

# Official Journal

## of the European Union

L 180



English edition

Legislation

Volume 53

15 July 2010

## Contents

I *Legislative acts*

## DIRECTIVES

- ★ **Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC** ..... 1

II *Non-legislative acts*

## REGULATIONS

- ★ **Council Regulation (EU, Euratom) No 617/2010 of 24 June 2010 concerning the notification to the Commission of investment projects in energy infrastructure within the European Union and repealing Regulation (EC) No 736/96** ..... 7

Commission Regulation (EU) No 618/2010 of 14 July 2010 establishing the standard import values for determining the entry price of certain fruit and vegetables ..... 15

Commission Regulation (EU) No 619/2010 of 14 July 2010 amending the representative prices and additional import duties for certain products in the sugar sector fixed by Regulation (EC) No 877/2009 for the 2009/10 marketing year ..... 17

Price: EUR 3

(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.

Commission Regulation (EU) No 620/2010 of 14 July 2010 on the issuing of import licences for applications lodged during the first seven days of July 2010 under tariff quotas opened by Regulation (EC) No 616/2007 for poultry meat .....	19
--	----

## DECISIONS

2010/391/EU:

- ★ **Commission Decision of 8 July 2010 amending the Annexes to Decision 93/52/EEC as regards the recognition of Lithuania and the region of Molise in Italy as officially free of brucellosis (*B. melitensis*) and amending the Annexes to Decision 2003/467/EC as regards the declaration of certain administrative regions of Italy as officially free of bovine tuberculosis, bovine brucellosis and enzootic-bovine-leukosis (notified under document C(2010) 4592) <sup>(1)</sup>.....** 21

2010/392/EU:

- ★ **Commission Decision of 14 July 2010 terminating the anti-dumping proceeding concerning imports of certain stainless steel fasteners and parts thereof originating in India and Malaysia** 26

2010/393/EU:

- ★ **Commission Decision of 14 July 2010 terminating the anti-subsidy proceeding concerning imports of certain stainless steel fasteners and parts thereof originating in India and Malaysia** 28

## IV Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty

2010/394/EC:

- ★ **Commission Decision of 20 May 2008 on State aid C 57/06 (ex NN 56/06, ex N 451/06) in connection with the financing of Hessische Staatsweingüter by the Land Hessen (notified under document C(2008) 1626) <sup>(1)</sup> .....** 30



<sup>(1)</sup> Text with EEA relevance

## I

*(Legislative acts)*

## DIRECTIVES

## DIRECTIVE 2010/41/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 7 July 2010

**on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

outside salaried work. In the interest of clarity, Directive 86/613/EEC should be replaced by this Directive.

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 157(3) thereof,

- (2) In its Communication of 1 March 2006 entitled 'Roadmap for equality between women and men', the Commission announced that in order to improve governance of gender equality, it would review the existing Union gender equality legislation not included in the 2005 recast exercise with a view to updating, modernising and recasting where necessary. Directive 86/613/EEC was not included in the recasting exercise.

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

- (3) In its conclusions of 5 and 6 December 2007 on 'Balanced roles of women and men for jobs, growth and social cohesion', the Council called on the Commission to consider the need to revise, if necessary, Directive 86/613/EEC in order to safeguard the rights related to motherhood and fatherhood of self-employed workers and their helping spouses.

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood <sup>(3)</sup> ensures application in Member States of the principle of equal treatment as between men and women engaged in an activity in a self-employed capacity, or contributing to the pursuit of such activity. As far as self-employed workers and spouses of self-employed workers are concerned, Directive 86/613/EEC has not been very effective and its scope should be reconsidered, as discrimination based on sex and harassment also occur in areas

- (4) The European Parliament has consistently called on the Commission to review Directive 86/613/EEC, in particular so as to boost maternity protection for self-employed women and to improve the situation of spouses of self-employed workers.
- (5) The European Parliament has already stated its position on these matters in its resolution of 21 February 1997 on the situation of the assisting spouses of the self-employed <sup>(4)</sup>.
- (6) In its Communication of 2 July 2008 entitled 'Renewed Social Agenda: Opportunities, access and solidarity in 21st century Europe', the Commission has affirmed the need to take action on the gender gap in entrepreneurship as well as to improve the reconciliation of private and professional life.

<sup>(1)</sup> OJ C 228, 22.9.2009, p. 107.

<sup>(2)</sup> Position of the European Parliament of 6 May 2009 (not yet published in the Official Journal), Position of the Council at first reading of 8 March 2010 (OJ C 123 E, 12.5.2010, p. 5), Position of the European Parliament of 18 May 2010.

<sup>(3)</sup> OJ L 359, 19.12.1986, p. 56.

<sup>(4)</sup> OJ C 85, 17.3.1997, p. 186.

- (7) There are already a number of existing legal instruments for the implementation of the principle of equal treatment which cover self-employment activities, in particular Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security<sup>(1)</sup> and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation<sup>(2)</sup>. This Directive should therefore not apply to the areas already covered by other directives.
- (8) This Directive is without prejudice to the powers of the Member States to organise their social protection systems. The exclusive competence of the Member States with regard to the organisation of their social protection systems includes, *inter alia* decisions on the setting up, financing and management of such systems and related institutions as well as on the substance and delivery of benefits, the level of contributions and the conditions for access.
- (9) This Directive should apply to self-employed workers and to their spouses or, when and in so far as recognised by national law, their life partners, where they, under the conditions laid down by national law, habitually participate in the activities of the business. In order to improve the situation for these spouses and, when and in so far as recognised by national law, the life partners of self-employed workers, their work should be recognised.
- (10) This Directive should not apply to matters covered by other Directives implementing the principle of equal treatment between men and women, notably Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services<sup>(3)</sup>, *inter alia*, Article 5 of Directive 2004/113/EC on insurance and related financial services remains applicable.
- (11) To prevent discrimination based on sex, this Directive should apply to both direct and indirect discrimination. Harassment and sexual harassment should be considered discrimination and therefore prohibited.
- (12) This Directive should be without prejudice to the rights and obligations deriving from marital or family status as defined in national law.
- (13) The principle of equal treatment should cover the relationships between the self-employed worker and third parties within the remit of this Directive, but not relationships between the self-employed worker and his or her spouse or life partner.
- (14) In the area of self-employment, the application of the principle of equal treatment means that there must be no discrimination on grounds of sex, for instance in relation to the establishment, equipment or extension of a business or the launching or extension of any other form of self-employed activity.
- (15) Member States may, under Article 157(4) of the Treaty on the Functioning of the European Union, maintain or adopt measures providing for specific advantages in order to make it easier for the under-represented sex to engage in self-employed activities or to prevent or compensate for disadvantages in their professional careers. In principle, measures such as positive action aimed at achieving gender equality in practice should not be seen as being in breach of the legal principle of equal treatment between men and women.
- (16) It is necessary to ensure that the conditions for setting up a company between spouses or, when and in so far as recognised by national law, life partners, are not more restrictive than the conditions for setting up a company between other persons.
- (17) In view of their participation in the activities of the family business, the spouses or, when and in so far as recognised by national law, the life partners of self-employed workers who have access to a system for social protection, should also be entitled to benefit from social protection. Member States should be required to take the necessary measures to organise this social protection in accordance with national law. In particular, it is up to Member States to decide whether this social protection should be implemented on a mandatory or voluntary basis. Member States may provide that this social protection may be proportional to the participation in the activities of the self-employed worker and/or the level of contribution.
- (18) The economic and physical vulnerability of pregnant self-employed workers and pregnant spouses and, when and in so far as recognised by national law, pregnant life partners of self-employed workers, makes it necessary for them to be granted the right to maternity benefits. The Member States remain competent to organise such benefits, including establishing the level of contributions and all the arrangements concerning benefits and payments, provided the minimum requirements of this Directive are complied with. In particular, they may determine in which period before and/or after confinement the right to maternity benefits is granted.

<sup>(1)</sup> OJ L 6, 10.1.1979, p. 24.

<sup>(2)</sup> OJ L 204, 26.7.2006, p. 23.

<sup>(3)</sup> OJ L 373, 21.12.2004, p. 37.

(19) The length of the period during which female self-employed workers and female spouses or, when and in so far as recognised by national law, female life partners of self-employed workers, are granted maternity benefits is similar to the duration of maternity leave for employees currently in place at Union level. In case the duration of maternity leave provided for employees is modified at Union level, the Commission should report to the European Parliament and the Council assessing whether the duration of maternity benefits for female self-employed workers and female spouses and life partners referred to in Article 2 should also be modified.

(20) In order to take the specificities of self-employed activities into account, female self-employed workers and female spouses or, when and in so far as recognised by national law, female life partners of self-employed workers should be given access to any existing services supplying temporary replacement enabling interruptions in their occupational activity owing to pregnancy or motherhood, or to any existing national social services. Access to those services can be an alternative to or a part of the maternity allowance.

(21) Persons who have been subject to discrimination based on sex should have suitable means of legal protection. To provide more effective protection, associations, organisations and other legal entities should be empowered to engage in proceedings, as Member States so determine, either on behalf or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.

(22) Protection of self-employed workers and spouses of self-employed workers and, when and in so far as recognised by national law, the life partners of self-employed workers, from discrimination based on sex should be strengthened by the existence of a body or bodies in each Member State with competence to analyse the problems involved, to study possible solutions and to provide practical assistance to the victims. The body or bodies may be the same as those with responsibility at national level for the implementation of the principle of equal treatment.

(23) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions.

(24) Since the objective of the action to be taken, namely to ensure a common high level of protection from discrimination in all the Member States, cannot be sufficiently achieved by the Member States and can be better achieved at Union level, the Union may adopt

measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

##### **Subject matter**

1. This Directive lays down a framework for putting into effect in the Member States the principle of equal treatment between men and women engaged in an activity in a self-employed capacity, or contributing to the pursuit of such an activity, as regards those aspects not covered by Directives 2006/54/EC and 79/7/EEC.

2. The implementation of the principle of equal treatment between men and women in the access to and supply of goods and services remains covered by Directive 2004/113/EC.

#### *Article 2*

##### **Scope**

This Directive covers:

- (a) self-employed workers, namely all persons pursuing a gainful activity for their own account, under the conditions laid down by national law;
- (b) the spouses of self-employed workers or, when and in so far as recognised by national law, the life partners of self-employed workers, not being employees or business partners, where they habitually, under the conditions laid down by national law, participate in the activities of the self-employed worker and perform the same tasks or ancillary tasks.

#### *Article 3*

##### **Definitions**

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

- (a) 'direct discrimination': where one person is treated less favourably on grounds of sex than another is, has been or would be, treated in a comparable situation;
- (b) 'indirect discrimination': where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary;

- (c) 'harassment': where unwanted conduct related to the sex of a person occurs with the purpose, or effect, of violating the dignity of that person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;
- (d) 'sexual harassment': where any form of unwanted verbal, non-verbal, or physical, conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.

#### Article 4

##### Principle of equal treatment

1. The principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex in the public or private sectors, either directly or indirectly, for instance in relation to the establishment, equipment or extension of a business or the launching or extension of any other form of self-employed activity.
2. In the areas covered by paragraph 1, harassment and sexual harassment shall be deemed to be discrimination on grounds of sex and therefore prohibited. A person's rejection of, or submission to, such conduct may not be used as a basis for a decision affecting that person.
3. In the areas covered by paragraph 1, an instruction to discriminate against persons on grounds of sex shall be deemed to be discrimination.

#### Article 5

##### Positive action

Member States may maintain or adopt measures within the meaning of Article 157(4) of the Treaty on the Functioning of the European Union with a view to ensuring full equality in practice between men and women in working life, for instance aimed at promoting entrepreneurship initiatives among women.

#### Article 6

##### Establishment of a company

Without prejudice to the specific conditions for access to certain activities which apply equally to both sexes, the Member States shall take the measures necessary to ensure that the conditions for the establishment of a company between spouses, or between life partners when and in so far as recognised by national law, are not more restrictive than the conditions for the establishment of a company between other persons.

#### Article 7

##### Social protection

1. Where a system for social protection for self-employed workers exists in a Member State, that Member State shall

take the necessary measures to ensure that spouses and life partners referred to in Article 2(b) can benefit from a social protection in accordance with national law.

2. The Member States may decide whether the social protection referred to in paragraph 1 is implemented on a mandatory or voluntary basis.

#### Article 8

##### Maternity benefits

1. The Member States shall take the necessary measures to ensure that female self-employed workers and female spouses and life partners referred to in Article 2 may, in accordance with national law, be granted a sufficient maternity allowance enabling interruptions in their occupational activity owing to pregnancy or motherhood for at least 14 weeks.
2. The Member States may decide whether the maternity allowance referred to in paragraph 1 is granted on a mandatory or voluntary basis.
3. The allowance referred to in paragraph 1 shall be deemed sufficient if it guarantees an income at least equivalent to:
  - (a) the allowance which the person concerned would receive in the event of a break in her activities on grounds connected with her state of health and/or;
  - (b) the average loss of income or profit in relation to a comparable preceding period subject to any ceiling laid down under national law and/or;
  - (c) any other family related allowance established by national law, subject to any ceiling laid down under national law.

4. The Member States shall take the necessary measures to ensure that female self-employed workers and female spouses and life partners referred to in Article 2 have access to any existing services supplying temporary replacements or to any existing national social services. The Member States may provide that access to those services is an alternative to or a part of the allowance referred to in paragraph 1 of this Article.

#### Article 9

##### Defence of rights

1. The Member States shall ensure that judicial or administrative proceedings, including, where Member States consider it appropriate, conciliation procedures, for the enforcement of the obligations under this Directive are available to all persons who consider they have sustained loss or damage as a result of a failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.



2. The Member States shall ensure that associations, organisations and other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that this Directive is complied with may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial or administrative proceedings provided for the enforcement of obligations under this Directive.

3. Paragraphs 1 and 2 shall be without prejudice to national rules on time limits for bringing actions relating to the principle of equal treatment.

#### Article 10

##### Compensation or reparation

The Member States shall introduce such measures into their national legal systems as are necessary to ensure real and effective compensation or reparation, as Member States so determine, for the loss or damage sustained by a person as a result of discrimination on grounds of sex, such compensation or reparation being dissuasive and proportionate to the loss or damage suffered. Such compensation or reparation shall not be limited by the fixing of a prior upper limit.

#### Article 11

##### Equality bodies

1. The Member States shall take the necessary measures to ensure that the body or bodies designated in accordance with Article 20 of Directive 2006/54/EC are also competent for the promotion, analysis, monitoring and support of equal treatment of all persons covered by this Directive without discrimination on grounds of sex.

2. The Member States shall ensure that the tasks of the bodies referred to in paragraph 1 include:

- (a) providing independent assistance to victims of discrimination in pursuing their complaints of discrimination, without prejudice to the rights of victims and of associations, organisations and other legal entities referred to in Article 9(2);
- (b) conducting independent surveys on discrimination;
- (c) publishing independent reports and making recommendations on any issue relating to such discrimination;
- (d) exchanging, at the appropriate level, the information available with the corresponding European bodies, such as the European Institute for Gender Equality.

#### Article 12

##### Gender mainstreaming

The Member States shall actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas referred to in this Directive.

#### Article 13

##### Dissemination of information

The Member States shall ensure that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought by all appropriate means to the attention of the persons concerned throughout their territory.

#### Article 14

##### Level of protection

The Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment between men and women than those laid down in this Directive.

The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.

#### Article 15

##### Reports

1. Member States shall communicate all available information concerning the application of this Directive to the Commission by 5 August 2015.

The Commission shall draw up a summary report for submission to the European Parliament and to the Council no later than 5 August 2016. That report should take into account any legal change concerning the duration of maternity leave for employees. Where appropriate, that report shall be accompanied by proposals for amending this Directive.

2. The Commission's report shall take the viewpoints of the stakeholders into account.

#### Article 16

##### Implementation

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 5 August 2012 at the latest. They shall forthwith communicate to the Commission the text of those provisions.

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

2. Where justified by particular difficulties, the Member States may, if necessary, have an additional period of two years until 5 August 2014 in order to comply with Article 7, and in order to comply with Article 8 as regards female spouses and life partners referred to in Article 2(b).

3. The 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 17

##### Repeal

Directive 86/613/EEC shall be repealed, with effect from 5 August 2012.

References to the repealed Directive shall be construed as references to this Directive.

#### Article 18

##### Entry into force

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

#### Article 19

##### Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 7 July 2010

For the European Parliament

The President

J. BUZEK

For the Council

The President

O. CHASTEL

---



## II

*(Non-legislative acts)*

## REGULATIONS

**COUNCIL REGULATION (EU, EURATOM) No 617/2010****of 24 June 2010****concerning the notification to the Commission of investment projects in energy infrastructure within the European Union and repealing Regulation (EC) No 736/96**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 337 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 187 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) Obtaining an overall picture of the development of investment in energy infrastructure in the Union is essential for the Commission to perform its tasks in the field of energy. The availability of regular and up-to-date data and information should enable the Commission to make the necessary comparisons, evaluations or to propose relevant measures based on appropriate figures and analysis, in particular concerning the future energy supply-demand balance.
- (2) The energy landscape within and outside the Union has changed significantly in recent years and makes investment in energy infrastructure a crucial issue for securing the Union's energy supply, for the functioning of the internal market and for the transition towards a low-carbon energy system the Union has begun.
- (3) The new energy context requires significant investment in all kinds of infrastructure in all energy sectors as well as the development of new types of infrastructure and new technologies to be taken up by the market. The liberalisation of the energy sector and the further integration of the internal market give a more prominent role to economic operators for investment. At the same time, new policy requirements such as targets affecting the fuel mix will alter Member States' policies towards new and/or modernised energy infrastructure.
- (4) In this context, greater attention should be paid to investment in energy infrastructure in the Union, in particular with a view to anticipating problems, promoting best practices and establishing greater transparency on the future development of the Union's energy system.
- (5) The Commission and in particular its Market Observatory for Energy should therefore have at its disposal accurate data and information on investment projects, including decommissioning, in the most significant components of the energy system of the Union.
- (6) Data and information regarding foreseeable developments in production, transmission and storage capacities and projects in the various energy sectors are of interest to the Union and important to future investment. It is therefore necessary to ensure that the Commission is notified of investment projects on which construction or decommissioning work has started or on which a final investment decision has been taken.
- (7) Pursuant to Articles 41 and 42 of the Euratom Treaty, undertakings are under an obligation to notify their investment projects. It is necessary to supplement such information with, in particular, a regular reporting on the implementation of investment projects. Such additional reporting is without prejudice to Articles 41 to 44 of the Euratom Treaty.

- (8) In order for the Commission to have a consistent view of the future developments of the Union's energy system as a whole, a harmonised reporting framework for investment projects based on updated categories for official data and information to be transmitted by the Member States is necessary.
- (9) Member States should, to this end, notify to the Commission, data and information on investment projects in energy infrastructure concerning production, storage and transport of oil, natural gas, electricity, including electricity from renewable sources, bio-fuels and the capture and storage of carbon dioxide planned or under construction in their territory, including inter-connections with third countries. Undertakings concerned should be under an obligation to notify to the Member State the data and information in question.
- (10) Given the time horizon of investment projects in the energy sector, reporting every two years should be sufficient.
- (11) With a view to avoiding disproportionate administrative burdens and to minimise costs to Member States and undertakings in particular for small and medium enterprises, this Regulation should give the possibility to exempt Member States and undertakings from reporting obligations provided that equivalent information is supplied to the Commission pursuant to energy sector-specific legal acts, adopted by the institutions of the Union, aiming at achieving the objectives of competitive energy markets in the Union, of sustainability of the energy system of the Union and of the security of energy supply to the Union. Any duplication of reporting requirements specified in the third internal market package for electricity and natural gas should therefore be avoided.
- (12) To process data as well as to simplify and secure data notification, the Commission and in particular its Market Observatory for Energy should be able to take all appropriate measures to that effect, in particular the operation of integrated IT tools and procedures.
- (13) The protection of individuals with regard to the processing of personal data by the Member States is governed by Directive 95/46/EC of the European Parliament and of the Council <sup>(1)</sup>, while the protection of individuals with regard to the processing of personal data by the Commission is governed by Regulation (EC) No 45/2001 of the European Parliament and of the Council <sup>(2)</sup>. This Regulation leaves those provisions intact.
- (14) Member States, or their delegated entities, and the Commission should preserve the confidentiality of commercially sensitive data and information. Therefore, Member States or their delegated entities should, with the exception of data and information related to crossborder transmission projects, aggregate such data and information at national level before submitting it to the Commission. If required the Commission should further aggregate this data in such a way that no details concerning individual undertakings and installations are disclosed or can be inferred.
- (15) The Commission and in particular its Market Observatory for Energy should provide a regular and cross-sector analysis of the structural evolution and perspectives of the Union energy system and, where appropriate, more focused analysis on certain aspects of this energy system. This analysis should in particular contribute to identifying possible infrastructure and investment gaps in view of an energy supply and demand balance. The analysis should also form a contribution to a discussion at Union level about energy infrastructures and should therefore be forwarded to the European Parliament, the Council and the European Economic and Social Committee and made available to interested parties.
- (16) The Commission may be assisted by experts from Member States or any other competent experts, with a view to developing a common understanding of potential infrastructure gaps and associated risks and to fostering transparency regarding future developments.
- (17) Building as far as possible on the notification format used under Commission Regulation (EC) No 2386/96 <sup>(3)</sup> which is applying Council Regulation (EC) No 736/96 of 22 April 1996 on notifying the Commission of investment projects of interest to the Community in the petroleum, natural gas and electricity sectors <sup>(4)</sup>, and after consultation of national experts, the technical measures necessary for the implementation of this Regulation should be adopted by the Commission.
- (18) Given the extent of amendments necessary to adapt it to today's energy challenges and for the sake of clarity, Regulation (EC) No 736/96 should be repealed and replaced by a new Regulation,

<sup>(1)</sup> OJ L 281, 23.11.1995, p. 31.

<sup>(2)</sup> OJ L 8, 12.1.2001, p. 1.

<sup>(3)</sup> OJ L 326, 17.12.1996, p. 13.

<sup>(4)</sup> OJ L 102, 25.4.1996, p. 1.

HAS ADOPTED THIS REGULATION:

#### Article 1

##### Subject matter and scope

1. This Regulation establishes a common framework for the notification to the Commission of data and information on investment projects in energy infrastructure in the oil, natural gas, electricity, including electricity from renewable sources, and bio-fuel sectors, and on investment projects related to the capture and storage of carbon dioxide produced by these sectors.

2. This Regulation shall apply to investment projects of the types listed in the Annex on which construction or decommissioning work has started or on which a final investment decision has been taken.

Member States may furthermore submit any estimated data or preliminary information on investment projects of the types listed in the Annex on which construction work is scheduled to start within five years and to those which are scheduled to be decommissioned within three years, but for which a final investment decision has not been taken.

#### Article 2

##### Definitions

For the purpose of this Regulation, the following definitions shall apply:

1. 'infrastructure' means any type of installations or part of installations related to production, transmission and storage;
2. 'investment projects' means projects aiming at:
  - (i) building new infrastructure;
  - (ii) transforming, modernising, increasing or reducing capacities of existing infrastructure;
  - (iii) partial or total decommissioning of existing infrastructure;
3. 'final investment decision' means the decision taken at the level of an undertaking to definitively earmark funds

towards the investment phase of a project, the investment phase meaning the phase during which construction or decommissioning takes place and capital costs are incurred. The investment phase excludes the planning phase, during which project implementation is prepared and which includes, where appropriate, a feasibility assessment, preparatory and technical studies, obtaining licences and authorisations and incurring capital costs;

4. 'investment projects under construction' means investment projects for which construction has started and capital costs are incurred;
5. 'decommissioning' means the phase where an infrastructure is permanently taken out of operation;
6. 'production' means the generation of electricity and the processing of fuels, including bio-fuels;
7. 'transmission' means the transport of energy sources or products or carbon dioxide, through a network, in particular:
  - (i) through pipelines, other than upstream pipeline network and other than the part of pipelines primarily used in the context of local distribution; or
  - (ii) through extra high voltage and high-voltage interconnected systems and other than the systems primarily used in the context of local distribution;
8. 'storage' means the stocking on a permanent or temporary basis of energy or energy sources in above-ground or underground infrastructure or geological sites or containment of carbon dioxide in underground geological formations;
9. 'undertaking' means any natural or legal private or public person, deciding or implementing investment projects;
10. 'energy sources' means:
  - (i) primary energy sources, such as oil, natural gas or coal;
  - (ii) transformed energy sources, such as electricity;

(iii) renewable energy sources including hydroelectricity, biomass, biogas, wind, solar, tidal, wave and geothermal energy; and

(iv) energy products, such as refined oil products and bio-fuels;

11. 'specific body' means a body entrusted by any energy sector-specific legal act of the Union with the preparation and adoption of Union-wide multi-annual network development and investment plans in energy infrastructure, such as the European network of transmission system operators for electricity ('ENTSO-E') referred to in Article 4 of Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity <sup>(1)</sup> and the European network for transmission system operators for gas ('ENTSO-G') referred to in Article 4 of Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks <sup>(2)</sup>.

#### Article 3

##### Notification of data

1. While keeping the collection and reporting burden proportionate, Member States or the entities to which they delegate this task to shall compile all data and information specified in this Regulation from 1 January 2011 and from then onwards every two years.

They shall notify the data and relevant project information specified in this Regulation to the Commission in 2011, that year being the first reporting year, and from then onwards every two years. This notification shall be made in aggregated form, except for data and relevant information relating to crossborder transmission projects.

Member States or their delegated entities shall notify aggregated data and relevant project information by 31 July of the reporting year concerned.

2. Member States or their delegated entities are exempted from the obligations set out in paragraph 1, provided that, and to the extent that, pursuant to energy sector-specific Union law or the Euratom Treaty:

(a) the concerned Member State or its delegated entity has already notified to the Commission data or information

equivalent to the requirements of this Regulation and has indicated the date of the notification and the specific legal act concerned; or

(b) a specific body is entrusted with the preparation of a multi-annual investment plan in energy infrastructure at Union level and compiles to this end data and information equivalent to the requirements of this Regulation. In this case and for the purposes of this Regulation, the specific body shall notify all the relevant data and information to the Commission.

#### Article 4

##### Data sources

The undertakings concerned shall notify the data or information referred to in Article 3 to the Member States, or their delegated entities, in whose territory they are planning to carry out investment projects before 1 June of each reporting year. The data or information notified shall reflect the situation of investment projects as of 31 March of the relevant reporting year.

The first paragraph shall not apply to undertakings where the Member State concerned decides to use other means of supplying the Commission with the data or information referred to in Article 3.

#### Article 5

##### Content of the notification

1. With regard to investment projects of the types listed in the Annex, the notification provided for in Article 3 shall indicate, where appropriate:

(a) the volume of the capacities planned or under construction;

(b) the type and main characteristics of infrastructure or capacities planned or under construction, including the location of crossborder transmission projects, if applicable;

(c) the probable year of commissioning;

(d) the type of energy sources used;

(e) the installations capable of responding to security of supply crises, such as equipment enabling reverse flows or fuel switching; and

<sup>(1)</sup> OJ L 211, 14.8.2009, p. 15.

<sup>(2)</sup> OJ L 211, 14.8.2009, p. 36.

- (f) the equipment of carbon capture systems or retrofitting mechanisms for carbon capture and storage.

2. With regard to any proposed decommissioning of capacities, the notification provided for in Article 3 shall indicate:

- (a) the character and the capacity of the infrastructure concerned; and

- (b) the probable year of decommissioning.

3. Any notification under Article 3 shall include where appropriate the total volume of installed production, transmission and storage capacities which are in place at the beginning of the reporting year concerned or whose operation is interrupted for a period exceeding three years.

Member States, their delegated entities or the specific body referred to in Article 3(2)(b) may add to their notifications relevant comments, such as comments on delays or obstacles to the implementation of investment projects.

#### Article 6

##### Quality and publicity of data

1. Member States, their delegated entities or, where appropriate, the specific bodies shall aim to ensure the quality, relevance, accuracy, clarity, timeliness and coherence of data and information they notify to the Commission.

In case of specific bodies, the data and information notified may be accompanied by appropriate comments from Member States.

2. The Commission may publish data and information forwarded pursuant to this Regulation, in particular in analyses referred to in Article 10(3), provided that the data and information are published in an aggregated form and that no details concerning individual undertakings and installations are disclosed or can be inferred.

3. Member States, the Commission, or their delegated entities shall each preserve the confidentiality of commercially sensitive data or information in their possession.

#### Article 7

##### Implementing provisions

Within the limits laid down by this Regulation, the Commission shall adopt, by 31 October 2010, the provisions necessary for the implementation of this Regulation, concerning the form and other technical details of the notification of data and information referred to in Articles 3 and 5.

#### Article 8

##### Data processing

The Commission shall be responsible for developing, hosting, managing and maintaining the IT resources needed to receive, store and carry out any processing of the data or information on energy infrastructure notified to the Commission pursuant to this Regulation.

#### Article 9

##### Protection of individuals with regards to the processing of data

This Regulation is without prejudice to Union law and, in particular, does not alter Member States' obligations with regard to the processing of personal data, as laid down by Directive 95/46/EC, or the obligations incumbent upon the Union's institutions and bodies under Regulation (EC) No 45/2001 with regard to the processing of personal data by them in the course of their duties.

#### Article 10

##### Monitoring and reporting

1. On the basis of data and information forwarded and, if appropriate, of any other data sources including data purchased by the Commission, and taking into account relevant analyses such as the multi-annual network development plans for gas and for electricity, the Commission shall forward to the European Parliament, to the Council and to the European Economic and Social Committee and shall publish every two years a cross-sector analysis of the structural evolution and perspectives of the energy system of the Union. This analysis shall aim in particular at:

- (a) identifying potential future gaps between energy demand and supply that are of significance from an energy policy perspective of the Union;
- (b) identifying investment obstacles and promoting best practices to address them; and
- (c) increasing transparency for market participants and potential market entrants.

On the basis of this data and information, the Commission may also provide any specific analysis deemed necessary or appropriate.

2. In preparing the analyses referred to in paragraph 1, the Commission may be assisted by experts from Member States and/or any other experts, professional associations with specific competence in the area concerned.

The Commission shall provide all Member States with an opportunity to comment on the draft analyses.

3. The Commission shall discuss the analyses with interested parties, such as ENTSO-E, ENTSO-G, the Gas Coordination Group and the Oil Supply Group.

#### Article 11

##### Review

'By 23 July 2015, the Commission shall review the implementation of this Regulation, and present a report on the results of this review to the European Parliament and to the Council.'. In the review, the Commission shall, *inter alia*, examine the possible extension of the scope to include the extraction of gas, oil and coal.

#### Article 12

##### Repeal

Regulation (EC) No 736/96 shall be repealed.

#### Article 13

##### Entry into force

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

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

Done at Luxembourg, 24 June 2010.

For the Council  
The President  
J. BLANCO LÓPEZ



## ANNEX

## INVESTMENT PROJECTS

## 1. OIL

## 1.1. Refining

- Distillation plants with a capacity of not less than 1 million tonnes a year,
- extension of distilling capacity beyond 1 million tonnes a year,
- reforming/cracking plants with a minimum capacity of 500 tonnes a day,
- desulphurisation plants for residual fuel oil/gas oil/feedstock/other petroleum products,

Chemical plants which do not produce fuel oil and/or motor fuels, or which produce them only as by-products, are excluded.

## 1.2. Transport

- Crude oil pipelines with a capacity of not less than 3 million metric tonnes a year, and extension or lengthening of these pipelines, which are not less than 30 kilometres long,
- petroleum product pipelines with a capacity of not less than 1,5 million tonnes a year, and extension or lengthening of these pipelines, which are not less than 30 kilometres long,
- pipelines which constitute essential links in national or international interconnecting networks and pipelines and projects of common interest identified in the guidelines established under Article 171 of the Treaty on the Functioning of the European Union ("TFEU") <sup>(1)</sup>.

Pipelines for military purposes and those supplying plants outside the scope of point 1.1. are excluded.

## 1.3. Storage

- Storage installations for crude oil and petroleum products (installations with a capacity of 150 000 m<sup>3</sup> or more or, in the case of tanks, with a capacity not less than 100 000 m<sup>3</sup>),

Tanks intended for military purposes and those supplying plants outside the scope of point 1.1. are excluded.

## 2. GAS

## 2.1. Transmission

- Gas, including natural gas and biogas, transport pipelines that form part of a network which mainly contains high-pressure pipelines, excluding pipelines that form part of an upstream pipeline network and excluding the part of high-pressure pipelines primarily used in the context of local distribution of natural gas,
- pipelines and projects of common interest identified in the guidelines established under Article 171 TFEU <sup>(2)</sup>.

## 2.2. LNG terminals

- Terminals for the importation of liquefied natural gas, with a regasification capacity of 1 billion m<sup>3</sup> per year or more.

## 2.3. Storage

- Storage installations connected to the transport pipelines referred to in point 2.1.

Gas pipelines, terminals and installations for military purposes and those supplying chemical plants which do not produce energy products, or which produce them only as by-products, are excluded.

## 3. ELECTRICITY

## 3.1. Production

- Thermal and nuclear power stations (generators with a capacity of 100 MWe or more),
- biomass/bioliquids/waste power generation installations (with a capacity of 20 MW or more),

<sup>(1)</sup> Decision No 1364/2006/EC of the European Parliament and of the Council of 6 September 2006 laying down guidelines for trans-European energy networks (OJ L 262, 22.9.2006, p. 1) was adopted under Article 155 of the Treaty establishing the European Community.

<sup>(2)</sup> Decision No 1364/2006/EC was adopted under Article 155 of the EC Treaty.

- power stations with cogeneration of electricity and useful heat (installations with an electrical capacity of 20 MW or more),
- hydro-electric power stations (installations having a capacity of 30 MW or more),
- wind power farms with a capacity of 20 MW or more,
- concentrated solar thermal and geothermal installations (with a capacity of 20 MW or more),
- photovoltaic installations (with a capacity of 10 MW or more).

### 3.2. Transmission

- Overhead transmission lines, if they have been designed for the voltage commonly used at the national level for the interconnection lines, and provided they have been designed for a voltage of 220 kV or more,
- underground and submarine transmission cables, if they have been designed for a voltage of 150 kV or more,
- projects of common interest identified in the guidelines established under Article 171 TFEU <sup>(1)</sup>.

## 4. BIOFUEL

### 4.1. Production

- Installations that are able to produce or refine bio-fuels (installations with a capacity of 50 000 tonnes/year or more).

## 5. CARBON DIOXIDE

### 5.1. Transport

- CO<sub>2</sub> pipelines related to production installations referred to in points 1.1. and 3.1.

### 5.2. Storage

- Storage installations (storage site or complex with a capacity of 100 kt or more),

Storage installations intended for research and technological development are excluded.

---

<sup>(1)</sup> Decision No 1364/2006/EC was adopted under Article 155 of the EC Treaty.

**COMMISSION REGULATION (EU) No 618/2010****of 14 July 2010****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) <sup>(1)</sup>,Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector <sup>(2)</sup>, and in particular Article 138(1) thereof,

Whereas:

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

HAS ADOPTED THIS REGULATION:

*Article 1*

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

*Article 2*

This Regulation shall enter into force on 15 July 2010.

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

Done at Brussels, 14 July 2010.

*For the Commission,  
On behalf of the President,*

Jean-Luc DEMARTY

*Director-General for Agriculture and  
Rural Development*<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1.<sup>(2)</sup> OJ L 350, 31.12.2007, p. 1.

## ANNEX

**Standard import values for determining the entry price of certain fruit and vegetables**

(EUR/100 kg)

CN code	Third country code <sup>(1)</sup>	Standard import value
0702 00 00	MK	38,5
	TR	85,9
	ZZ	62,2
0707 00 05	TR	108,5
	ZZ	108,5
0709 90 70	TR	99,9
	ZZ	99,9
0805 50 10	AR	80,8
	TR	111,6
	UY	74,4
	ZA	83,6
	ZZ	87,6
0808 10 80	AR	110,8
	BR	71,3
	CA	119,1
	CL	96,5
	CN	57,9
	NZ	111,5
	US	115,5
	UY	116,3
	ZA	98,1
	ZZ	99,7
0808 20 50	AR	123,5
	CL	130,6
	NZ	141,4
	ZA	99,9
	ZZ	123,9
0809 10 00	TR	197,6
	ZZ	197,6
0809 20 95	TR	273,5
	US	509,9
	ZZ	391,7
0809 30	AR	130,0
	TR	148,9
	ZZ	139,5
0809 40 05	IL	164,9
	TR	141,2
	ZZ	153,1

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

**COMMISSION REGULATION (EU) No 619/2010****of 14 July 2010****amending the representative prices and additional import duties for certain products in the sugar sector fixed by Regulation (EC) No 877/2009 for the 2009/10 marketing year**

THE EUROPEAN COMMISSION,

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

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

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 <sup>(2)</sup>, and in particular Article 36(2), second subparagraph, second sentence thereof,

Whereas:

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

for the 2009/10 marketing year are fixed by Commission Regulation (EC) No 877/2009 <sup>(3)</sup>. These prices and duties have been last amended by Commission Regulation (EU) No 616/2010 <sup>(4)</sup>.

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

HAS ADOPTED THIS REGULATION:

*Article 1*

The representative prices and additional duties applicable to imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EC) No 877/2009 for the 2009/10, marketing year, are hereby amended as set out in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 15 July 2010.

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

Done at Brussels, 14 July 2010.

*For the Commission,  
On behalf of the President,*

Jean-Luc DEMARTY  
*Director-General for Agriculture and  
Rural Development*

<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1.

<sup>(2)</sup> OJ L 178, 1.7.2006, p. 24.

<sup>(3)</sup> OJ L 253, 25.9.2009, p. 3.

<sup>(4)</sup> OJ L 179, 14.7.2010, p. 6.

## ANNEX

**Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 15 July 2010**

(EUR)

CN code	Representative price per 100 kg net of the product concerned	Additional duty per 100 kg net of the product concerned
1701 11 10 <sup>(1)</sup>	41,21	0,00
1701 11 90 <sup>(1)</sup>	41,21	2,54
1701 12 10 <sup>(1)</sup>	41,21	0,00
1701 12 90 <sup>(1)</sup>	41,21	2,24
1701 91 00 <sup>(2)</sup>	47,57	3,20
1701 99 10 <sup>(2)</sup>	47,57	0,07
1701 99 90 <sup>(2)</sup>	47,57	0,07
1702 90 95 <sup>(3)</sup>	0,48	0,23

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



**COMMISSION REGULATION (EU) No 620/2010****of 14 July 2010****on the issuing of import licences for applications lodged during the first seven days of July 2010  
under tariff quotas opened by Regulation (EC) No 616/2007 for poultry meat**

THE EUROPEAN COMMISSION

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

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

Having regard to Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences <sup>(2)</sup>, and in particular Article 7(2) thereof,

Having regard to Commission Regulation (EC) No 616/2007 of 4 June 2007 opening and providing for the administration of Community tariff quotas for poultry meat originating in Brazil, Thailand and other third countries <sup>(3)</sup>, and in particular Article 5(5) thereof,

Whereas:

- (1) Regulation (EC) No 616/2007 opened tariff quotas for imports of products in the poultry meat sector.
- (2) The applications for import licences lodged during the first seven days of July 2010 for the subperiod 1 October to 31 December 2010 relate, for some quotas, to quantities exceeding those available. The extent to which licences may be issued should therefore be determined and an allocation coefficient

HAS ADOPTED THIS REGULATION:

*Article 1*

The quantities for which import licence applications have been lodged pursuant to Regulation (EC) No 616/2007 for the subperiod 1 October to 31 December 2010 shall be multiplied by the allocation coefficients set out in the Annex to this Regulation.

*Article 2*

This Regulation shall enter into force on 15 July 2010.

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

Done at Brussels, 14 July 2010.

*For the Commission,  
On behalf of the President,*

Jean-Luc DEMARTY

*Director-General for Agriculture and  
Rural Development*

<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1.

<sup>(2)</sup> OJ L 238, 1.9.2006, p. 13.

<sup>(3)</sup> OJ L 142, 5.6.2007, p. 3.

## ANNEX

Group No	Order No	Allocation coefficient for import licence applications lodged for the subperiod from 1.10.2010-31.12.2010 (%)
1	09.4211	0,400612
5	09.4215	0,378838
6	09.4216	7,14204

## DECISIONS

## COMMISSION DECISION

of 8 July 2010

**amending the Annexes to Decision 93/52/EEC as regards the recognition of Lithuania and the region of Molise in Italy as officially free of brucellosis (*B. melitensis*) and amending the Annexes to Decision 2003/467/EC as regards the declaration of certain administrative regions of Italy as officially free of bovine tuberculosis, bovine brucellosis and enzootic-bovine-leukosis**

(notified under document C(2010) 4592)

(Text with EEA relevance)

(2010/391/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine <sup>(1)</sup>, and in particular Annex A(I)(4), Annex A(II)(7) and Annex D(I)(E) thereto,

Having regard to Council Directive 91/68/EEC of 28 January 1991 on animal health conditions governing intra-Community trade in ovine and caprine animals <sup>(2)</sup>, and in particular Section II of Chapter 1 of Annex A thereto,

Whereas:

- (1) Directive 91/68/EEC defines the animal health conditions governing trade in the Union in ovine and caprine animals. It lays down the conditions whereby Member States or regions thereof are to be recognised as being officially brucellosis-free.
- (2) Commission Decision 93/52/EEC of 21 December 1992 recording the compliance by certain Member States or regions with the requirements relating to brucellosis (*B. melitensis*) and according them the status of a Member State or region officially free of the disease <sup>(3)</sup> lists, in the Annexes thereto, the Member States and regions thereof which are recognised as officially free of brucellosis (*B. melitensis*) in accordance with Directive 91/68/EEC.
- (3) Lithuania has submitted to the Commission documentation demonstrating compliance with the appropriate conditions laid down in Directive 91/68/EEC in order

to be recognised as officially free of brucellosis (*B. melitensis*) as regards its whole territory. That Member State should therefore be recognised as being officially free of that disease. Annex I to Decision 93/52/EEC should therefore be amended accordingly.

- (4) Italy has submitted to the Commission documentation demonstrating compliance with the appropriate conditions laid down in Directive 91/68/EEC as regards all the provinces in the region of Molise in order for that region to be recognised as officially free of brucellosis (*B. melitensis*). That region should therefore be recognised as being officially free of that disease.
- (5) Italy has also requested that amendments be made to the entry for that Member State in the list of regions of the Member States which are recognised as officially free of brucellosis (*B. melitensis*) in Annex II to Decision 93/52/EEC. The current administrative division of Italy splits the region Trentino-Alto Adige into two distinct regions: namely the province of Bolzano and the province of Trento. The region of Sardegna has been divided into eight provinces. In addition, as all the provinces of the regions of Lombardia, Piemonte, Toscana, Sardegna and Umbria have already been recognised as officially free of brucellosis (*B. melitensis*), those entire regions should be recognised as officially free of that disease.
- (6) The entry for Italy in Annex II to Decision 93/52/EEC should therefore be amended accordingly.
- (7) Directive 64/432/EEC applies to trade in the Union in bovine animals and swine. It lays down the conditions whereby a Member State or part or region thereof may be declared officially free of tuberculosis, brucellosis and enzootic-bovine-leukosis as regards bovine herds.

<sup>(1)</sup> OJ 121, 29.7.1964, p. 1977/64.

<sup>(2)</sup> OJ L 46, 19.2.1991, p. 19.

<sup>(3)</sup> OJ L 13, 21.1.1993, p. 14.

- (8) Commission Decision 2003/467/EC of 23 June 2003 establishing the official tuberculosis, brucellosis and enzootic-bovine-leukosis-free status of certain Member States and regions of Member States as regards bovine herds <sup>(1)</sup> lists such Member States and regions in Annexes I, II and III respectively to that Decision.
- (9) Italy has submitted to the Commission documentation demonstrating compliance with the appropriate conditions laid down in Directive 64/432/EEC as regards all provinces of the regions of Lombardia and Toscana, and the provinces of Cagliari, Medio-Campidano, Ogliastra and Olbia-Tempio in the region of Sardegna in order that those regions and provinces may be declared officially tuberculosis-free regions of Italy.
- (10) Italy has submitted to the Commission documentation demonstrating compliance with the appropriate conditions laid down in Directive 64/432/EEC as regards the province of Campobasso in the region of Molise in order that that province may be declared an officially brucellosis-free region of Italy.
- (11) Italy has also submitted to the Commission documentation demonstrating compliance with the appropriate conditions laid down in Directive 64/432/EEC as regards the province of Napoli in the region of Campania, the province of Brindisi in the region of Puglia and the provinces of Agrigento, Caltanissetta, Siracusa and Trapani in the region of Sicily in order that they may be declared officially enzootic-bovine-leukosis-free regions of Italy.
- (12) Following evaluation of the documentation submitted by Italy, the provinces and the regions concerned should be declared officially tuberculosis-free, officially brucellosis-free and officially enzootic-bovine-leukosis-free regions of Italy respectively.
- (13) Italy has also requested that amendments be made to the entry for that Member State in the lists of regions of the Member States declared officially free of tuberculosis, brucellosis and officially free of enzootic-bovine-leukosis in the Annexes to Decision 2003/467/EC. The current administrative division of Italy splits the region Trentino-Alto Adige into two distinct regions: namely the province of Bolzano and province of Trento.
- (14) In addition, as all the provinces of the regions of Emilia-Romagna, Lombardia, Sardegna and Umbria listed in Chapter 2 of Annex II to Decision 2003/467/EC have already been declared officially free of brucellosis and all the provinces of the regions of Emilia-Romagna, Lombardia, Marche, Piemonte, Toscana, Umbria and Val d'Aosta listed in Chapter 2 of Annex III to Decision 2003/467/EC have already been declared officially free of enzootic-bovine-leukosis, those entire regions should be considered as officially free of those respective diseases.
- (15) The Annexes to Decision 2003/467/EC should therefore be amended accordingly.
- (16) Decisions 93/52/EEC and 2003/467/EC should therefore be amended accordingly.
- (17) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,
- HAS ADOPTED THIS DECISION:
- Article 1*
- The Annexes to Decision 93/52/EEC are amended in accordance with Annex I to this Decision.
- Article 2*
- The Annexes to Decision 2003/467/EC are amended in accordance with Annex II to this Decision.
- Article 3*
- This Decision is addressed to the Member States.
- Done at Brussels, 8 July 2010.
- For the Commission*  
John DALLI  
Member of the Commission

<sup>(1)</sup> OJ L 156, 25.6.2003, p. 74.

## ANNEX I

The Annexes to Decision 93/52/EEC are amended as follows:

(1) Annex I is replaced by the following:

## 'ANNEX I

## MEMBER STATES

ISO code	Member State
BE	Belgium
CZ	Czech Republic
DK	Denmark
DE	Germany
IE	Ireland
LT	Lithuania
LU	Luxembourg
HU	Hungary
NL	Netherlands
AT	Austria
PL	Poland
RO	Romania
SI	Slovenia
SK	Slovakia
FI	Finland
SE	Sweden
UK	United Kingdom'

(2) In Annex II, the entry for Italy is replaced by the following:

'In Italy:

- Region Abruzzo: Province of Pescara,
- Province of Bolzano,
- Region Friuli Venezia Giulia,
- Region Lazio: Provinces of Latina, Rieti, Roma, Viterbo,
- Region Liguria: Province of Savona,
- Region Lombardia,
- Region Marche,
- Region Molise,
- Region Piemonte,
- Region Sardegna,
- Region Toscana,
- Province of Trento,
- Region Umbria,
- Region of Veneto.'

## ANNEX II

The Annexes to Decision 2003/467/EC are amended as follows:

(1) In Annex I, in Chapter 2, the entry for Italy is replaced by the following:

‘In Italy:

- Region Abruzzo: Province of Pescara,
- Province of Bolzano,
- Region Emilia-Romagna,
- Region Friuli-Venezia Giulia,
- Region Lombardia,
- Region Marche: Province of Ascoli Piceno,
- Region Piemonte: Provinces of Novara, Verbania, Vercelli,
- Region Sardegna: Province of Cagliari, Medio-Campidano, Ogliastra, Olbia-Tempio, Oristano,
- Region Toscana,
- Province of Trento,
- Region Veneto.’

(2) In Annex II, in Chapter 2, the entry for Italy is replaced by the following:

‘In Italy:

- Region Abruzzo: Province of Pescara,
- Province of Bolzano,
- Region Emilia-Romagna,
- Region Friuli-Venezia Giulia,
- Region Lazio: Province of Rieti,
- Region Liguria: Provinces of Imperia, Savona,
- Region Lombardia,
- Region Marche,
- Region Molise: Province of Campobasso,
- Region Piemonte,
- Region Puglia: Province of Brindisi,
- Region Sardegna,
- Region Toscana,
- Province of Trento,
- Region Umbria,
- Region Veneto.’



(3) In Annex III, in Chapter 2, the entry for Italy is replaced by the following:

'In Italy:

- Region Abruzzo: Province of Pescara,
  - Province of Bolzano,
  - Region Campania: Province of Napoli,
  - Region Emilia-Romagna,
  - Region Friuli-Venezia Giulia,
  - Region Lazio: Provinces of Frosinone, Rieti,
  - Region Liguria: Provinces of Imperia, Savona,
  - Region Lombardia,
  - Region Marche,
  - Region Molise,
  - Region Piemonte,
  - Region of Puglia: province of Brindisi,
  - Region Sardegna,
  - Region Sicilia: Provinces of Agrigento, Caltanissetta, Siracusa, Trapani,
  - Region Toscana,
  - Province of Trento,
  - Region Umbria,
  - Region Val d'Aosta,
  - Region Veneto.'
-

## COMMISSION DECISION

of 14 July 2010

**terminating the anti-dumping proceeding concerning imports of certain stainless steel fasteners and parts thereof originating in India and Malaysia**

(2010/392/EU)

THE EUROPEAN COMMISSION,

Union of certain stainless steel fasteners and parts thereof originating in the countries concerned <sup>(3)</sup>.

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community <sup>(1)</sup> (the 'basic Regulation') and in particular Article 9 thereof,

After consulting the Advisory Committee,

Whereas:

(6) The Commission sent questionnaires to the Union industry and to any known association of producers in the Union, to the exporters/producers in the countries concerned, to any association of exporters/producers, to the importers, to any known association of importers, and to the authorities of the countries concerned. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

**B. Withdrawal of the complaint and termination of the proceeding**

(7) By its letter of 1 April 2010 to the Commission, EIFI formally withdrew its complaint.

**A. Procedure**

(1) On 30 June 2009, the European Commission ('Commission') received a complaint concerning the alleged injurious dumping of certain stainless steel fasteners and parts thereof originating in India and Malaysia (the 'countries concerned').

(8) In accordance with Article 9(1) of the basic Regulation, the proceeding may be terminated where the complaint is withdrawn, unless such termination would not be in the Union interest.

(2) The complaint was lodged by the European Industrial Fasteners Institute (EIFI) on behalf of producers representing a major proportion, in this case more than 25 %, of the total Union production of certain stainless steel fasteners pursuant to Articles 4(1) and 5(4) of the basic Regulation.

(9) The Commission considered that the present proceeding should be terminated since the investigation had not brought to light any considerations showing that such termination would not be in the Union interest. Interested parties were informed accordingly and were given the opportunity to comment. No comments were received indicating that such termination would not be in the Union interest.

(3) The complaint contained prima facie evidence of the existence of dumping and of material injury resulting therefrom which was considered sufficient to justify the initiation of an anti-dumping proceeding.

(10) The Commission therefore concludes that the anti-dumping proceeding concerning imports into the Union of certain stainless steel fasteners and parts thereof originating in the countries concerned should be terminated,

(4) The Commission, after consultation of the Advisory Committee, by a notice published in the *Official Journal of the European Union* <sup>(2)</sup>, accordingly initiated an anti-dumping proceeding concerning imports into the Union of certain stainless steel fasteners and parts thereof originating in the countries concerned, currently falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61 and 7318 15 70.

HAS ADOPTED THIS DECISION:

*Article 1*

The anti-dumping proceeding concerning imports of certain stainless steel fasteners and parts thereof originating in India and Malaysia, currently falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61 and 7318 15 70, is hereby terminated.

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 51.

<sup>(2)</sup> OJ C 190, 13.8.2009, p. 27.

<sup>(3)</sup> OJ C 190, 13.8.2009, p. 32.

*Article 2*

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

Done at Brussels, 14 July 2010.

*For the Commission*  
*The President*  
José Manuel BARROSO

---

## COMMISSION DECISION

of 14 July 2010

**terminating the anti-subsidy proceeding concerning imports of certain stainless steel fasteners and parts thereof originating in India and Malaysia**

(2010/393/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community <sup>(1)</sup> (the basic Regulation) and in particular Article 14 thereof,

After consulting the Advisory Committee,

Whereas:

**A. PROCEDURE**

- (1) On 30 June 2009, the European Commission (Commission) received a complaint concerning the alleged injurious subsidisation of imports of certain stainless steel fasteners and parts thereof originating in India and Malaysia (the countries concerned).
- (2) The complaint was lodged by the European Industrial Fasteners Institute (EIFI) on behalf of producers representing a major proportion, in this case more than 25 %, of the total Union production of certain stainless steel fasteners pursuant to Articles 9(1) and 10(6) of the basic Regulation.
- (3) The complaint contained prima facie evidence of the existence of subsidisation and of material injury resulting therefrom which was considered sufficient to justify the initiation of an anti-subsidy proceeding.
- (4) Prior to the initiation of the proceeding and in accordance with Article 10(7) of the basic Regulation, the Commission notified the governments of the countries concerned that it had received a properly documented complaint alleging that subsidised imports of certain stainless steel fasteners and parts thereof originating in the countries were causing material injury to the Union industry. The governments of the

countries concerned were separately invited for consultations with the aim of clarifying the situation as regards the content of the complaint and arriving at a mutually agreed solution. During the consultations no mutually agreed solution was found.

- (5) The Commission, after consultation of the Advisory Committee, by a notice published in the *Official Journal of the European Union* <sup>(2)</sup>, accordingly initiated an anti-subsidy proceeding concerning imports into the Union of certain stainless steel fasteners and parts thereof originating in the countries concerned, currently falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61 and 7318 15 70.

- (6) On the same day, the Commission initiated an anti-dumping proceeding concerning imports into the Union of certain stainless steel fasteners and parts thereof originating in the countries concerned <sup>(3)</sup>.

- (7) The Commission sent questionnaires to the Union industry and to any known association of producers in the Union, to the exporters/producers in the countries concerned, to any association of exporters/producers, to the importers, to any known association of importers, and to the authorities of the countries concerned. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

**B. WITHDRAWAL OF THE COMPLAINT AND TERMINATION OF THE PROCEEDING**

- (8) By its letter of 1 April 2010 to the Commission, EIFI formally withdrew its complaint.
- (9) In accordance with Article 14(1) of the basic Regulation, the proceeding may be terminated where the complaint is withdrawn, unless such termination would not be in the Union interest.

<sup>(1)</sup> OJ L 188, 18.7.2009, p. 93.

<sup>(2)</sup> OJ C 190, 13.8.2009, p. 32.

<sup>(3)</sup> OJ C 190, 13.8.2009, p. 27.

- (10) The Commission considered that the present proceeding should be terminated since the investigation had not brought to light any considerations showing that such termination would not be in the Union interest. Interested parties were informed accordingly and were given the opportunity to comment. No comments were received indicating that such termination would not be in the Union interest.
- (11) The Commission therefore concludes that the anti-subsidy proceeding concerning imports into the Union of certain stainless steel fasteners and parts thereof originating in the countries concerned should be terminated,

and Malaysia, currently falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61 and 7318 15 70, is hereby terminated.

*Article 2*

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

Done at Brussels, 14 July 2010.

HAS ADOPTED THIS DECISION:

*Article 1*

The anti-subsidy proceeding concerning imports of certain stainless steel fasteners and parts thereof originating in India

*For the Commission*

*The President*

José Manuel BARROSO

---

## IV

(Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty)

## COMMISSION DECISION

of 20 May 2008

on State aid C 57/06 (ex NN 56/06, ex N 451/06) in connection with the financing of Hessische Staatsweingüter by the Land Hessen

(notified under document C(2008) 1626)

(Only the German text is authentic)

(Text with EEA relevance)

(2010/394/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having called on interested parties to submit their comments pursuant to the Article cited above <sup>(1)</sup> and having regard to their comments,

Whereas:

## I. PROCEDURE

- (1) DG Agriculture and Rural Development (DG AGRI), following complaints received in October 2003 and in November 2004, has investigated the financing of Hessische Staatsweingüter by the Land Hessen.
- (2) In this context, two meetings took place, one between authorities from Hessen and officials from DG AGRI on 26 January 2005, and one between Hessen Prime Minister Koch and the Commissioner for Agriculture and Rural Development on 29 September 2005. Following the meeting of 29 September 2005, DG AGRI sent a letter to the Hessen authorities on 13 October 2005.
- (3) The Hessen authorities sent DG AGRI information in writing by letters of 25 January 2005, 25 April 2005 and 12 December 2005, to which reference is made.
- (4) By e-mail of 6 July 2006 Germany notified the Commission of the equity financing of a new wine cellar, in accordance with Article 88(3) of the EC Treaty. According to the information provided, the notifi-

cation was submitted in the interests of legal certainty. Since part of the funds had already been paid out prior to the notification, the measure was entered in the register of non-notified aid as NN 56/06. Germany submitted further information in e-mails sent on 21 September 2006 and 14 November 2006.

- (5) By letter of 20 December 2006 (K(2006) 6605 endg.) 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 aid.
  - (6) The Commission Decision to open the procedure was published in the *Official Journal of the European Union* <sup>(2)</sup>. The Commission invited interested parties to submit their comments within one month.
  - (7) The Commission received comments from an interested party, who initially asked to remain confidential, by letter of 15 February 2007.
  - (8) The comments received were notified to Germany by letter of 2 March 2007, without disclosing the identity of the interested party. The party in question revoked the request for confidentiality by letter of 7 March 2007. Germany submitted further comments by e-mail on 4 April 2007.
- II. DESCRIPTION**
- (9) According to the information supplied, Hessische Staatsweingüter GmbH Kloster Eberbach, which has its registered office in Eltville am Rhein, is the biggest vineyard in Germany, with a cultivated area of some 190 hectares, specialising in the production of high quality wine, mainly 'Riesling' and also increasingly red wine. It is 100 % owned by the Land Hessen.

<sup>(1)</sup> OJ C 19, 27.1.2007, p. 2.

<sup>(2)</sup> See footnote 1.



- (10) The wine business of the Land Hessen was initially managed as a department of the general administration until 1998 [*kameralistische Wirtschaftsführung*] and then as an undertaking of the Land Hessen [*Landesbetrieb*] until 2003. A number of measures have to be examined in connection with the financing of Hessische Staatsweingüter:

#### Measures before 31 December 2002

- (11) Before 2003, Hessische Staatsweingüter had occasionally made losses. The losses were borne by the Land.
- (12) Before notification from Germany, the Hessen authorities provided detailed information on the funds allocated by the Land Hessen to Hessische Staatsweingüter in the years 1995-2002.
- (13) Under the system of *kameralistische Wirtschaftsführung*, the operation of Hessische Staatsweingüter was covered under Chapters 09 35 and 03 35 of the general budget of the Land. The deficits were made up by the Land Hessen in the respective annual budgets.
- (14) According to the information provided, at that time Hessische Staatsweingüter also still owned Kloster Eberbach, an architectural and cultural monument and former Cistercian Abbey. The costs of maintaining and managing the monastery were therefore attributed to Hessische Staatsweingüter. According to the information provided, the monastery is now run as an independent foundation under public law.
- (15) According to the information provided, Hessische Staatsweingüter produced the following results for the period 1995 to 1997:

(in DEM)

	1995	1996	1997
Income	10 424 594	10 970 002	12 043 717
Expenditure	11 637 419	11 889 731	12 330 538
Results	<b>- 1 212 825</b>	<b>- 919 729</b>	<b>- 286 821</b>

- (16) The Hessen authorities claimed that expenditure attributable to the maintenance and management of Kloster Eberbach should not be taken into account for the determination of the total amount of allowances of the Land Hessen attributable to the wine business of Hessische Staatsweingüter.
- (17) The income and expenditure of Kloster Eberbach attributed to Hessische Staatsweingüter were, according to the information provided, displayed under a separate sub-heading [*Titelgruppe 72*] and could therefore be clearly identified.
- (18) According to the Hessen authorities, the accounts of Hessische Staatsweingüter also included expenditure for services, which were not directly attributable to running the vineyard but to other public services, such as wine tastings for the Hessen government and parliament as representation activities, along with investments connected with land consolidation measures. According to the information provided, these expenses were listed in the explanatory annex to Chapters 09 35 and 03 35 of the annual accounts.

- (19) For these reasons, the Hessen authorities consider that the allocations from the Land Hessen to the wine business of Hessische Staatsweingüter should be adjusted as follows:

(in DEM)			
	1995	1996	1997
Results	- 1 212 825	- 919 729	- 286 821
Kloster Eberbach income	570 825	826 672	966 948
Kloster Eberbach expenditure	1 344 793	1 331 987	1 533 826
Adjustment for Kloster Eberbach	773 968	505 315	566 878
Representative wine tastings (lump sum)	140 000	140 000	140 000
Land consolidation	63 918	99 568	47 963
Adjustment for non-operating-related expenditure	203 918	239 568	187 963
Total adjusted amount	- 234 939	- 174 846	468 020
Adjusted allowances in EUR	120 122	89 397	—

- (20) According to the information provided, the *Landesbetrieb Hessische Staatsweingüter* (created as of 1 January 1998 as a separate part of the administration of the Land but without legal entity) received operating allowances, including operating grants and grants for Land representation activities (lump sums for wine tastings for the Hessen parliament and government).
- (21) According to the Hessen authorities, the following amounts can be considered as relevant allocations to the Hessen State Wineries for the period 1998 to 2002:

(in DEM)					
	1998	1999	2000	2001	2002
Operating allowances	145 000	670 000	100 000	120 000	61 400
Of which grants for representation activities	65 000	100 000	100 000	120 000	61 400
Relevant allowances	80 000	570 000	—	—	—
Relevant allowances in EUR	40 903	291 436	—	—	—

- (22) According to the Hessen authorities, the relevant allowances for the period 1995 to 2002 can be summarised as follows:

(in EUR)		
Kameralistische Wirtschaftsführung	1995-1997	209 520
Landesbetrieb	1998-2002	332 339
Total	1995-2002	541 859

**Restructuring of the wine business of the Land Hessen**

- (23) In preparation for the restructuring of the wine business and at the request of the Land Hessen, between August and November 2001 Hessische Staatsweingüter and the Geisenheim research centre worked together to produce a strategy document entitled '*Situationsanalyse und Entwicklungsperspektiven*' [Analysis of the situation and prospects for development], presenting different scenarios for the possible further development of the state wineries. This paper envisaged two possible legal forms for the wine business, namely a GmbH (limited liability company) or a foundation. With regard to the business strategy, the options were to completely renovate the old wine cellar or to build a new one.
- (24) This document was used as the basis for developing a business plan for the different scenarios in June 2002. The 'status quo' scenario provided for the gradual restoration of the old premises in Eltville over the next ten years at a cost of some EUR 6,7 million. The 'status quo' option would not, however, have made the wine business viable again. According to the business plan, financing the state wineries over a period of ten years would require total allowances from the Land Hessen of some EUR 14,3 million (including covering the cash deficit from their earlier operation since 2000) as well as the proceeds from the sale of non-operating assets amounting to some EUR 7,7 million. The wine business would have still generated an annual deficit of some EUR 2 million in 2011.
- (25) A second option, the construction of a new wine cellar on the old premises in Eltville, was deemed to be the least economically advantageous option and was therefore not given further consideration.
- (26) The only option which would have led to long-term viability, according to the business plan, was the construction of a new wine cellar in the area of the depot of the Steinberg vineyard and the relocation of the management and wine shop of Hessische Staatsweingüter to Kloster Eberbach. This option assumed that the Land had to take over the liabilities accrued by the wine business by the end of 2002. The total investment cost for the new wine cellar was estimated at EUR 15 million, which was supposed to be financed partly by sale of non-essential real estate and partly by debt capital. The respective business plan model would have led to a first positive contribution margin of Hessische Staatsweingüter in financial year 2006/2007 and to positive cash flows from the financial year 2008/2009 onwards. The necessary allowances of the Land to cover the cash flow needs in the first years of the restructuring from 2003 onwards would have amounted to a total of some EUR 4,3 million.
- (27) Due to a change in the market situation and other conditions (including a flood and the general economic situation in Germany), the June 2002 business plan had to be updated in September 2002 and the financial model revised. According to the revised model, the delay in Hessische Staatsweingüter becoming profitable would have made additional allowances of some EUR 3,4 million from the Land necessary.
- (28) By cabinet decision of 10 December 2002 the Hessen government decided to transform the wine-business into a newly founded limited company, the Hessische Staatsweingüter GmbH Kloster Eberbach (hereinafter: 'GmbH'), effective as of 1 January 2003. The Hessen authorities refer to this process as 'formal privatisation'. The cabinet also decided to build a new wine cellar in the area of the Steinberg depot and to move the administration from Eltville to Eberbach (realisation of the third strategic option presented in the business plan).
- (29) The current assets and the movable operating fixed assets of the former Landesbetrieb Hessische Staatsweingüter, amounting to a total of some EUR 7,3 million, as well as some short-term liabilities and provisions were transferred to the GmbH. The essential immovable fixed assets (the cultivated land and the buildings) were incorporated into what is known as a 'Betrieb gewerblicher Art' (a commercial institution established under public law and 100 % owned by the Land) and leased by the GmbH. According to the information provided, the lease rates were fixed on the basis of two expert's reports on the determination of the lease value (Pachtwertermittlungsgutachten), which were presented by the Hessen authorities.
- (30) According to the Hessen authorities, the aim of the Land was to provide enough capital to the GmbH under a comprehensive investment plan to safeguard its medium and long-term economic viability in the international wine markets, without public financing.
- (31) By the end of 2002 the Landesbetrieb had accumulated debts of EUR 1,792 million to the Land Hessen. The Land made a provision in the addendum to the 2002 budget writing off this debt on 31 December 2002.
- (32) On its inception in January 2003, the Land endowed the GmbH with an initial EUR 1 million (subscribed capital). The transfer of assets (and some liabilities), debt write-off and the initial capital injection gave the newly created GmbH equity capital of approximately EUR 7,6 million (around 91 % of the balance sheet total).

- (33) A second capital injection of EUR 1,225 million was agreed at the end of 2003 and was actually paid out in tranches of EUR 400 000 on 2 April, EUR 300 000 on 28 June, EUR 125 000 on 11 August and EUR 100 000 on 15 September 2004. The last tranche of EUR 300 000 was finally paid out on 27 February 2006. The capital injection was entered in the GmbH's accounts as capital reserves.
- (34) The business plan of September 2002 was updated again in February 2003 (business plan of 26 February 2003, extended to include complete profit and loss planning) and then again in November 2003 (business plan of 28 November 2003). The business plan of 28 November 2003 anticipated the first positive EBITDA <sup>(3)</sup> in the 2007 financial year, the first positive cash flow in 2010 and net incomes as of 2014. According to the information provided, the underlying financial model would have led to returns on equity (on the basis of earnings before tax) of more than 3 % in 2016, reaching a level of more than 7 % from 2019 onwards.
- (35) In this context, an expert's report on the market positioning and economic viability of comparable vineyards in Germany and the European Union (*Kurzgutachten – Die Marktstellung und Wirtschaftlichkeit von mit der Hessischen Staatsweingüter Kloster Eberbach GmbH, Eltville, vergleichbaren Weingütern in Deutschland und der Europäischen Union*; 'Hoffmann report') was submitted to the Commission by the Hessian authorities. For this report, the Geisenheim research centre conducted regular business analyses of more than 130 vineyards to determine average profitability indicators for the industry.
- (36) According to the Hoffmann report, vineyards and potential owners from other industries are interested in long-term and sustainable rates of return. The analysis determined an average rate of return on equity of 1,9 % for the 1992–2003 period for all the vineyards analysed. The top vineyards achieved an average rate of return of 11,7 %. According to the information provided, the top vineyards analysed cannot be compared directly with Hessische Staatsweingüter as the former are family businesses and the profitability indicators would have to be adjusted to take account of the staff costs of external management. After this adjustment (allowing for the costs of one technical and two financial managers), the report determines an average return on equity for top vineyards of around 2 % (1992 to 2003) and 3 % (1998 to 2003), which should, according to the Hessen authorities, be the benchmark for the financing of Hessische Staatsweingüter.
- (37) The Hoffmann report furthermore estimates that it will take at least ten and on average ten to fifteen years for restructured vineyards or larger-scale long-term investments to break even.
- (38) The Hessen authorities indicated that the underlying financial models were based on a very conservative planning approach. According to the information provided, the business plan of 26 February 2003 was audited by KPMG Deutsche Treuhand-Gesellschaft Aktiengesellschaft (KPMG) and classed as very conservative in terms of a worst-case scenario.
- Equity financing of new wine cellar**
- (39) The Land Hessen has now provided further equity to Hessische Staatsweingüter GmbH Kloster Eberbach for the construction of the new underground wine cellar. According to the information provided this investment is central to the GmbH achieving medium and long-term profitability (see recitals 23 to 25) and is necessary in view of the structural deficiencies of the old cellar in Eltville, in order to maintain the quality of the wine and ensure compliance with international food standards. The new cellar is being built in the area of the depot of the Steinberg vineyard.
- (40) The total investment of around EUR 15 million is partly financed through a capital injection from the Land Hessen. Though not originally provided for in the restructuring plan, the equity financing of EUR 7,5 million, notification of which was given on 6 July 2006, was not a pure equity capital injection but a shareholder loan.
- (41) This shareholder loan is based on a yearly fixed return of 3,7 % with the possibility of capitalising the annual interest until 2014 or 2015 (i.e. payment of 50 % of accrued interest and compound interest in 2014 and 50 % in 2015 respectively).
- (42) Furthermore, the shareholder loan will, at a rate proportional to the relation of the shareholder loan and the subscribed capital, be included in the annual profit of the GmbH up to a maximum of 25 % of the outstanding principle. In October 2006 the profit participation rate was 88 %.
- (43) The shareholder loan will be amortised as of 2021 at a rate of 5 % per year.

<sup>(3)</sup> Earnings before interest, tax, depreciation and amortisation.

(44) The shareholder loan is paid out at the request of the GmbH management in line with the investment project's progress.

(45) According to the information provided, a first tranche of EUR 300 000 was already paid out in August 2004 in connection with the planning of the new wine cellar and further tranches amounting to EUR 2,3 million were paid out between March and September 2006 in connection with the construction of this cellar. These amounts were granted as allowances under two administrative decisions [*Bescheide*] of the Hessen Ministry of the Environment, Rural Development and Consumer Protection of 22 December 2004 and 21 July 2006, covering a total of EUR 1,2 million and EUR 6,3 million respectively, and earmarked for expenses connected with the new wine cellar. The German authorities informed the Commission by e-mail of 14 November 2006 that these decisions would be revoked and the amounts already paid out would be included in the shareholder loan and subject to the same conditions.

(46) A business plan for the GmbH updated on 16 October 2006, based on the original planning for 2004-2020 and reflecting the financing conditions for the new wine cellar, was submitted to the Commission by e-mail of 16 November 2006. According to this business plan, which covered the 2006 to 2020 and 2025 period and provided for a fixed interest rate of 3,7 % for the capital provided, a positive cash flow from results can be expected as from 2010 onwards <sup>(4)</sup>. Net profits should be generated as of 2014.

(47) This business plan shows a total return on the shareholder loan (including the fixed minimum return of 3,7 %) of some 4,3 % for 2014, reaching a level of more than 13 % in 2020.

(48) According to the information provided, in its first two operating years (2004 and 2005) the GmbH considerably exceeded its forecast sales and earnings.

(49) The remaining finance for the new wine cellar was from a commercial bank loan. A corresponding loan offer from Commerzbank AG (with refinancing from the *Kreditanstalt für Wiederaufbau*) was submitted to the

Commission by e-mail of 22 September 2006 for information purposes. It is based on standard credit covenants like a change of control clause <sup>(5)</sup> and the requirement of a minimum equity ratio of 30 % over the term of the loan.

### **Reasons that prompted the Commission to initiate the procedure provided for in Article 88(2) of the EC Treaty**

(50) In its letter of 20 December 2006 (K(2006) 6605 endg.) informing Germany that it had decided to initiate the formal investigation procedure, the Commission found that the Land Hessen had conferred an advantage on Hessische Staatsweingüter by continuously covering the losses of the wine business before 2003 and that this measure therefore constituted State aid within the meaning of Article 87(1) of the EC Treaty.

(51) It furthermore expressed doubts as to whether the Land Hessen acted like a market economy investor in connection with the two capital injections of EUR 1 million and EUR 1,225 million.

(52) In addition, the Commission noted that it could be concluded that the Land Hessen acted like a private investor in granting the shareholder loan to the Hessische Staatsweingüter GmbH as a stand-alone investment.

(53) It, however, specified that the equity financing of the wine cellar has to be regarded as a follow-up investment by the Land Hessen and that it has to be assessed whether a private investor, having covered the losses of a company in the past and having subsequently injected capital amounting to EUR 2,225 million, would still provide equity financing for a new wine cellar of EUR 7,5 million subject to the conditions of the shareholder loan.

### **III. COMMENTS FROM INTERESTED PARTIES**

(54) By letter of 15 February 2007 the Commission received comments from *Interessensgemeinschaft der Rheingauer Winzer* [Syndicate of winegrowers in the Rheingau region] [(hereinafter, the 'interested party'), who initially asked for their name to remain confidential, but revoked this request by letter of 7 March 2007.

<sup>(4)</sup> In the business plan submitted, the net profit/loss for the year was adjusted only by depreciations as non-cash expenditure for determining the cash flow.

<sup>(5)</sup> Provision, according to which the bank can ask for (additional) collateral for the loan if the shareholding of the Land Hessen in the Hessische Staatsweingüter GmbH falls below 51 %.



- (55) The interested party, who was opposed to the construction of the new wine cellar, addressed four areas in this letter: the 2002-2006 preparatory phase, the weaknesses of the business plan, the investments not included in the business plan, and the derogations pursuant to Article 87 of the EC Treaty.

#### **2002-2006 preparatory phase**

- (56) According to the interested party, even before the financing of the new wine cellar it was already apparent that the government of the Land Hessen would not be acting like a market economy investor. This statement is substantiated by the following comments.

- (a) the members of the supervisory board of the GmbH are almost exclusively from public administration. Only one member comes from the private sector;
- (b) no alternative to the construction of a new wine cellar (i.e. the renovation of the old wine cellar) was considered;
- (c) other German state-owned vineyards, in particular those of the Land Rhineland-Palatinate, that were finally sold after not making a profit for decades, were not taken into account for comparative purposes;
- (d) the previous capital injections were provided without a requirement on return (which indicates that the Land and the supervisory board did not believe that Hessische Staatsweingüter was economically viable);
- (e) the equity contribution for the financing of the new wine cellar was converted into a shareholder loan only after contact with the Commission.

- (57) The interested party also asks to what extent the GmbH achieved its targets for 2005/2006 through some kind of special earnings.

#### **Weaknesses of the business plan**

- (58) The interested party claims that the business plan of October 2006, which includes the shareholder loan, does not contain anything to show that the capital injections in 2003 and 2004 and the equity financing of the new wine cellar complied with the market economy investor principle. This statement is substantiated by the following comments:

- (a) the business plan does not allow for quality and revenue fluctuations;

- (b) the business plan assumes that the total volume produced can be sold (while 3 % must be deducted for shrinkage and quality risks);

- (c) the business plan does not reflect the risks associated with purchasing grapes, must and wine that result from market fluctuations;

- (d) the financing of such external purchases is not taken into account;

- (e) the business plan does not differentiate between the selling price for wine from own production and for wine from purchases (according to the interested party, wine from purchases should be included in the business plan with an average selling price of no more than EUR 5);

- (f) the assumptions made for materials usage are unrealistic as they do not reflect the likely increases in the price of bottles;

- (g) the interested party cannot see whether the financing of replacement investments is taken into account in the business plan in the form of depreciations.

- (59) On the basis of these comments, the interested party presented an alternative calculation for the year 2014. Based on the assumption of a 3 % shrinkage on an own production of 1,1 million litres, a selling price of EUR 5 for the 300 000 litres of purchased wine and materials costs per litre of wine of EUR 1,80, in 2014 the ordinary activities of the GmbH would incur a loss of EUR 900 000 as opposed to the EUR 164 000 profit forecast. The interested party claims that the business plan is highly unstable and does not make adequate provision for fluctuations.

#### **Expenditure for management and the wine shop not included in the business plan**

- (60) The interested party states that the management and the wine shop of Hessische Staatsweingüter will remain in Kloster Eberbach, which is being restored. The interested party claims that the costs for this restoration are not included in the business plan. According to the interested party, cross-subsidisation through lower lease payments cannot be ruled out.

- (61) The interested party further objects that private wine-growers will only be allowed to a limited extent to use the Kloster wine shop as a sales outlet.

### **Derogation pursuant to Article 87 of the EC Treaty**

(62) The interested party claims that the Hessen government cannot invoke the following arguments to gain approval of the financial contributions as compatible aid pursuant to Article 87 of the EC Treaty:

- (a) Hessische Staatsweingüter is setting an example for private vineyards (the interested party contests this);
- (b) viticulture research by the state-owned research institution in Geisenheim (the interested party claims that this could also be done in cooperation with private companies);
- (c) need for conservation of the man-made landscape, in particular the steep-slope vineyards (according to the interested party only 20 % of all steep-slope vineyards in the region are managed by the state wineries).

### **IV. COMMENTS FROM GERMANY**

(63) The Commission received comments from Germany by letter of 4 April 2007. They follow the structure of the comments submitted by the interested party and include arguments on four areas: the Hessen government as a market economy investor; the soundness of the business plan; the provision for the premises in the monastery Kloster Eberbach in the business plan and the irrelevance of the justifying reasons given for the compatibility of aid. In addition, information is given on the sale of land owned by the former state company [*Landesbetrieb*].

### **The Hessen government acted like a market economy investor**

(64) According to the German authorities, the Hessen government acted like a market economy investor even during the phase leading up to the construction of the new wine cellar. They claim that the arguments in the comments from the interested party are factually incorrect and have no legal bearing. The German authorities base this statement on the following comments:

- (a) the Land Hessen, as sole shareholder of the GmbH, appointed representatives of the Land to the supervisory board, in line with what every private investor would have done. In addition, a representative from the private sector was included, thus providing outside technical expertise;
- (b) the decision to relocate the wine business and to construct a new wine cellar was a purely commercial decision based on an analysis of possible strategic approaches;

(c) the Hessen government has taken other average and even top private vineyards as the benchmark for its action, in line with the market economy investor principle (not other loss-making public vineyards, as claimed by the interested party).

- (65) According to the German authorities, the economic development of the GmbH corresponds to the business plan. There were no special earnings in 2005. Sales were up by EUR 500 000 compared to forecasts. The other higher operating income came from insurance payments for damage caused by a flood but was offset by higher personnel and material expenditure linked to that damage.
- (66) According to the German authorities, despite bad harvests in both 2005 (21 % less than in 2004) and 2006 (32 % less than in 2004), the result for 2006 should correspond to the business plan.

(67) According to the information provided, the two decisions under which the first tranches for the financing of the new wine cellar had been paid out were revoked and the whole amount of EUR 7,5 million was granted as a shareholder loan. The amounts already paid out were retroactively included in the loan subject to the same conditions. The budget of the Land was amended accordingly.

### **The business plan is well founded**

(68) According to the German authorities, the business plan is well founded and based on conservative realistic assumptions. This statement is substantiated by the following arguments:

- (a) the production planning is based on average revenues from average harvests (allowing for good and bad harvests as well as for shrinkage). The planned production output is below the average production output of vineyards in the Rheingau region;
- (b) the planning of purchases is well founded. The GmbH does not purchase wine but rather grapes, on the basis of lease and cultivation agreements. The cost of these purchases is given full consideration in the business plan. The quality and quantity risk corresponds exactly to the own production risk. The wine produced from grapes purchased under the lease and cultivation agreements can be marketed under the GmbH name and brand (bottled by the producer). The business plan does provide for the new wine cellar to temporarily be empty to some extent in the period 2007-2010;

(c) the basic assumptions for calculating the material usage are correct. Economies of scale and increased efficiencies will lead to cost reductions, already achieved in part in 2005/2006;

(d) the business plan is based on realistic and conservative assumptions, as attested by KPMG. The fact that Commerzbank is granting a commercial loan for part of the financing of the new wine cellar confirms the feasibility of the business plan;

(e) the replacement investments are factored into the business plan as capital expenditure and depreciations.

#### **Full provision is made in the business plan for the expenses for the premises in Kloster Eberbach**

(69) According to the information provided, the restoration of Kloster Eberbach, which will probably take more than 25 years, is not intended to be a financial asset to the GmbH but to preserve a cultural monument. The GmbH will rent premises for its administration and wine shop at market conditions. No contract has been concluded so far between the GmbH and the foundation managing Kloster Eberbach. Estimates of rental costs are included in the business plan.

#### **The grounds cited by the complainant are immaterial**

(70) According to the information provided, the financing of the new wine cellar does not constitute aid within the meaning of Article 87(1) of the EC Treaty, because the Hessen government acted like a private investor. The arguments which the complainant claims will be used by Hessen to justify a payment of aid are therefore not relevant to the case at hand.

#### **Sale of land of former Landesbetrieb**

(71) Furthermore, the German authorities informed the Commission that land worth EUR 2 959 675 which belonged to the former *Landesbetrieb* has been sold and the proceeds returned to the general budget of the Land Hessen.

### **V. APPRAISAL OF THE AID**

#### **Applicability of State aid rules**

(72) Hessische Staatsweingüter produces and sells wine. Article 71 of Council Regulation (EC) No 1493/1999

of 17 May 1999 on the common organisation of the market in wine <sup>(6)</sup> states that Articles 87, 88 and 89 of the EC Treaty shall apply to the production of and trade in the products covered by it. Therefore, the measures in question have to be examined in the light of State aid rules.

#### **Presence of aid within the meaning of Article 87(1) of the EC Treaty**

(73) According to Article 87(1) of the EC Treaty, aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, in so far as it affects trade between Member States, is to be deemed incompatible with the common market.

(74) According to the case law of the Court of Justice, aid to an undertaking is deemed to affect trade between Member States where that undertaking operates in a market open to intra-Community trade <sup>(7)</sup>. Hessische Staatsweingüter produces and sells wine and thus operates in a highly competitive international market <sup>(8)</sup>. The measures in question use State resources (from the budget of the Land Hessen) and are selective, in so far as they favour one specific undertaking. Consequently, it must be examined whether those measures conferred or confer an advantage on Hessische Staatsweingüter, which would distort competition and affect trade and thus constitute aid within the meaning of Article 87(1) of the EC Treaty. In order to assess whether the measure confers an advantage, the market economy investor principle (MEIP) has to be applied <sup>(9)</sup>.

#### **Measures before 31 December 2002**

(75) The investigation confirmed that the Land Hessen conferred an advantage on Hessische Staatsweingüter in covering its losses, so therefore the measure constitutes State aid within the meaning of Article 87(1) of the EC Treaty.

<sup>(6)</sup> OJ L 179, 14.7.1999, p. 1.

<sup>(7)</sup> See in particular Judgment of the Court of 13 July 1988, Case 102/87, *France v Commission*, [1988] ECR I-4067.

<sup>(8)</sup> There is a high level of intra-Community trade in wine. Some 20 % of all wine produced within EU-25 is traded internally. In 2005, some 37,1 million hectolitres (inward movements) and 38,8 million hectolitres (outward movements) respectively were traded within the EU (EU-25). In 2004/2005 Germany accounted for some 5,5 % of total wine production in EU-25 (*Source: Eurostat*).

<sup>(9)</sup> See Commission communication on the application of Articles 92 and 93 (now 87 and 88) of the EEC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector, (OJ C 307, 13.11.1993, p. 4).



- (76) It has to be examined whether Hessische Staatsweingüter, while managed as a department of the general administration of the Land Hessen (until the end of 1997) and later on as an undertaking of the Land Hessen, as a separate part of the general administration but still without a legal personality, could be regarded as an undertaking within the meaning of Article 87(1) of the EC Treaty.
- (77) It follows from the ruling of the Court in Case C-118/85 (*Commission v Italy*)<sup>(10)</sup> that if a State carries on an economic activity then it is of no importance whether it carries out this activity by way of a distinct body or through a body forming part of the State administration, in order for this body to be considered a public undertaking. Therefore it can be concluded that in the period before 2003 Hessische Staatsweingüter could already be regarded as an undertaking within the meaning of Article 87(1) of the EC Treaty.
- (78) The Commission concludes that the relevant period to be considered for an assessment of the aid is the period 1995-2002. It recalls that Article 15 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<sup>(11)</sup> stipulates that the powers of the Commission to recover aid shall be subject to a limitation period of ten years. The limitation period shall begin on the day on which the unlawful aid is awarded to the beneficiary. Any action taken by the Commission or by a Member State, acting at the request of the Commission, with regard to the unlawful aid shall interrupt the limitation period.
- (79) The Commission indicated in the opening decision that the first meeting held between the Hessen authorities and officials from DG AGRI on 26 January 2005 could be regarded as a measure interrupting the limitation period laid down in Article 15 of Regulation (EC) No 659/1999.
- (80) Neither the comments received from the interested party nor the comments received from Germany after the publication of the Commission decision to open the procedure question this preliminary finding. The Commission therefore maintains its view that the first meeting held between the Hessen authorities and officials from DG AGRI on 26 January 2005 was a measure interrupting the limitation period.
- (81) The aid in question, which was continuously provided by the Land Hessen to cover the losses of Hessische Staatsweingüter, is therefore made up of the relevant grants made to the wineries under the system known as *kameralistische Wirtschaftsführung* in the years 1995-1997 (EUR 209 520) and to the *Landesbetrieb* in the years 1998-2002 (EUR 332 339), amounting to a total of EUR 541 859 (see recital 22).
- (82) In its letter of 20 December 2006 (K(2006) 6605 endg.), the Commission also found that the actual beneficiary of the past aid would seem to be the *Betrieb gewerblicher Art* [commercial enterprise].
- (83) According to the German authorities, the *Betrieb gewerblicher Art* is the legal and economic successor to the *Landesbetrieb* Hessische Staatsweingüter, as it is the legal and economic owner of the fixed assets of Hessische Staatsweingüter and has to be regarded as the actual beneficiary of the past aid. The GmbH leases the operating immovable fixed assets from the *Betrieb gewerblicher Art*. The lease rates were fixed on the basis of two expert's reports on the determination of the lease value [*Pachtwertermittlungsgutachten*], which were submitted by the Hessen authorities (see recital 28). The Commission therefore considers that these assets are leased at market terms.
- (84) The Commission, however, considers that the GmbH, which took over the running of the wineries and received the current assets and movable operating fixed assets of the *Landesbetrieb* (see recital 28), benefited from the measures before 31 December 2002 and therefore also has to be considered as a beneficiary of the past aid.
- (85) The doubts which prompted the Commission to initiate the procedure and the preliminary findings presented in the decision to initiate the procedure have therefore been confirmed.
- Restructuring of the wine business of the Land Hessen**
- (86) The investigation confirmed the Commission's doubts that, by injecting an initial EUR 1 million and then another EUR 1,225 million into the GmbH, the Land Hessen did not act like a market economy investor.
- (87) According to the German authorities, the capital was provided at market conditions because the anticipated rates of return were in line with or even above the industry average, as attested by the Hoffmann report, while the business plan of the GmbH was, according to KPMG, based on a conservative planning approach.

<sup>(10)</sup> [1987] ECR I-2599.

<sup>(11)</sup> OJ L 83, 27.3.1999, p. 1.

- (88) The Commission notes that any such assessment would relate to the restructuring as a whole, since the reference benchmark used by the German authorities was the return on equity and the GmbH's equity reflected all the restructuring measures taken (i.e. not only the cash capital injections but also the asset contribution and the debt write-off).
- (89) The interested party (see recital 54) claims in its comments that the Land Hessen did not act like a market economy investor in the phase leading up to the financing of the new wine cellar. The comments refer (among other things) to the composition of the supervisory board of the GmbH, the failure to consider other loss-making vineyards for comparison purposes, and the fact that the capital injections were provided without the requirement of remuneration. The interested party furthermore criticises alleged weaknesses in the business plan, claiming that it is too unstable and does not allow for enough fluctuations.
- (90) The German authorities in their comments (see recital 63) contest the points raised by the interested party as being factually incorrect and legally irrelevant.
- (91) The Commission considers that the comments made by the German authorities allay the doubts raised by the interested party and that the business plan is well founded. It also shares the position of the German authorities, according to which other comparable, profitable vineyards should be used as a benchmark for the purpose of the market economy investor test (see recital 64).
- (92) The Commission therefore notes that the restructuring measures taken by the Land Hessen in favour of the GmbH (asset contribution, debt write-off and two capital injections) could, on a stand-alone basis, be regarded as acceptable to an investor operating under normal market conditions. It does however consider that the capital injections have to be assessed in the context of all the measures taken including the loss coverage for losses resulting from before 31 December 2002, when the wine business had been managed as an integral part of the Land, as the GmbH took over the running of the wine business and to a certain extent, must also be regarded as a beneficiary of this past aid (see recital 82).
- (93) The Commission considers that the debt write-off of EUR 1,792 million in particular, which concerned liabilities accrued by the *Landesbetrieb* vis-à-vis the Land from the past operations, had the same purpose as the occasional coverage of deficits before 31 December 2002 and can be considered as retroactively subsidising the past operation.
- (94) The Commission therefore does not consider that the restructuring measures can reasonably be separated from the measures before 31 December 2002. It therefore concludes that the Land Hessen, in taking the different restructuring measures to benefit the GmbH (asset contribution, debt write-off, two capital injections) did not act like a market economy investor, in view of the operating aid previously granted to the wine business of the Land Hessen, and that these restructuring measures therefore constitute aid within the meaning of Article 87(1) of the EC Treaty.
- (95) The doubts which prompted the Commission to initiate the procedure and the preliminary findings presented in the decision to initiate the procedure have therefore been confirmed.
- Equity financing of new wine cellar**
- (96) As regards the equity financing of the new wine cellar, the investigation confirmed the Commission's doubts that in view of its previous investments, in granting the shareholder loan to Hessische Staatsweingüter GmbH, the Land Hessen did not act like a private sector investor.
- (97) The comments made by the interested party on the alleged weaknesses of the business plan also concerned the financing of the new wine cellar. These comments were contested in the comments received from Germany (see recitals 58 and 68). The Commission considers that the doubts raised by the interested party with regard to the financing of the new wine cellar were likewise allayed by the comments from Germany and that the business plan is well-founded (see recital 91), since it allows for the necessary fluctuations in quantity and quality of harvests as well as for shrinkage and includes all required cost items (see recitals 68 and 69). Furthermore, the business plan was examined by KPMG and classed as very conservative (see recital 38).
- (98) The interested party furthermore comments on the fact that the equity contribution from the Land Hessen to the financing of the new wine cellar was converted into a shareholder loan only after contacts with the Commission. It further claims that capital expenditure related to the administration and the wine shop of Hessische Staatsweingüter is not reflected in the business plan. According to the interested party, cross-subsidisation through lower lease payments cannot be ruled out.

(99) The German authorities in their comments state that the payments already made in connection with the new wine cellar were fully incorporated into the shareholder loan and retroactively made subject to the same conditions (see recital 67). They furthermore clarify that the business plan fully allows for the expenses in connection with the premises to be rented in Kloster Eberbach for the administration and the wine shop of Hessische Staatsweingüter (see recital 67). Estimates of rental costs are included in the business plan. The Commission therefore considers that the doubts raised by the interested party could be allayed by the clarifications provided by the German authorities.

(100) The shareholder loan is based on a yearly fixed return of 3,7 % and will be included in the yearly profit of the GmbH (see recitals 41 to 44 for a detailed description of financing conditions). The Commission considers that these conditions are acceptable market conditions for this type of investment. The Commission furthermore takes note of the fact that the remaining part of the investment will be provided by a bank loan at market conditions, which is an indicator of the company's viability.

(101) The Commission therefore upholds the conclusion set out in its letter of 20 December 2006 (K(2006) 6605 endg.) that on a stand-alone basis, the shareholder loan could be considered as being granted at conditions acceptable to a market economy investor and that it therefore would not confer an advantage on the GmbH.

(102) It however considers that the financing of the new wine cellar cannot reasonably be separated from the aid previously received by the GmbH. The new wine cellar was an integral part of the restructuring plan and has to be regarded as a further measure in the restructuring process (i.e. following the debt write-off and the two capital injections). Moreover the current economic and financial situation of the GmbH, which allows it to obtain a commercial bank loan for the partial financing of the wine cellar, reflects the restructuring measures taken by the Land Hessen in favour of the GmbH and therefore has to be assessed in this context.

(103) The Commission therefore concludes that the Land Hessen, in providing the equity financing for the new wine cellar amounting to EUR 7,5 million in the form of a shareholder loan and subject to those conditions, is not acting like a market economy investor in the context

of the restructuring measures previously granted and that this shareholder loan therefore constitutes aid within the meaning of Article 87(1) of the EC Treaty.

(104) The doubts which prompted the Commission to initiate the procedure and the preliminary findings presented in the decision to initiate the procedure have therefore been confirmed.

#### **Derogation pursuant to Article 87 of the EC Treaty**

(105) The ban on State aid in Article 87(1) does not exclude that some categories of aid can be declared compatible with the common market on the basis of exceptions provided for in paragraphs 2 and 3 of that Article.

(106) The measures in question cannot claim to have a social character or be intended to make good the damage caused by natural disasters, such that Article 87(2)(a) or (b) of the EC Treaty could be invoked. Likewise, the measures do not seem to be designed to promote the economic development of areas where the standard of living is abnormally low, or to promote either the execution of an important project of common European interest or cultural and heritage conservation. Hence, the exceptions under Article 87(3)(a), (b) and (d) of the EC Treaty are not applicable in this case.

(107) In application of the derogations in Article 87(3)(c) of the EC Treaty, the Commission may consider aid to be compatible with the common market if it is found to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

#### **Measures before 31 December 2002**

(108) Pursuant to paragraph 15 of the Community Guidelines for State aid in the Agriculture and Forestry Sector 2007 to 2013<sup>(12)</sup>, aid measures must contain some incentive element or require some counterpart on the part of the beneficiary in order to be compatible with the common market. Unilateral State aid measures which are simply intended to improve the financial situation of a producer but which in no way contribute to the development of the sector are considered to constitute operating aids which are incompatible with the common market.

<sup>(12)</sup> OJ C 319, 27.12.2006, p. 1.

(109) The Commission observes that it is not clear that in the period before 2003 Hessische Staatsweingüter could have been regarded as a company in difficulty. It is true that the amount of EUR 541 859 it received from the Land in the period 1995 to 2002 constitutes operating aid as indicated above. However, this does not necessarily mean that Hessian State Wineries Hessische Staatsweingüter must have been a company in difficulty unable to obtain additional financing at market conditions. Moreover, the occasional loss coverage was ad hoc measures, not based on a restructuring plan. These measures were taken long before the restructuring decision was taken. The last coverage of a loss which was included in the EUR 541 859 was in 1999 (see recital 21), whereas preparations for restructuring did not start until 2001, a restructuring plan was elaborated only as of June 2002 and the official restructuring decision was taken on 10 December 2002 (see the description of the restructuring in recitals 23 to 38, and recital 28 in particular). Therefore the coverage of deficits cannot be regarded as part of the restructuring process which effectively started on 31 December 2002.

(110) Neither was this aid linked to investment, training, job creation or any counterpart required from the beneficiary. The aid was simply intended to strengthen the financial position of the beneficiary.

(111) The Commission therefore considers that this aid constitutes operating aid, which is incompatible with the common market.

(112) The Commission regrets that Germany did not notify the aid pursuant to Article 88(3) of the EC Treaty but implemented it unlawfully.

#### **Restructuring of the wine business of the Land Hessen and equity financing of the new wine cellar**

(113) Since it was found that the equity financing of the new wine cellar in the light of the restructuring measures previously granted constitutes aid within the meaning of Article 87(1) of the EC Treaty (see recital 103), it is hereafter assessed as part of the restructuring measures.

(114) Aid for restructuring companies in difficulty must normally be examined on the basis of the 2004 Community Guidelines on State aid for Rescuing and Restructuring Firms in Difficulty<sup>(13)</sup>. However, pursuant to paragraphs 103 and 104 of the guidelines, the Commission assesses aid notified prior to 10 October 2004 as well as non-notified rescue and restructuring aid on the basis of the guidelines in force at the time of notification and at the time the aid was granted, as the case may be.

(115) The restructuring measures for the GmbH to be established were formally decided by cabinet decision of 10 December 2002 (see recitals 28 to 33). This should hence be regarded as the time of the granting of the aid. At that time the 1999 Community Guidelines on State aid for Rescuing and Restructuring Firms in Difficulty<sup>(14)</sup> (hereinafter: 'Restructuring Guidelines') were in force. Chapter 3.2 of these Guidelines sets out the provisions specific to restructuring aid.

#### *Eligibility for financing*

(116) Paragraph 30 of the Restructuring Guidelines stipulates that the firm must qualify as a firm in difficulty in order to be eligible for restructuring aid.

(117) Pursuant to paragraph 4 of the Restructuring Guidelines the Commission regards a firm as being in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owners/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to go out of business in the short or medium term.

(118) In the case at hand the GmbH had a solid financial basis as of its establishment at the beginning of 2003 (see recital 32). The opening balance sheet, however, already reflected the situation after the implementation of most of the restructuring measures (asset contribution, debt write-off and first capital injection). Even in these circumstances the GmbH would have been unable to stem the losses until the planned break through its own resources. In the business plan of June 2002 the necessary allowances to cover the cash flow needs of the GmbH in the first years of the restructuring were estimated at some EUR 4,3 million (see recital 26). According to the revised model of September 2002, another EUR 3,4 million would be needed (see recital 27). Despite the relatively strong equity base of the GmbH (total equity of some EUR 7,6 million, corresponding to some 91 % of the balance sheet total), the company would most probably not have been able to cover its cash flow needs until becoming profitable through its own resources. Moreover, it is unlikely that the GmbH would have received outside financing for its on-going operations without a guarantee from the Land Hessen. Since it was demonstrated that the shareholder contributions within the context of the restructuring measures were not provided at conditions acceptable to a market economy investor (see recital 94), any funds provided by the Land Hessen in this context would have to be regarded as containing an aid element and could not be considered for the purpose of proving the company's ability to survive without public intervention.

<sup>(13)</sup> OJ C 244, 1.10.2004, p. 2.

<sup>(14)</sup> OJ C 288, 9.10.1999, p. 2.



- (119) Therefore it can be considered that the GmbH, as of its creation, could be regarded as a firm in difficulty, pursuant to paragraph 4 of the Restructuring Guidelines.
- (120) Pursuant to paragraph 7 of the Restructuring Guidelines a newly created firm is not eligible for rescue or restructuring aid, even if its initial financial position is insecure. However, footnote 9 of the Restructuring Guidelines specifies that the creation of a subsidiary by a company merely as a vehicle for receiving its assets and possibly its liabilities is not regarded as the creation of a new firm.
- (121) In this case, the GmbH was created on 1 January 2003 and thus fell within the definition of a newly created company, at the time when the restructuring measures were taken. However the immovable fixed assets remained with the Land Hessen (booked in the *Betrieb gewerblicher Art*) and leased to the GmbH, while the current assets and the movable operating fixed assets, amounting to a total of some EUR 7,3 million, as well as some short-term liabilities and provisions were transferred to the GmbH. The GmbH can therefore be regarded as a subsidiary, created merely as a vehicle to take over certain assets and liabilities of the *Landesbetrieb*. The Commission therefore considers that the GmbH is covered by the derogation of footnote 9 of the Restructuring Guidelines and is therefore in principle eligible for restructuring aid pursuant to paragraph 30 of the Restructuring Guidelines.

#### Restoration of viability

- (122) Pursuant to paragraphs 31 to 34 of the Restructuring Guidelines, the aid is granted subject to the implementation of a restructuring plan. The restructuring plan, the duration of which must be as short as possible, must restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions. The plan should provide for a turnaround that will enable the company, after completing its restructuring, to cover all its costs including depreciation and financial charges. The expected return on capital should be enough to enable the restructured firm to compete in the marketplace on its own merits.
- (123) In this case, a strategy document (*'Situationsanalyse und Entwicklungsperspektiven'*) was drawn up between August and November 2001 in preparation of the restructuring, which presented different scenarios for the possible further development of Hessische Staatsweingüter (see recital 23). On the basis of this document a business plan was elaborated for the different scenarios in June 2002. The only strategic option leading to long-term

viability of the Hessische Staatsweingüter was the construction of a new wine cellar in the area of the depot of the vineyard Steinberg and the relocation of the management and the wine shop to Kloster Eberbach. This option assumed that the Land had to take over the liabilities accrued by the wine business by the end of 2002. The total investment cost for the new wine cellar was estimated at EUR 15 million, which was supposed to be financed partly by sale of non-essential real estate and partly by debt capital. The respective business plan model would have led to a first positive contribution margin of Hessische Staatsweingüter in financial year 2006/2007 and to positive cash flows from the financial year 2008/2009 onwards. Due to a change in the market situation and other conditions, the financial model had to be revised in September 2002 to predict a slight delay in profitability of the Hessische Staatsweingüter compared to the June 2002 model. By cabinet decision of 10 December 2002, the Hessen government decided to pursue this strategic option (see recitals 24 to 28).

- (124) The business plan of September 2002 was again updated first in February 2003 (and extended to include a complete profit and loss planning) and then in November 2003. The business plan of November 2003 foresaw a first positive EBITDA<sup>(15)</sup> as early as the financial year 2007, a first positive cash flow in 2010 and net profits as of 2014. According to the information provided, the underlying financial model would have led to returns on equity (on the basis of earnings before tax) of more than 3 % in 2016, reaching a level of more than 7 % from 2019 onwards.
- (125) The Commission considers that the restructuring plan decided upon by the Hessen government in December 2002 can restore the long-term viability of the GmbH within a reasonable timescale on the basis of realistic assumptions as to future operating conditions.
- (126) It furthermore considers that the expected return on capital is enough to enable the restructured firm to compete in the marketplace on its own merits. In this context, the Commission is basing its conclusions on the Hoffman report submitted by the Hessen authorities. This report determines an average return on equity for vineyards comparable with Hessische Staatsweingüter of some 2 % to 3 %. It furthermore estimates break-even periods for the restructuring of vineyards or for larger scale long-term investments to be at least 10, and on average 10 to 15 years (see recitals 35 to 37). According to the information provided, the business plan of February 2003 was examined by KPMG and considered to be very conservative in terms of a worst-case scenario (see recital 38).

<sup>(15)</sup> Earnings before interest, tax, depreciation and amortisation.

(127) The Commission also considers that the plan provides for a turnaround that will enable the company, after completing its restructuring, to cover all its costs including depreciation and financial charges and therefore return to viability (see recital 30).

(128) The underlying restructuring plan therefore complies with the provisions of paragraphs 31 to 34 of the Restructuring Guidelines.

*Avoidance of undue distortions of competition*

(129) Pursuant to paragraphs 35 to 39 of the Restructuring Guidelines measures must be taken to mitigate as far as possible any adverse effects of the aid on competitors, with such measures usually taking the form of a limitation on the presence which the company can enjoy on its market or markets after the end of the restructuring period. The Commission, however, considers that where the firm's share of the relevant market is negligible there is no undue distortion of competition (see paragraph 36 of the Restructuring Guidelines).

(130) Hessische Staatsweingüter has, according to the information provided, the biggest vineyard in Germany with a cultivated area of some 190 hectares. The sales volume of the GmbH was estimated in the business plan of June 2002 at some 1 million litres a year. According to the information provided, before 2003 Hessische Staatsweingüter mainly produced the 'Riesling' variety. At EU level (EU-25) a total of some 15.6 billion litres of wine was produced in 2002/2003<sup>(16)</sup>. The share of Hessische Staatsweingüter in this total production was less than 0,01 %. According to the information provided by the German authorities, the total cultivation area for the Riesling variety on EU territory can be estimated at some 26 413 hectares (with Germany accounting for the biggest part with some 21 197 hectares). Hessische Staatsweingüter, with a cultivated area of some 190 hectares, represents some 0,7 % of the total EU cultivation area of Riesling. Its share of the relevant market can therefore be considered negligible and the condition of compensatory measures can be waived in the case at hand.

(131) The Commission, however, assumes, that Hessische Staatsweingüter will not receive any further aid during the restructuring period (i.e. until 2014, following the business plan update of November 2003), in line with

what is provided in paragraph 42 (iii) of the Restructuring Guidelines.

*Aid limited to the minimum*

(132) Pursuant to paragraphs 40 and 41 of the Restructuring Guidelines the amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken. Aid beneficiaries will be expected to make a significant contribution to the restructuring plan from their own resources, including through the sale of assets that are not essential to the firm's survival, or from external financing at market conditions. The amount of the aid or the form in which the aid is granted must be such as to avoid providing the company with surplus cash which could be used for aggressive, market-distorting activities not linked to the restructuring process. The aid should not go to finance new investment that is not essential for restoring the firm's viability. It must be demonstrated to the Commission that the aid will be used only for the purpose of restoring the firm's viability and that it will not enable the recipient during the implementation of the restructuring plan to expand production capacity, except in so far as this is essential for restoring viability without unduly distorting competition.

(133) Three strategic options were considered in preparation of the restructuring, namely the gradual refurbishment of the old premises in Eltville, the construction of a new wine cellar in Eltville and the construction of a new wine cellar in the area of the depot of the vineyard Steinberg (see recitals 24 to 26). The Commission acknowledges that the construction of the new wine cellar in the area of the depot of the vineyard Steinberg and the relocation of the administration of Hessische Staatsweingüter and the wine shop to Kloster Eberbach was the only strategic option for steering the Hessische Staatsweingüter towards long-term viability (see recital 26). This new wine cellar would, according to the information provided, allow Hessische Staatsweingüter to engage in high-quality red wine production. The Commission therefore considers that the increase in production capacity envisaged in the restructuring plan is essential for restoring the viability of the company. The Commission furthermore considers that the aid is limited to the minimum needed to enable restructuring to be undertaken. The GmbH received an initial capital injection of EUR 1 million on its creation on 1 January 2003. In addition it disposed of cash amounting to some EUR 538 000, according to the balance sheet provided. The business plan, however, did not foresee any positive operating cash flow to be generated by the GmbH before the 2008/2009 financial year. It was estimated that total allowances of another EUR 4,3 to EUR 7,7 million would be necessary to cover the cash flow needs in the first years of the GmbH's operations. Thus, despite an initial cash injection, the company did not dispose of surplus cash which could be used for aggressive, market-distorting activities not linked to the restructuring process.

<sup>(16)</sup> Source: Eurostat.

- (134) The new wine cellar, with a total investment amount of some EUR 15 million, is partly financed by the shareholder loan amounting to EUR 7,5 million. The difference to the total investment amount for the new wine cellar is financed via a commercial bank loan (see recital 49). The Commission considers that this commercial bank loan can be considered as a significant own contribution. The provisions of paragraphs 40 and 41 of the Restructuring Guidelines are therefore respected in the case at hand.

#### *Full implementation of the restructuring plan*

- (135) Pursuant to paragraph 43 of the Restructuring Guidelines the company must fully implement the restructuring plan.
- (136) The Commission considers this condition to be met. According to the information provided the GmbH in its first two years of existence outperformed forecasts in terms of sales and earnings considerably. After the creation of the GmbH and its initial capitalisation only one more capital injection, amounting to EUR 1,225 million was made by the Land (see recital 33). The new wine cellar (estimated total investment costs of EUR 15 million) is being partly financed by a shareholder loan with a guaranteed fixed minimum remuneration, provided by the Land (shareholder loan, see recitals 40 to 45) and partly by a commercial bank loan (see recital 49). The administration and the wine shop are planned to be moved to the premises in Kloster Eberbach.

#### *'One time, last time' principle*

- (137) Pursuant to paragraph 48 of the Restructuring Guidelines restructuring aid should be granted only once in ten years (to be counted from the moment when the restructuring period came to an end or implementation of the plan was halted) in order to prevent firms from being unfairly assisted. Paragraph 49 specifies that the application of this rule will in no way be affected by any changes in ownership of the recipient firm following the grant of aid.
- (138) The Commission considers that the 'one time, last time' condition is met in the case at hand because Hessische Staatsweingüter did not receive any rescue or restructuring aid in the last ten years. As indicated in recital 109, the Commission did not find that Hessische Staatsweingüter was to be regarded as a company in difficulty when it was still managed as a department of the general administration of the Land Hessen and then as *Landesbetrieb*. Instead the occasional coverage of deficits by the Land in the period 1995-2002 merely constituted illegal operating aid (see recital 111).

- (139) The Commission therefore considers that the restructuring measures taken by the Land Hessen to benefit Hessische Staatsweingüter comply with the relevant provisions of the Restructuring Guidelines and therefore can be considered compatible with the common market.
- (140) The Commission regrets that Germany did not notify the aid pursuant to Article 88(3) of the EC Treaty but implemented it unlawfully.

## VI. CONCLUSION

- (141) The Commission finds that Germany has unlawfully implemented measures to grant State aid in the form of continuous coverage of deficits amounting to EUR 541 859 to Hessische Staatsweingüter, in breach of Articles 87 and 88 of the EC Treaty. This aid benefited both the *Betrieb gewerblicher Art* and the GmbH. In view of the specific facts of this case, it can be held that the benefit is proportional to the operating assets taken over from the former Landesbetrieb Hessische Staatsweingüter.
- (142) The Commission furthermore finds that the restructuring measures taken by the Land Hessen in favour of the GmbH constitute State aid compatible with the EC Treaty,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The State aid amounting to EUR 541 859 unlawfully granted by Germany in the period 1995 to 2002, in breach of Article 88(3) of the EC Treaty, in favour of Hessische Staatsweingüter is incompatible with the common market.

The State aid in the form of restructuring measures unlawfully granted by Germany in the period after 2002, in breach of Article 88(3) of the EC Treaty, in favour of Hessische Staatsweingüter GmbH Kloster Eberbach is compatible with the common market.

#### *Article 2*

- Germany shall recover the aid referred to in Article 1(1) from the *Betrieb gewerblicher Art* and from Hessische Staatsweingüter GmbH Kloster Eberbach, in due proportion of the aid received.
- The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiaries until their actual recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 <sup>(17)</sup>.

#### Article 3

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

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

#### Article 4

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

- the total amount (principal and recovery interests) to be recovered from each beneficiary,
- a detailed description of the measures already taken and planned to comply with this Decision,

- documents demonstrating that the beneficiaries have been ordered to repay the aid.

2. Germany shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 1(1) has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiaries.

#### Article 5

This Decision is addressed to the Federal Republic of Germany.

Brussels, 20 May 2008.

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

---

<sup>(17)</sup> OJ L 140, 30.4.2004, p. 1.









## 2010 SUBSCRIPTION PRICES (excluding VAT, including normal transport charges)

EU Official Journal, L + C series, paper edition only	22 official EU languages	EUR 1 100 per year
EU Official Journal, L + C series, paper + annual CD-ROM	22 official EU languages	EUR 1 200 per year
EU Official Journal, L series, paper edition only	22 official EU languages	EUR 770 per year
EU Official Journal, L + C series, monthly CD-ROM (cumulative)	22 official EU languages	EUR 400 per year
Supplement to the Official Journal (S series), tendering procedures for public contracts, CD-ROM, two editions per week	multilingual: 23 official EU languages	EUR 300 per year
EU Official Journal, C series — recruitment competitions	Language(s) according to competition(s)	EUR 50 per year

Subscriptions to the *Official Journal of the European Union*, which is published in the official languages of the European Union, are available for 22 language versions. The Official Journal comprises two series, L (Legislation) and C (Information and Notices).

A separate subscription must be taken out for each language version.

In accordance with Council Regulation (EC) No 920/2005, published in Official Journal L 156 of 18 June 2005, the institutions of the European Union are temporarily not bound by the obligation to draft all acts in Irish and publish them in that language. Irish editions of the Official Journal are therefore sold separately.

Subscriptions to the Supplement to the Official Journal (S Series — tendering procedures for public contracts) cover all 23 official language versions on a single multilingual CD-ROM.

On request, subscribers to the *Official Journal of the European Union* can receive the various Annexes to the Official Journal. Subscribers are informed of the publication of Annexes by notices inserted in the *Official Journal of the European Union*.

CD-Rom formats will be replaced by DVD formats during 2010.

### Sales and subscriptions

Subscriptions to various priced periodicals, such as the subscription to the *Official Journal of the European Union*, are available from our commercial distributors. The list of commercial distributors is available at:

[http://publications.europa.eu/others/agents/index\\_en.htm](http://publications.europa.eu/others/agents/index_en.htm)

**EUR-Lex (<http://eur-lex.europa.eu>) offers direct access to European Union legislation free of charge. The *Official Journal of the European Union* can be consulted on this website, as can the Treaties, legislation, case-law and preparatory acts.**

**For further information on the European Union, see: <http://europa.eu>**



Publications Office of the European Union  
2985 Luxembourg  
LUXEMBOURG

EN