease control measures and has sent further information on the disease situation to the Commission, it appears that the situation in Bulgaria, except for the regions of Vratsa, Blagoevgrad, Kardzhali and Burgas (excluding the municipalities of Burgas and Sungurlare) is still satisfactory. It is therefore appropriate to limit the suspension of imports to those regions.

(5) The Annex to Decision 2005/648/EC should therefore be amended accordingly.

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

HAS ADOPTED THIS DECISION:

Article 1

In Decision 2005/648/EC the Annex is replaced by the Annex to this Decision.

Article 2

Member States shall immediately take the necessary measures to comply with this Decision and publish those measures. They shall immediately inform the Commission thereof.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 14 August 2006.

For the Commission
Markos KYPRIANOU
Member of the Commission

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[1] OJ L 268, 24.9.1991, p. 56. Directive as last amended by the 2003 Act of Accession.
[2] OJ L 24, 30.1.1998, p. 9. Directive as last amended by Regulation (EC) No 882/2004 of the European Parliament and of the Council (OJ L 165, 30.4.2004, p. 1, as corrected by OJ L 191, 28.5.2004, p. 1).
[3] OJ L 238, 15.9.2005, p. 16. Decision as last amended by Decision 2006/354/EC (OJ L 132, 19.5.2006, p. 34).

ANNEX

'*ANNEX*

Administrative district of Blagoevgrad

Administrative district of Burgas, excluding the municipalities of Burgas and Sungurlare

Administrative district of Vratsa

Adminsitrative district of Kardzhali'

COMMISSION DECISION

of 18 August 2006

amending Decision 2005/393/EC as regards the restricted zones in relation to bluetongue in Spain and Portugal

(notified under document number C(2006) 3700)

(Text with EEA relevance)

(2006/572/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 8(3)(c) and the third paragraph of Article 19 thereof,

Whereas:

(1) Directive 2000/75/EC lays down control rules and measures to combat bluetongue in the Community, including the establishment of protection and surveillance zones and a ban on animals leaving those zones.

(2) Commission Decision 2005/393/EC of 23 May 2005 on protection and surveillance zones in relation to bluetongue and conditions applying to movements from or through these zones [2] provides for the demarcation of the global geographic areas where protection and surveillance zones (the restricted zones) are to be established by the Member States in relation to bluetongue.

(3) Spain has informed the Commission that the presence of the vector has been detected in a number of new peripheral areas of the restricted zone.

(4) Consequently, the restricted zone related to Spain should be extended taking into account of the data available on the ecology of the vector and the evolution of its seasonal activity.

(5) Portugal has informed the Commission that no virus has circulated in the councils of Oleiros, Sertã and Vila de Rei since November 2005.

(6) Consequently, these councils should be considered free of bluetongue and, on the basis of the substantiated request submitted by Portugal, deleted from the areas listed for restricted zones.

(7) Decision 2005/393/EC should therefore be amended accordingly.

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

HAS ADOPTED THIS DECISION:

Article 1

Annex I to Decision 2005/393/EC is amended in accordance with the Annex to this Decision.

Article 2

This Decision shall apply from the day following its publication in the *Official Journal of the European Union*.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 18 August 2006.

For the Commission

Markos KYPRIANOU

Member of the Commission

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[1] OJ L 327, 22.12.2000, p. 74.

[2] OJ L 130, 24.5.2005, p. 22. Decision as last amended by Decision 2006/273/EC (OJ L 99, 7.4.2006, p. 35).

ANNEX

1. In Annex I to Decision 2005/393/EC, the list of restricted zones in *Zone E (serotype 4)* which relates to Spain is replaced by the following:

'Spain:

— Autonomous Region of Extremadura: provinces of Cáceres, Badajoz

— Autonomous Region of Andalucia: provinces of Cádiz, Córdoba, Huelva, Jaén (comarcas of Alcalá la Real, Andújar, Huelma, Jaén, Linares, Santiesteban del Puerto, Ubeda), Málaga, Sevilla

— Autonomous Region of Castilla-La Mancha: provinces of Albacete (comarca of Alcaraz), Ciudad Real, Toledo

— Autonomous Region of Castilla y León: provinces of Avila (comarcas of Arenas de San Pedro, Candeleda, Cebreros, Las Navas del Marqués, Navaluenga, Sotillo de la Adrada), Salamanca (comarcas of Béjar, Ciudad Rodrigo and Sequeros)

— Autonomous Region of Madrid: province of Madrid (comarcas of Alcalá de Henares, Aranjuez, Arganda del Rey, Colmenar Viejo, El Escorial, Griñón, Municipio de Madrid, Navalcarnero, San Martín de Valdeiglesias, Torrelaguna, Villarejo de Salvanés).'

2. In Annex I to Decision 2005/393/EC, the list of restricted zones in *Zone E (serotype 4)* which relates to Portugal is replaced by the following:

'Portugal:

— Regional Direction of Agriculture of Algarve: all *concelhos*

— Regional Direction of Agriculture of Alentejo: all *concelhos*

— Regional Direction of Agriculture of Ribatejo e Oeste: *concelhos* of Almada, Barreiro, Moita, Seixal, Sesimbra, Montijo, Coruche, Setúbal, Palmela, Alcochete, Benavente, Salvaterra de Magos, Almeirim, Alpiarça, Chamusca, Constância, Abrantes and Sardoal

— Regional Direction of Agriculture of Beira Interior: *concelhos* of Penamacor, Fundão, Idanha-a-Nova, Castelo Branco, Proença-a-Nova, Vila Velha de Ródão and Mação.'