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⁽¹⁾ Text with EEA relevance

I

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

REGULATIONS

COUNCIL REGULATION (EC) No 865/2008

of 27 August 2008

extending the suspension of the definitive anti-dumping duty imposed by Regulation (EC) No 1420/2007 on imports of silico-manganese originating in the People's Republic of China and Kazakhstan

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾ (the basic Regulation), and in particular Article 14(4) thereof,

Having regard to the proposal submitted by the Commission, after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) The Council, by Regulation (EC) No 1420/2007⁽²⁾, imposed a definitive anti-dumping duty on imports of silico-manganese (including ferro-silico-manganese) (SiMn) originating in the People's Republic of China (PRC) and Kazakhstan, falling within CN codes 7202 30 00 and ex 8111 00 11 (TARIC code 8111 00 11 10) (the product concerned). The rate of the anti-dumping duty is 8,2 % and 6,5 % for imports of the product concerned originating in the PRC and Kazakhstan respectively.
- (2) By Decision 2007/789/EC⁽³⁾ (the Decision), the Commission suspended the definitive anti-dumping duties for a period of nine months, with effect from 6 December 2007.

B. GROUNDS FOR EXTENDING OF THE SUSPENSION

- (3) Article 14(4) of the basic Regulation provides that, in the Community interest, anti-dumping measures may be

suspended on the grounds that market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of such suspension, provided that the Community industry has been given an opportunity to comment and these comments have been taken into account. Article 14(4) also specifies that the suspension may be extended for a further period, not exceeding one year, if the Council so decides, acting on a proposal from the Commission. Article 14(4) further specifies that the measures concerned may be reinstated at any time if the reason for suspension is no longer applicable.

- (4) Following the suspension of the definitive anti-dumping duties, the Commission has, in accordance with recital 13 of the Decision, continued to monitor the developments on the market, in particular with regard to the flow of imports and the prices of SiMn. In addition to such analysis of the imports, a questionnaire was also sent to co-operating Community producers requesting monthly data on production, sales in volume and value on the Community market as well as profitability for the last quarter of 2007 and the first quarter of 2008.
- (5) On the basis of the information gathered, it was established that market prices of SiMn on the Community market continued to be relatively high and significantly higher than during the original investigation period (1 July 2005 to 30 June 2006). A continuous increase can be observed from the third quarter of year 2006 with an average price of 622 EUR/MT, through an average of 1 051 EUR/MT in the third quarter of year 2007 and an average 1 189 EUR/MT in the first quarter of year 2008. These trends were also observed for imports of SiMn into the Community.

- (6) As regards imports, between the period investigated for the Decision suspending the measures (from 1 October 2006 to 30 September 2007) (the 'Decision IP') and the period from 1 March 2007 to 29 February 2008 (the 'Monitoring Period') the market share of imports of SiMn originating in the PRC and Kazakhstan increased only

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 317, 5.12.2007, p. 5.

⁽³⁾ OJ L 317, 5.12.2007, p. 79.

marginally by 0,2 percentage point to 10 % of the overall Community consumption and remained below their respective market share during the original investigation period (10,4 %). EC consumption remained stable, around 20 % higher than during the original investigation period.

- (7) With regard to the Community industry, its situation remained improved when compared to the original investigation period (from 1 July 2005 to 30 June 2006). As mentioned in recital 8 of the Decision, between the original investigation period and the period from 1 October 2006 to 30 September 2007, the sales and production volumes have increased by 15 % and 19 % respectively and the profitability of the Community industry reached 42 % in the third quarter of year 2007. The new information gathered revealed that between the Decision IP and the Monitoring Period, the sales of the Community industry increased even further by additional 9 % and their market share increased to 25,4 %. As a result of the uninterrupted high price levels of the SiMn on the EU market the profitability of the Community industry remained extraordinary, even if it slightly dropped in the first quarter of year 2008 to 36 %, still substantially surpassing the 5 % profit level established as appropriate by the original investigation.
- (8) As indicated in recitals 157 to 163 of Regulation (EC) No 1420/2007 and referred to in recital 9 of the Decision, the imposition of measures in question was expected to have some negative, although limited, effects for users in the form of cost increases arising out of the possible need to arrange new or alternative supplies. Considering the temporary change in market conditions and that consequently the Community industry is currently not suffering injury, any negative effect on users could continue to be eliminated by extending the suspension of the measures. Consequently, it can be concluded that extending the suspension is in the overall Community interest.

C. CONSULTATION OF COMMUNITY INDUSTRY

- (9) Pursuant to Article 14(4) of the basic Regulation, the Commission has informed the Community industry of its intention to extend the suspension of the anti-dumping measures in question. The Community industry has been given an opportunity to comment

and did not oppose the suspension of the anti-dumping measures.

D. CONCLUSION

- (10) Given the above, it is considered that the market is in a substantially similar situation as when the measures were suspended. Indeed, considering the temporary change in market conditions, and in particular the high level of prices of SiMn existing on the Community market, which is far higher than the injurious price level found in the original investigation, it is considered that the injury linked to the imports of the product concerned originating in the PRC and Kazakhstan is unlikely to resume as a result of the extension of the suspension.
- (11) In view of the aforementioned findings, it is therefore proposed that the suspension of the anti-dumping measures on imports of silico-manganese (including ferro-silico-manganese) be extended for a further period of one year pursuant to Article 14(4) of the basic Regulation.
- (12) The Commission will continue to monitor the development of imports and the prices of the product concerned. Should a situation arise at any time in which increased volumes at dumped prices of the product concerned from the PRC and Kazakhstan resume and consequently cause injury to the Community industry, the Commission will take the necessary steps to reinstate the anti-dumping duty, taking into account the substantive rules that govern an injury assessment. An interim review pursuant to Article 11(3) of the basic Regulation may be initiated, if appropriate,

HAS ADOPTED THIS REGULATION:

Article 1

The suspension of the definitive anti-dumping duty imposed by Commission Decision 2007/789/EC is hereby extended until 6 September 2009.

Article 2

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

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

Done at Brussels, 27 August 2008.

For the Council
The President
B. KOUCHNER

COMMISSION REGULATION (EC) No 866/2008**of 3 September 2008****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 4 September 2008.

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

Done at Brussels, 3 September 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MK	22,4
	ZZ	22,4
0707 00 05	JO	156,8
	TR	152,4
	ZZ	154,6
0709 90 70	TR	94,9
	ZZ	94,9
0805 50 10	AR	69,9
	CL	65,6
	UY	72,2
	ZA	75,3
	ZZ	70,8
0806 10 10	IL	235,7
	TR	116,4
	US	188,9
	XS	61,0
	ZZ	150,5
0808 10 80	BR	89,0
	CL	101,3
	CN	80,8
	NZ	108,2
	US	91,5
	ZA	78,2
0808 20 50	ZZ	91,5
	AR	123,5
	CN	58,4
	TR	142,2
	ZA	82,5
0809 30	ZZ	101,7
	TR	138,6
	US	166,6
	XS	61,2
0809 40 05	ZZ	122,1
	IL	138,1
	MK	53,9
	TR	58,0
	XS	53,4
	ZZ	75,9

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

COMMISSION REGULATION (EC) No 867/2008**of 3 September 2008****laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards operators' organisations in the olive sector, their work programmes and the financing thereof**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular the third subparagraph of Article 103(2) in conjunction with Article 4 thereof,

Whereas:

(1) In accordance with Article 201(1)(c) of Regulation (EC) No 1234/2007, Council Regulation (EC) No 865/2004 of 29 April 2004 on the common organisation of the market in olive oil and table olives and amending Regulation (EEC) No 827/68 ⁽²⁾ shall be repealed as from 1 July 2008. Given the numerous references to specific dispositions of Regulation (EC) No 865/2004 in Commission Regulation (EC) No 2080/2005 ⁽³⁾, which lays down detailed rules for the application of Regulation (EC) No 865/2004, and in the interest of clarity and rationalisation, Regulation (EC) No 2080/2005 should be repealed and replaced by a new Regulation specifying the new legal basis and containing reference to the correct basic dispositions. The new Regulation should also include certain amendments that are deemed necessary after the experience gained in two years of implementation of work programmes.

(2) To ensure that approved operators' organisations are effective, approval should relate to the various categories of operators having a major impact in the olive oil or table olives sectors, while ensuring that those organisations can guarantee compliance with certain minimum conditions that are sufficient to obtain economically significant results.

(3) To allow producer Member States to implement administrative management of the system of approved operators' organisations in the olive sector, the procedures and time limits for the approval of such organisations, the criteria for selecting their work programmes, the arrangements for paying Community financing and the allocation thereof should be laid down.

(4) Under Article 110i(4) of Council Regulation (EC) No 1782/2003 ⁽⁴⁾, which establishes common rules for direct support schemes under the common agricultural policy and certain support schemes for farmers, Member States may withhold up to 10 % of the olive oil component in the national ceiling referred to in Article 41 thereof to provide Community financing for the work programmes drawn up by approved operators' organisations in one or more of the areas referred to in Article 103(1) of Regulation (EC) No 1234/2007.

(5) In accordance with the common rules on financing direct support schemes, and to allow the use of the amounts available by Member State, the annual expenditure intended for the implementation of the work programmes should not exceed the annual amounts withheld by the Member States in accordance with Article 110i(4) of Regulation (EC) No 1782/2003.

(6) To ensure overall consistency between the activities of approved operators' organisations, the types of measures that are eligible for Community financing and those that are ineligible should be laid down. The arrangements for the submission of the programmes and the selection criteria for those programmes should also be laid down. Given the enhanced efficiency of modern technology, it would be opportune to consider as eligible, the storage or processing improvements which may also result in an indirect increase of capacity. The Member States concerned should, however, be allowed to lay down additional eligibility conditions so as to gear measures more closely to the national situation in the olive sector.

(7) In the light of experience, the Community financing thresholds should be fixed at the very least for the areas of improving the environmental impact of olive cultivation and traceability, certification and protection, under the authority of the national administrations, of the quality of olive oil and table olives by means of quality control on the olive oils sold to the final consumer so as to ensure implementation of at least a certain number of measures in sensitive priority areas. To take into consideration the experience gained, the relevant threshold for the area of improving the environmental impact of olive cultivation should be adapted in order to reflect the evolution in this area. In view of the work programmes concerned and in order to facilitate their implementation, it is appropriate to provide for an increased percentage of overheads.

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 161, 30.4.2004, p. 97. Corrected by OJ L 206, 9.6.2004, p. 37.

⁽³⁾ OJ L 333, 20.12.2005, p. 8.

⁽⁴⁾ OJ L 270, 21.10.2003, p. 1.

- (8) To ensure that the work programmes are implemented within the given time periods and in accordance with Article 103(1) of Regulation (EC) No 1234/2007, and to ensure efficient administrative management of the system of approved operators' organisations in the olive sector, the procedures should be laid down for applications for approval, and the selection and approval of work programmes. For the selection of the work programmes, Member States should also consider the evaluation of programmes carried out by operators' organisations in the framework of this Regulation, of Commission Regulation (EC) No 1334/2002 of 23 July 2002 laying down detailed rules for the application of Council Regulation (EC) No 1638/98 as regards the work programmes of operators' organisations in the olive sector for the marketing years 2002/03, 2003/04 and 2004/05 ⁽¹⁾ and of Regulation (EC) No 2080/2005.
- (9) To guarantee the good and complete execution of the approved work programmes, it would be essential to increase the amount of the bank security linked to the application approval, and to allow its release only after the successful completion of the entire work programme.
- (10) To allow correct use of the financing available by Member State, provision should be made for an annual amendment of the work programmes approved for the following year, to take into account any duly justified changes over the initial conditions. Member States should also be able to lay down the conditions required to amend the work programmes and redistribute the amounts allocated without exceeding the annual amounts withheld by the producer Member States pursuant to Article 110i(4) of Regulation (EC) No 1782/2003. For the case of programme amendments requested by operators' organisations, and in order to allow flexibility in the application of the work programmes, it would be opportune to shorten the required advance notice to be given to the competent authorities.
- (11) To allow work to commence in good time, operators' organisations should be able to receive a maximum advance of 90 % of the eligible annual expenditure for the approved work programme, subject to the lodging of a security under the terms laid down by Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products ⁽²⁾. To facilitate and speed up the execution of the work programmes, it would be appropriate to set up a more balanced distribution of the amount of the advances.
- (12) In order to increase the overall impact of the work programmes carried out in the area of market follow-up and administrative management in the olive oil and table olives sector, it should be provided for operators' organisations and Member States to publish on their Internet sites the results of the measures undertaken thereof.
- (13) For the purposes of proper management of the rules on operators' organisations in the olive sector, the Member States concerned should draw up a control plan and specify a system of penalties for any irregularities committed. Provision should also be made for operators' organisations to notify the results of their work to the national authorities in the Member States concerned and to transmit those results to the Commission. In view of the cut-off date given to operators' organisations to present their financing applications and to Member States to conclude the necessary checks, a new deadline for a Member States communication should be fixed.
- (14) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation lays down detailed rules for the application of Articles 103 and 125 of Regulation (EC) No 1234/2007 as regards the approval of operators' organisations, the measures that are eligible for Community financing, the approval of work programmes, and the implementation of approved work programmes.

Article 2

Conditions for approving operators' organisations in the olive sector

1. Member States shall approve operators' organisations eligible for Community financing of work programmes as referred to in Article 103 of Regulation (EC) No 1234/2007.
2. Member States shall draw up the conditions for approval, which shall include at least the following:
 - (a) producer organisations shall be composed exclusively of olive producers who are not members of any other approved producer organisation;
 - (b) associations of producer organisations shall be composed exclusively of approved producer organisations which are not part of another approved association of producer organisations;

⁽¹⁾ OJ L 195, 24.7.2002, p. 16. Regulation repealed by Regulation (EC) No 2080/2005.

⁽²⁾ OJ L 205, 3.8.1985, p. 5.

- (c) other operators' organisations shall be composed exclusively of operators in the olive sector who are not part of another approved operators' organisation;
- (d) interbranch organisations shall provide a broad and balanced representation of all economic activities linked to the production and processing of, and trade in, olive oil and/or table olives;
- (e) the operators' organisation shall be in a position to submit a work programme for at least one of the areas of measures referred to in points (a), (b), (c), (d) and (e) of the first subparagraph of Article 5(1);
- (f) the operators' organisation shall undertake to submit to the checks provided for in Article 14 of this Regulation.

3. In evaluating the applications for approval submitted by operators' organisations, Member States shall consider in particular the following aspects:

- (a) the specific features of the olive sector in each regional area defined by the Member States (hereinafter regional area);
- (b) consumer interests and market balance;
- (c) improving the production quality of olive oil and table olives;
- (d) an assessment of the effectiveness of the work programmes submitted.

Article 3

Procedure for approving operators' organisations in the olive sector

1. For the purposes of approval, operators' organisations in the olive sector must lodge, by a date to be determined by the Member State but no later than 15 February of each year, an application demonstrating that they meet the conditions laid down in Article 2(2).

The application for approval shall be drawn up in accordance with a model provided by the competent authority in the Member State in order to be able to monitor compliance with the conditions provided for in Article 2(2). It shall include elements allowing the identification of each member of the operators' organisation.

2. No later than 1 April of each year of implementation of the approved work programme, the operators' organisation shall be approved by the Member State and shall receive an approval number.

3. Approval shall be rejected, suspended or withdrawn immediately if the operators' organisation does not meet the conditions referred to in Article 2(2).

4. Nevertheless, the operators' organisation shall retain the rights which devolve from its approval until the moment that its approval is withdrawn, provided that it acted in good faith as regards conformity with the conditions referred to in Article 2(2).

Where approval is withdrawn because the operators' organisation has failed deliberately or as a result of serious negligence to comply with the conditions for approval referred to in Article 2(2), the decision to withdraw approval shall take effect from the date from which the conditions for approval are no longer being fulfilled.

5. Approval shall be rejected, suspended or withdrawn immediately if the operators' organisation:

- (a) has been penalised for infringing the production aid scheme provided for in Regulation No 136/66/EEC of the Council ⁽¹⁾ in the 2002/03 to 2004/05 marketing years;
- (b) has been penalised for infringing the scheme to fund the activities of operators' organisations provided for in Council Regulation (EC) No 1638/98 ⁽²⁾ in the 2002/03 to 2004/05 marketing years.

6. Operators' organisations which have been approved by the Member State under Regulation (EC) No 1334/2002 and/or have received financing for the work programmes of operators' organisations in the marketing years from 2002/03 to 2004/05 may be deemed approved under this Regulation if they meet the conditions referred to in Article 2(2).

Article 4

Community financing

1. The annual Community financing for the work programmes of operators' organisations shall be provided up to the amount withheld in accordance with Article 110i(4) of Regulation (EC) No 1782/2003.

Member States shall ensure that the annual expenditure for the implementation of approved work programmes does not exceed the amount referred to in the first subparagraph.

2. Member States shall ensure that the Community financing is allocated proportionately over the period provided for in Article 8(1).

⁽¹⁾ OJ 172, 30.9.1966, p. 3025/66.

⁽²⁾ OJ L 210, 28.7.1998, p. 32.

*Article 5***Measures eligible for Community financing**

1. The measures eligible for Community financing under Article 103(1) of Regulation (EC) No 1234/2007 (hereinafter referred to as eligible measures) shall be as follows:

(a) in the area of market follow-up and administrative management in the olive oil and table olives sector:

(i) collecting data on the sector and the market, in accordance with specifications relating to method, geographical representativeness and precision laid down by the competent national authority;

(ii) drawing up studies, in particular on subjects linked to the other activities provided for in the work programme of the operators' organisation concerned;

(b) in the area of improving the environmental impacts of olive cultivation:

(i) collective operations to maintain olive groves of high environmental value at risk of abandonment, in conformity with specified conditions, on the basis of objective criteria, by the competent national authority in particular concerning the regional areas which may be eligible and the area and minimum number of olive oil producers who must be involved to make the operations in question effective;

(ii) developing good agricultural practice in olive growing, based on environmental criteria adapted to local conditions, its dissemination among olive growers and following up its practical application;

(iii) practical demonstrations of alternatives to chemical products for controlling olive fly;

(iv) practical demonstrations of olive-growing techniques geared towards environmental protection and stewardship of the countryside, such as organic farming, low-input farming, integrated farming, etc.;

(v) adding environmental data to the geographic information system for olive cultivation (olive GIS) referred to in Article 20 of Regulation (EC) No 1782/2003;

(c) in the area of improving the production quality of olive oil and table olives:

(i) improving conditions for growing, in particular controlling olive fly, harvesting, delivering and storing

olives prior to processing, in accordance with the technical specifications laid down by the competent national authority;

(ii) varietal improvement of olive groves on individual holdings, provided that they contribute to the objectives of the work programmes;

(iii) improving conditions for storage and use of the residues of olive oil and table olive production;

(iv) technical assistance to the olive oil processing industry covering aspects linked to the quality of products;

(v) setting up and improving laboratories for the analysis of virgin olive oils;

(vi) training tasters to carry out organoleptic checks on virgin olive oils;

(d) in the area of traceability, certification and protection, under the authority of the national administrations, of the quality of olive oil and table olives by means of quality control on the olive oils sold to the final consumer:

(i) setting up and managing systems allowing products to be traced from the olive grower through to packaging and labelling, in accordance with specifications set out by the competent national authority;

(ii) setting up and managing quality certification systems, based on a system of risk analysis and checks on critical points, which is in conformity with technical criteria adopted by the competent national authority;

(iii) setting up and managing systems to monitor compliance with norms attesting to the authenticity, quality and marketing of the olive oil and table olives placed on the market, in accordance with the technical specifications laid down by the competent national authority;

(e) in the area of disseminating information on measures carried out by operators' organisations to improve the quality of olive oil and table olives:

(i) disseminating information on the work carried out by operators' organisations in the areas referred to in points (a), (b), (c) and (d);

(ii) setting up and maintaining an Internet site on measures carried out by operators' organisations in the areas referred to in points (a), (b), (c) and (d).

As regards the measure provided for in point (c)(ii) of the first subparagraph, Member States shall ensure that appropriate provisions are made in order to recover the investment or its residual value if the member leaves the operators' organisation.

2. Member States may adopt additional conditions specifying the eligible measures, provided that these do not render their presentation or implementation impossible.

Article 6

Allocation of Community financing

In each Member State a minimum percentage of 25 % of the amount of Community financing available under Article 103 of Regulation (EC) No 1234/2007 shall be allocated to the area referred to in point (b) of the first subparagraph of Article 5(1), and a minimum percentage of 12 % of that Community financing shall be allocated to the area referred to in point (d) of the first subparagraph of Article 5(1).

If the minimum percentage referred to in the first subparagraph cannot be fully used in the areas of measures mentioned therein, the amounts which have not been used may not be allocated to other areas of measures but shall be returned to the Community budget.

Article 7

Activities and costs ineligible for Community financing

1. The following activities shall not be eligible for Community financing under Article 103 of Regulation (EC) No 1234/2007:

- (a) activities which are in receipt of Community financing other than that provided for in Article 103 of Regulation (EC) No 1234/2007;
- (b) activities aiming at a direct increase in production, storage or processing capacity;
- (c) activities linked to the purchase or storage of olive oil or table olives or having an impact on their prices;
- (d) activities linked to the commercial promotion of olive oil or table olives;
- (e) activities linked to scientific research;
- (f) activities that could distort competition in the other economic activities of the operators' organisation.

2. To ensure compliance with paragraph 1(a), operators' organisations shall undertake in writing, on behalf of themselves

and their members, to refuse any financing under another Community or national aid scheme for measures which are actually financed under Article 103 of Regulation (EC) No 1234/2007.

3. In the implementation of the measures referred to in Article 5, costs incurred as a result of the following shall not be eligible for Community financing:

- (a) reimbursement (including in the form of annual payments) of loans taken out for a measure carried out in full or in part before the beginning of the work programme;
- (b) payments to operators participating in meetings and training programmes, to compensate for loss of income;
- (c) expenditure relating to administrative and personnel costs incurred by Member States and beneficiaries of aid from the EAGF;
- (d) the purchase of land which has not been built on;
- (e) the purchase of second-hand equipment;
- (f) expenditure linked to leasing contracts, including taxes, interest and insurance costs;
- (g) hire as an alternative to purchase, and the operating costs of the goods hired.

4. Member States may adopt additional conditions giving further details of the ineligible activities and costs referred to in paragraphs 1 and 3.

Article 8

Work programmes and applications for approval

1. The work programmes eligible for Community financing under Article 103(1) of Regulation (EC) No 1234/2007 shall be carried out over a maximum period of three years. The first period shall begin on 1 April 2006. The following periods shall begin every three years on 1 April.

2. Each operators' organisation approved under this Regulation may lodge an application for approval for one single work programme by a date to be determined by the Member State but no later than 15 February of each year.

The application for approval shall contain the following elements:

- (a) details of the operators' organisation in question;

- (b) information on the selection criteria provided for in Article 9(1);
 - (c) a description and justification of each proposed measure, and a timetable;
 - (d) the planned expenditure, broken down by measure and by area of measures, as referred to in Article 5, with details for each 12-month period from the date of approval of the work programme, distinguishing the overheads, which may not exceed 7 % of the total, and the other main types of costs;
 - (e) the financing plan by area of measures referred to in Article 5, with details for each 12-month period maximum from the date of approval of the work programme, indicating in particular the Community financing applied for and, where appropriate, the financial contributions from operators and the national contribution;
 - (f) the description of the quantitative and qualitative efficiency indicators allowing interim evaluation in the course of implementation, and *ex post* evaluation of the programme on the basis of general principles laid down by the Member State;
 - (g) proof that a security in accordance with Regulation (EEC) No 2220/85 for an amount equivalent to at least 10 % of the requested Community financing has been lodged;
 - (h) an application for an advance under Article 11;
 - (i) the declaration provided for in Article 7(2);
 - (j) for interbranch organisations and associations of producer organisations, details of the operators' organisations responsible for the actual implementation of the sub-contracted measures in their programmes;
 - (k) for operators' organisations forming part of an association of producers or of an interbranch organisation, a statement that the measures provided for in their programmes are not covered by any other application for Community financing under this Regulation.
- (b) the financial credibility and the sufficiency of the financial resources of the operators' organisation concerned for the purposes of implementing the proposed measures;
 - (c) the size of the regional area involved in the work programme;
 - (d) the divergent economic situations in the regional area involved which are taken into account in the work programme;
 - (e) the existence of several areas of measures and the size of the financial contribution from the operators;
 - (f) the quantitative and qualitative efficiency indicators allowing interim evaluation in the course of implementation, and *ex post* evaluation of the programme drawn up by the Member State;
 - (g) the evaluation of work programmes which may have been previously carried out by the operators' organisation in the framework of this Regulation or of Regulations (EC) No 1334/2002 or (EC) No 2080/2005.
- Member States shall take account of the distribution of applications among the different types of operators' organisations in each regional area.
2. Member States shall reject any work programmes that are incomplete or contain inaccurate information, or include any of the ineligible activities provided for in Article 7.
3. No later than 15 March of each year, Member States shall inform operators' organisations which work programmes have been approved and, where applicable, to which work programmes they have granted the corresponding national financing.
- Final approval of a work programme may be made subject to the incorporation of amendments judged necessary by the Member State. In this case, the operators' organisation concerned shall communicate its agreement within 15 days of the notification of amendments.
4. Should the proposed work programme not be selected, the Member State shall immediately release the security referred to in Article 8(2)(g).
5. Member States shall ensure that the amount of Community financing is allocated within each category of operators' organisation taking account of the value of olive oil produced or marketed by the members of the operators' organisation.

Article 9

Selection and approval of work programmes

1. Member States shall select the work programmes on the basis of the following criteria:
- (a) the general quality of the programme and its consistency with the goals and priorities of the olive sector in the regional area concerned, as laid down by the Member State;

*Article 10***Amendments to work programmes**

1. Operators' organisations may, in accordance with a procedure laid down by the Member State, request amendments to the content and budget of their approved work programme, provided that this does not involve an overrun on the amount withheld pursuant to Article 110i(4) of Regulation (EC) No 1782/2003.

2. Requests for amendment to a work programme shall be accompanied by supporting documents setting out the reasons for and the nature and implications of the proposed changes. Such requests shall be submitted by the operators' organisation to the competent authority at least three months before the planned start of implementation of the measure in question.

3. Where operators' organisations with previously separate work plans have merged, they shall operate the plans in parallel and separately until 1 January of the year following the merger. These organisations shall merge their work programmes by means of an application to amend their respective work programmes, in accordance with paragraphs 1 and 2.

Notwithstanding the first subparagraph, the Member States may authorise the operators' organisations which so request, for duly substantiated reasons, to implement their respective work programmes without merging them.

4. No later than two months after receiving the amendment request referred to in paragraph 2, once it has examined the documents provided, the competent authority in the Member State shall communicate its decision to the operators' organisation concerned. If a decision is not taken within that time limit, the request shall be deemed to have been accepted.

5. Should the Community financing obtained by the operators' organisation be less than the amount in the approved programme, beneficiaries may adapt their programme to the financing obtained.

*Article 11***Advances**

1. An operators' organisation which has lodged the application provided for in Article 8(2)(h) shall receive, under the conditions referred to in paragraph 2 of this Article, a total advance of a maximum of 90 % of the eligible expenditure planned for each year covered by the approved work programme.

2. Before the end of the month following the month of the beginning of the implementation of each year of the approved work programme, the Member State shall pay the operators' organisation concerned an initial instalment of half of the amount referred to in paragraph 1.

A second instalment equivalent to the remaining half of the amount referred to in paragraph 1 shall be paid after carrying out the check referred to in paragraph 3.

3. Member States shall check that each instalment of the advance has actually been spent, before paying the following instalment.

This check shall be carried out by the Member State on the basis of the report referred to in Article 13 or on the basis of an on-the-spot check as referred to in Article 14.

4. The payments referred to in paragraph 2 shall be subject to the lodging of a security by the operators' organisation concerned in accordance with Regulation (EEC) No 2220/85 of an amount equal to 110 % of the advance requested. The primary requirement within the meaning of Article 20(2) of that Regulation is the implementation of the measures listed in the approved work programme.

5. By a date to be determined by the Member State but no later than the end of each year of implementation of the work programme, the operators' organisations concerned may lodge an application for release of the security referred to in paragraph 4 up to an amount equal to half the expenditure actually carried out. The Member State shall lay down which supporting documents shall accompany this application and check them, and shall release the securities corresponding to the expenditure concerned no later than in the course of the second month following that in which the application is lodged.

*Article 12***Application for Community financing**

1. For the purposes of payment of the Community financing under Article 103 of Regulation (EC) No 1234/2007, an operators' organisation shall lodge, by a date to be determined by the Member State but no later than three months after the end of each year of implementation of its work programme, an application for financing with the paying agency.

The Member State may pay operators' organisations the balance of Community financing corresponding to each year of implementation of the work programme after checking, on the basis of the report referred to in Article 13 or on the basis of an on-the-spot check as referred to in Article 14, that the two instalments of the advance referred to in Article 11(2) have actually been spent.

Applications for Community financing submitted after the date referred to in the first subparagraph shall be inadmissible and any amounts received in respect of Community financing for the programme shall be reimbursed in accordance with the procedure laid down in Article 17.

2. The application for Community financing shall be drawn up in accordance with a model provided by the competent authority in the Member State. To be admissible, the application shall be accompanied by:

(a) supporting documents proving:

- (i) the expenditure effected in the period of implementation of the work programme (invoices and bank documentation proving that they have been paid);
- (ii) where appropriate, payment of the financial contributions of the operators and the Member State concerned;

(b) a summary report comprising the following elements:

- (i) a detailed description of the stages of the programme implemented, broken down by areas of measures as detailed in Article 5;
- (ii) where appropriate, the justification and the financial repercussions of the gaps between the stages of the work programme approved by the Member State and the stages of the work programme actually implemented;
- (iii) an evaluation of the work programme implemented based on the indicators laid down in Article 8(2)(f).

3. Applications for financing which do not comply with the conditions set out in paragraphs 1 and 2 shall be rejected. The operators' organisation concerned may lodge a new application for financing within a period to be laid down by the Member State.

4. Applications for expenditure made more than two months after the end of the period of implementation of the work programme shall be rejected.

5. No later than three months after the date of submission of the application for financing and the supporting documents referred to in paragraph 2, and once they have carried out the examination of the supporting documents and the checks referred to in Article 14, Member States shall pay the Community financing that is due and, as appropriate, release the security referred to in Article 11(4).

The security referred to in Article 8(2)(g) shall be released after the completion of the entire work programme, the examination of the supporting documents and the checks referred to in Article 14.

Article 13

Operators' organisation reports

1. With effect from 2007, operators' organisations shall submit by 1 May of each year annual reports on the implementation of the work programmes during the previous calendar year. These reports shall cover the following:

- (a) the stages of the work programme implemented or being implemented;
- (b) the main amendments to the work programmes;
- (c) an evaluation of the results already obtained based on the indicators laid down in Article 8(2)(f).

For the final year of implementation of the work programme, a final report shall replace the reports provided for in the first subparagraph.

2. For work programmes with a duration of under one year, the final report shall be presented no later than two months after the end of implementation of the programme.

3. The final report shall evaluate the work programme and shall comprise at least the following:

- (a) an account, based at least on the indicators set out in Article 9(1)(f) and any other relevant criteria, showing to what extent the objectives pursued by the programmes have been achieved;
- (b) an account of the changes to the work programme;
- (c) where appropriate, an indication of the factors to be taken into account in drawing up the next work programme.

4. Data collected and studies drawn up in execution of measures under Article 5(1)(a) shall, upon completion of the relevant measure, be published on the Internet site of the operators' organisation.

Article 14

On-the-spot checks

1. Member States shall verify that the conditions for granting Community financing are met, in particular as regards compliance with the following aspects:

- (a) compliance with the approval conditions;

- (b) implementation of the approved work programmes, in particular investment measures;
- (c) the expenditure actually implemented as compared to the assistance applied for and the financial contribution by the olive operators concerned.

2. The competent authority shall introduce control plans for on-the-spot checks covering a sample of approved operators' organisations in accordance with Article 103(3) of Regulation (EC) No 1234/2007. The competent authority shall select the sample on the basis of risk analysis in such a way that:

- (a) producer organisations and associations thereof are all subject to on-the-spot checks at least once after payment of the advance and before the final payment of Community financing;
- (b) other operators' organisations and interbranch organisations are all checked each year during the period of implementation of each approved work programme, unless they have benefited from an advance in the course of that year, in which case the check will be carried out after the date of payment of that advance.

If the checks reveal irregularities, the competent authority shall carry out additional checks during the year in question and shall increase the number of operators' organisations to be checked the following year.

3. The on-the-spot checks shall be unannounced. However, in order to facilitate the practical organisation of checks, advance warning of no more than 48 hours may be given to the operators' organisation to be checked.

4. The competent authority shall determine which operators' organisations to check on the basis of a risk analysis based on the following criteria:

- (a) the amount of financing for the approved work programme;
- (b) the nature of the measures financed under the work programme;
- (c) the degree of progress in implementing work programmes;
- (d) findings made during previous on-the-spot checks or verifications carried out during the approval procedure;
- (e) other risk criteria to be defined by the Member States.

5. The duration of each on-the-spot check shall correspond to the degree of progress in implementing the approved work programme.

Article 15

Inspection reports

Every on-the-spot check shall be the subject of a detailed inspection report, indicating in particular:

- (a) the date and duration of the check;
- (b) a list of those present;
- (c) a list of invoices checked;
- (d) reference numbers of invoices selected from the accounting documents (register of sales, or of purchases, and VAT register in which the selected invoices have been recorded);
- (e) bank documents proving payment of the amounts selected;
- (f) an indication of the measures already carried out which have been specifically analysed on-the-spot.

Article 16

Corrections and penalties

1. Where the withdrawal of approval referred to in Article 3(3) results from the fact that the operators' organisation has failed deliberately or by serious negligence to meet its obligations, the operators' organisation shall be ineligible for financing in respect of the entire work programme and shall also pay the competent authority an amount equal to the ineligible amount of financing.

2. If a given measure has not been implemented in conformity with a work programme, the operators' organisation shall be ineligible for financing for the measure in question. This exclusion shall not apply if the operators' organisation has submitted factually correct information or can show by any other means that it is not at fault.

3. The following penalties shall apply to operators' organisations where irregularities are found in the implementation of the work programme:

- (a) in the event of an irregularity caused by negligence, the operators' organisation:
 - (i) shall be ineligible for financing for the measure in question;

(ii) shall also pay the competent authority an amount equal to the ineligible amount of financing;

(b) in the event of an intentional irregularity, including false declarations, the operators' organisation:

(i) shall be ineligible for financing in respect of the entire work programme;

(ii) shall also pay the competent authority an amount equal to the ineligible amount of financing;

(iii) shall be ineligible for Community financing under Article 103 of Regulation (EC) No 1234/2007 for the entire three-year period following that in which the irregularity was discovered.

4. Amounts resulting from the application of the corrections or penalties under this Article shall be paid to the responsible paying agency and deducted by it from expenditure financed by the European Agricultural Guarantee Fund.

Article 17

Recovery of undue payments

1. The competent authority in the Member State shall recover any amount unduly paid plus, where appropriate, interest calculated in accordance with paragraph 2.

2. Interest shall be calculated:

(a) on the basis of the period elapsing between payment and reimbursement by the beneficiary;

(b) at the rate applied by the European Central Bank to its main refinancing operations published in the 'C' series of the *Official Journal of the European Union* and in force on the date on which the undue payment is made, plus three percentage points.

3. In the case of a measure which is subsequently found to be ineligible, and which has been implemented in conformity with an approved work programme, the Member State may decide to pay the relevant financing due or not to proceed to the recovery of amounts which have already been paid out, if such a decision is permitted in comparable cases financed from the national budget and if the operators' organisation has not acted negligently or intentionally.

4. The amounts recovered or paid under this Article shall be paid to the paying agency and deducted from expenditure financed by the European Agricultural Guarantee Fund.

Article 18

Communications from the Member States

1. No later than 31 January 2006 for the first three years' period beginning on 1 April 2006 and 31 January 2009 for the second three years' period to begin on 1 April 2009, the Member States producing olive oil shall communicate to the Commission the national measures implementing this Regulation, and in particular those relating to:

(a) the conditions for approval of the operators' organisations referred to in Article 2(2);

(b) the additional conditions specifying the eligible measures adopted pursuant to Article 5(2);

(c) the goals and priorities of the olive sector referred to in Article 9(1)(a) and the quantitative and qualitative indicators referred to in Article 9(1)(f);

(d) the arrangements for the system of advances referred to in Article 11 and, where appropriate, the system for paying the national financing;

(e) the application of the checks referred to in Article 14 and of the penalties and corrections provided for in Article 16;

(f) the period referred to in Article 12(3).

2. No later than 1 May of each year of implementation of the approved work programme, Member States shall transmit to the Commission data on:

(a) approved operators' organisations;

(b) the work programmes and their characteristics, broken down by type of operators' organisation, by area of measures and by regional area;

(c) the amount of financing allocated to each work programme;

(d) the planned schedule of Community financing by budget year for the total period covered by the work programmes.

3. No later than 20 October of each year of implementation of the approved work programmes, Member States shall transmit to the Commission a report on the implementation of this Regulation comprising at least the following information:

(a) the number of work programmes financed, recipients, areas under olive trees, mills, processing facilities and volumes of oil and table olives concerned;

- (b) the characteristics of the measures developed in each of the areas of measures;
- (c) any discrepancy between measures planned and measures actually carried out, and its implications at the level of expenditure;
- (d) a description and evaluation of results, based in particular on the evaluations of the work programmes referred to in Article 12(2)(b)(iii);
- (e) statistics on the checks carried out in accordance with Articles 14 and 15 and the penalties or corrections applied in accordance with Article 16;
- (f) expenditure by programme and by area of measures, and the Community, national and operators' financial contributions.

4. The communications provided for in this Article shall be carried out electronically in accordance with the information provided to the Member States by the Commission.

5. The competent authorities of Member States shall publish on their Internet sites all data collected and studies drawn up in execution of measures under Article 5(1)(a) upon their completion.

Article 19

Transitional provision

1. The Member States may advance the Community financing for the first year of implementation of the programme.

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

Done at Brussels, 3 September 2008.

2. This advance shall be limited exclusively to the amount corresponding to that Community financing.

3. Expenditure resulting from the payment of the advance provided for in paragraph 2 shall be entered in the accounts as expenditure incurred from 16 to 31 October 2006.

4. The competent authorities of Member States shall publish on their Internet sites all data collected and studies drawn up in execution of measures under Article 5(1)(a) of Regulation (EC) No 2080/2005, upon their completion.

Article 20

Repeal

Regulation (EC) No 2080/2005 is repealed.

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

Article 21

Entry into force

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

It shall apply from 1 April 2009. However, Article 19(4) shall apply from the date of its entry into force.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

ANNEX

Correlation table referred to in the second paragraph of Article 20

Regulation (EC) No 2080/2005	This Regulation
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6	Article 6
Article 7	Article 7
Article 8	Article 8
Article 9(1), first subparagraph, points (a) to (f)	Article 9(1), first subparagraph, points (a) to (f)
—	Article 9(1), first subparagraph, point (g)
Article 9(1), second subparagraph	Article 9(1), second subparagraph
Article 9(2) to (5)	Article 9(2) to (5)
Article 10	Article 10
Article 11(1), (2) and (3)	Article 11(1), (2) and (3)
Article 11(4), first subparagraph	Article 11(4), first subparagraph
Article 11(4), second subparagraph	—
Article 11(5)	Article 11(5)
Article 12(1) to (4)	Article 12(1) to (4)
Article 12(5)	Article 12(5), first subparagraph
—	Article 12(5), second subparagraph
Article 13(1), (2) and (3)	Article 13(1), (2) and (3)
—	Article 13(4)
Article 14(1)	Article 14(1)
Article 14(2), first subparagraph, introductory words	Article 14(2), first subparagraph, introductory words
Article 14(2), first and second indents	Article 14(2), points (a) and (b)
Article 14(2), second subparagraph	Article 14(2), second subparagraph
Article 14(3), (4) and (5)	Article 14(3), (4) and (5)
Article 15	Article 15
Article 16	Article 16
Article 17	Article 17
Article 18(1) to (4)	Article 18(1) to (4)
—	Article 18(5)

Regulation (EC) No 2080/2005	This Regulation
Article 19(1) to (3)	Article 19(1) to (3)
—	Article 19(4)
Article 20, first paragraph	Article 20, first paragraph
Article 20, second paragraph	—
—	Article 20, second paragraph
Article 21, first paragraph	Article 21, first paragraph
—	Article 21, second paragraph

COMMISSION REGULATION (EC) No 868/2008**of 3 September 2008****on the farm return to be used for determining the incomes of agricultural holdings and analysing the business operation of such holdings**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation No 79/65/EEC of the Council of 15 June 1965 setting up a network for the collection of accountancy data on the incomes and business operation of agricultural holdings in the European Economic Community ⁽¹⁾, and in particular Articles 6(2), 7(3) and 12(2) thereof,

Whereas:

- (1) The type, definition and presentation of the accountancy data referred to in Article 7 of Regulation No 79/65/EEC and collected by means of the farm return drawn up for the purpose of reliably determining the incomes of agricultural holdings must be identical, irrespective of the returning holdings surveyed. For reasons of simplification and data readability, provision should also be made for that individual return to include additional particulars and details meeting the specific requirements of an analysis of the business operation of the agricultural holdings selected under Article 11 of that Regulation. In that case, the farm return should also be considered as a special farm return, as referred to in Article 12(1).
- (2) Commission Regulation (EEC) No 2237/77 of 23 September 1977 on the form of farm return to be used for the purpose of determining incomes of agricultural holdings ⁽²⁾ lays down rules on the collection of accountancy data.
- (3) The data collected by means of the farm return should take account of the experience acquired since the network was set up and of developments in the common agricultural policy and should comply with the definitions laid down in the relevant regulations, and in particular Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural

products and foodstuffs ⁽³⁾, Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers ⁽⁴⁾, Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) ⁽⁵⁾, Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 ⁽⁶⁾ as regards areas eligible for aid under the Structural Funds, and 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 as regards certain products in this sector (Single CMO Regulation) ⁽⁷⁾.

- (4) Regulation (EEC) No 2237/77 should therefore be adapted to take account of developments in the common agricultural policy, in the type of information required for analysing data and in information communication techniques since that Regulation was adopted. For reasons of clarity and rationality, that Regulation should be replaced.
- (5) Duly completed farm returns should be sent to the Commission by the liaison agency appointed by each Member State, in accordance with Article 6 of Regulation No 79/65/EEC. To that end, provision should be made for the liaison agency to send the information concerned direct to the Commission via the computerised system set up by the Commission and for that system to allow the requisite information to be exchanged electronically on the basis of the models made available to the liaison agency via that system. Provision should also be made for the Commission to inform Member States of the general conditions for implementing the computerised system via the Community Committee on the farm accountancy data network.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Community Committee for the farm accountancy data network,

⁽¹⁾ OJ 109, 23.6.1965, p. 1859/65.

⁽²⁾ OJ L 263, 17.10.1977, p. 1.

⁽³⁾ OJ L 198, 22.7.1991, p. 1. Regulation to be replaced by Council Regulation (EC) No 834/2007 (OJ L 189, 20.7.2007, p. 1) from 1 January 2009.

⁽⁴⁾ OJ L 270, 21.10.2003, p. 1.

⁽⁵⁾ OJ L 277, 21.10.2005, p. 1.

⁽⁶⁾ OJ L 210, 31.7.2006, p. 25.

⁽⁷⁾ OJ L 299, 16.11.2007, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

Farm returns and accountancy data

1. The nature and form of presentation of the accountancy data required for the annual determination of the incomes of holdings and analysis of their business operation in accordance with Chapters II and III of Regulation No 79/65/EEC are laid down in Annex I to this Regulation.

2. Definitions and instructions relating to the data referred to in paragraph 1 are laid down in Annex II.

Article 2

Transmission to the Commission

1. The farm returns and data referred to in Article 1 shall be transmitted to the Commission by the liaison agency referred to in Article 6 of Regulation No 79/65/EEC via the computerised system set up by the Commission and made available to the Member States for the electronic exchange of information.

2. Member States shall be informed of the general conditions for implementing the computerised system referred to in paragraph 1 via the Community Committee for the farm accountancy data network.

The form and content of the farm return shall be defined on the basis of a model and the instructions required for drawing it up. That model shall be adapted and updated by the Commission via the computerised system after the Committee referred to in the first subparagraph has been informed.

Article 3

Repeal

Regulation (EEC) No 2237/77 is hereby repealed.

References made to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.

Article 4

Entry into force

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

It shall apply from the 2009 accounting year.

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

Done at Brussels, 3 September 2008.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

ANNEX I

LAYOUT OF FARM RETURN

For each heading and column of the tables in this Annex, it is necessary to refer to the definitions and instructions as laid down in Annex II. The numbers in the columns of these tables are serial numbers of data in the information media. These serial numbers are systematically indicated, even for positions which will never be filled in (e.g. table K, column area for product 162 'Cow's milk'). The unused numbers are available for later use and should be filled in with zero.

A. GENERAL INFORMATION ON THE HOLDING

Heading number and description	Serial number
1. Number of holding	
— Division,	1
— Subdivision,	2
— Serial number of holding,	3
'Unused'	4-5
2. Information on computer records and accounting office	
— Number of 10-data groups,	6
'Unused'	7-16
— Number of the accounting office,	17
3. Organisational form of the holding	18
'Unused'	19
4. National sampling and weighting factors	
— National weight of the farm calculated by the Member State,	20
'Unused'	21
'Unused'	22
'Unused'	23-30
5. Location of holding	31
6. Category of holding	
— Organic farming,	32
— Type of farming at the time of selection,	33
— Type of farming on the basis of the accountancy data,	34
— Economic size class at the time of selection,	35
— Economic size class on the basis of the accountancy data,	36
7. Dates of closure of accounts and creation of the information medium	
— Date of closure of accounts,	37
— Date of creation of the information medium,	38
8. Less-favoured area	39
9. Other particulars concerning the holding	
— Irrigated utilised agricultural area (UAA),	40
— Altitude,	41
— Days grazing on mountain or other pastures not included in the UAA,	42
— Total area under shelter,	43
— Structural Funds Area,	44
— Areas with environmental restrictions,	45
'Unused'	46-47

B. TYPE OF OCCUPATION

Heading number and description	Serial number
10. UAA in owner-occupation	48
11. Rented UAA	49
12. UAA in sharecropping	50

C. LABOUR

Heading number and description	Functions performed (code)	Year of birth	Number of annual work units	Annual time worked (hours)
	(1)	(2)	(3)	(4)
A. Regular unpaid labour				
13. Holder/manager (code 1)	51	52	53	54
	55	56	57	58
14. Holder/not manager (code 2)	59	60	61	62
	63	64	65	66
15. Manager/not holder (code 3)	67	68	69	70
	<i>Number of persons</i>			
16. Spouse(s) of holder(s)	71	—	72	73
17. Others	74	—	75	76
B.18. Casual unpaid labour	—	—	—	77
C. Regular paid labour				
19. Manager	—	78	79	80
20. Others	—	—	81	82
D.21. Paid casual labour	—	—	—	83

D. NUMBER AND VALUE OF LIVESTOCK

Heading number and description	Opening valuation		Closing valuation		Average number
	Number	Value	Number	Value	
	(1)	(2)	(3)	(4)	
22. Equines	86	87	88	89	90
23. Calves for fattening	91	92	93	94	95
24. Other cattle under one year	96	97	98	99	100
25. Male cattle from one to less than two years	101	102	103	104	105
26. Female cattle from one to less than two years	106	107	108	109	110
27. Male cattle of two years or more	111	112	113	114	115
28. Breeding heifers	116	117	118	119	120
29. Heifers for fattening	121	122	123	124	125
30. Dairy cows	126	127	128	129	130
31. Cull dairy cows	131	132	133	134	135
32. Other cows	136	137	138	139	140
33. Beehives	141	142	143	144	145
34. Rabbits, breeding females	146	147	148	149	150
35. 'Unused'	151	152	153	154	155
36. 'Unused'	156	157	158	159	160
37. 'Unused'	161	162	163	164	165
38. Goats, breeding females	166	167	168	169	170
39. Other goats	171	172	173	174	175
40. Ewes	176	177	178	179	180
41. Other sheep	181	182	183	184	185
42. 'Unused'	186	187	188	189	190
43. Piglets	191	192	193	194	195
44. Breeding sows	196	197	198	199	200
45. Pigs for fattening	201	202	203	204	205
46. Other pigs	206	207	208	209	210
47. Table chickens	211	212	213	214	215
48. Laying hens	216	217	218	219	220
49. Other poultry	221	222	223	224	225
50. Other animals	—	227	—	229	—

E. LIVESTOCK PURCHASES AND SALES

Heading number and description	Purchases of animals	Sales of animals	Farmhouse consumption and benefits in kind
	(1)	(2)	(3)
51. Equines	231	232	233
52. Cattle	234	235	236
53. 'Unused'	237	238	239
54. Sheep	240	241	242
55. Goats	243	244	245
56. Pigs	246	247	248
57. Poultry	249	250	251
58. Other animals	252	253	254

F. COSTS

Heading number and description	Serial number
Labour and machinery costs	
59. Wages and social security	259
60. Contract work and machinery hire	260
61. Current upkeep of machinery and equipment	261
62. Motor fuels and lubricants	262
63. Car expenses	263
Specific livestock costs	
<i>Purchased feedingstuffs:</i>	
64. Concentrated feedingstuffs for grazing stock (equines, cattle, sheep, goats)	264
65. Coarse fodder for grazing stock (equines, cattle, sheep, goats)	265
66. Feedingstuffs for pigs	266
67. Feedingstuffs for poultry and other small animals	267
<i>Farm-produced feedingstuffs used on farm for:</i>	
68. Grazing stock (equines, cattle, sheep, goats)	268
69. Pigs	269
70. Poultry and other small animals	270
71. Other specific livestock costs	271
Specific crop costs	
72. Seeds and seedlings purchased	272
73. Seeds and seedlings produced and used on the farm	273
74. Fertilisers and soil improvers	274
75. Crop protection products	275
76. Other specific crop costs	276
77. Specific forestry costs	277
Farming overheads	
78. Current upkeep of land improvements and buildings	278
79. Electricity	279
80. Heating fuels	280
81. Water	281
82. Insurance	282
83. Taxes and other dues	283
84. Other farming overheads	284
Land charges	
85. Rent paid	285
86. Of which: rent paid for land	286
87. Insurance for farm buildings	287
88. Taxes on land and buildings	288
Interest paid	
89. Interest and financial charges paid, total:	289
90. Interest and financial charges paid on loans for land and buildings	290
91. Of which: for purchase of land	291
92. Interest and financial charges paid on loans for working capital and to creditors	292
93. Total costs	293

G. LAND AND BUILDINGS, DEADSTOCK AND CIRCULATING CAPITAL

Heading number and description	Unused		Opening valuation	Investment		Sales	Depreciation	Closing valuation
				Before deduction of subsidies	Subsidies			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
94. <i>Agricultural land, buildings and rights, of which:</i>	294	295	296	297	298	299	300	301
95. <i>Agricultural land</i>	302	303	304	305	306	307	308	309
96. <i>Permanent crops</i>	310	311	312	313	314	315	316	317
97. <i>Land improvements</i>	318	319	320	321	322	323	324	325
98. <i>Farm buildings</i>	326	327	328	329	330	331	332	333
99. <i>Acquisition costs, quotas and other rights</i>	334	335	336	337	338	339	340	341
100. <i>Forest land including standing timber</i>	342	343	344	345	346	347	348	349
101. <i>Machinery and equipment</i>	350	351	352	353	354	355	356	357
102. <i>Circulating capital</i>	358	359	360	361	362	363	364	365
103. Total	366	367	368	369	370	371	372	373

H. DEBTS

Heading number and description	Opening valuation				Closing valuation			
	Total	Of which for:			Total	Of which for:		
		Land and buildings		Other assets		Land and buildings		Other assets
		Total	Of which land			Total	Of which land	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	
104. Long- and medium-term loans	374	375	376	377	378	379	380	381
105. Short-term loans and creditors	382	383	384	385	386	387	388	389
106. Total	390	391	392	393	394	395	396	397

I. VALUE ADDED TAX (VAT)

Heading number and description		Serial number
107.	VAT system	400
	Subdivision of the VAT system (Spain, France and Italy)	401
	Headings 108 to 111 are to be filled only when an agricultural system or a similar system is applied	
108.	VAT on sales	402
109.	VAT on purchases	403
110.	VAT on investments	404
111.	VAT refunded by tax authorities	405

J. GRANTS AND SUBSIDIES

Full details must be supplied

Heading number	Description	Code ⁽¹⁾	Amount
112	Grants and subsidies except those on costs and purchase of animals	—	408
113	Of which:	409	to ...
	20 'open' codes corresponding to the categories defined in Annex II	...	448
114	Grants and subsidies on costs	—	449
115	Of which:	450	to ...
	10 'open' codes corresponding to the headings for the costs in question (headings 59 to 89)	...	469
116	Grants and subsidies on the purchase of animals	—	470
117	Of which:	471	to ...
	5 'open' codes corresponding to the headings for the categories of animals purchased (headings 51 to 58)	...	480
118	Total grants and subsidies	—	481
119	'Unused'	—	482
	Differences from previous accounting years	—	483

⁽¹⁾ Enter the heading for the categories of animals, products, costs or direct aids concerned.

K. PRODUCTION (excluding animals) (headings 120 to 375)

Product (heading)	Type of crop (code)	Missing data (code)	Area	Production for the accounting year	Opening valuation	Sales	Farmhouse consumption and benefits in kind	Closing valuation	Farm use
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
488	489	490	491	492	493	494	495	496	497
498	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	(¹)

⁽¹⁾ Last serial number = 487 + (10 × number of products entered).

L. QUOTAS AND OTHER RIGHTS

Quota or right	Type of data code		Payments (purchase/leasing, renting)	Receipts (sale/leasing, renting)	Opening valuation	Depreciation	Closing valuation	Quantity	Taxes (including additional levy)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
xxx	Code 1 = asset-related entries Code 2 = income-related entries	Unused	Code 1 = value of purchases Code 2 = payments for use	Code 1 = value of sales Code 2 = receipts for use	Code 1 = value Code 2 = unused	Code 1 = value Code 2 = unused	Code 1 = value Code 2 = unused		Code 2 = value

M. DIRECT PAYMENTS under Regulation (EC) No 1782/2003 ⁽¹⁾ (headings 601 to 680 and 700 to 772)

Product or product combination (heading)			Number of basic units for payments	Total aid	Reference amount				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
xxx	Unused	Unused				Unused			

N. DETAILS OF PURCHASES AND SALES OF LIVESTOCK

Category of livestock (heading)			Number of animals purchased	Values of purchases	Number of animals sold	Values of sales			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
xxx	Unused	Unused					Unused		

⁽¹⁾ OJ L 270, 21.10.2003, p. 1.

ANNEX II

DEFINITIONS AND INSTRUCTIONS IN RESPECT OF THE FARM RETURN

I. GENERAL DEFINITIONS AND INSTRUCTIONS

- (a) The data on the farm return should relate to a single agricultural holding and to a single accounting year of 12 consecutive months.
- (b) Data in the farm return concern exclusively the agricultural holding. These data refer to activities of the holding itself and if appropriate to both forestry and tourism connected with the farm. Nothing connected with any non-farming activities of the holder or of his family, or with any pension, inheritance, private bank accounts, property external to the agricultural holding, personal taxation, private insurance, etc., is to be taken into account in preparing the farm returns.

When the holding's production resources (paid or unpaid labour, machinery or equipment) are used to increase fixed assets (construction or major repairs of machinery, construction, major repairs or even demolition of buildings, planting or felling of fruit trees), the corresponding costs — or an estimate thereof — are not to be included in the working costs of the holding. In any case, labour costs and hours worked to produce fixed assets are to be excluded from both costs and data on labour. In exceptional cases, if certain costs (other than labour costs) used to produce fixed assets cannot be calculated separately (e.g. use of the holding's tractor) and if these expenses are then included under costs, an estimate of all these costs used to produce fixed assets is to be entered in heading 181 (Other products and receipts).

In any case, the value of the fixed assets produced is to be assessed on the basis of their cost (including the value of the paid and/or unpaid labour) and must be added to the value of the fixed assets given under headings 94 to 101.

- (c) Data given in a farm return are to be taken from accounts consisting of entries made systematically and regularly throughout the accounting year.
- (d) The accountancy data are expressed in money terms:
- either without VAT,
 - or with VAT in the circumstances mentioned below (see headings 107 to 111).
- (e) The accountancy data in money terms are expressed without grants and subsidies. Grants and subsidies are understood to be all forms of direct aid from public funds which have resulted in a specific receipt (see headings 112 to 118).
- (f) Concerning grants and subsidies:
- in Table G the grants and subsidies to be entered are those received during the accounting year, including those received for investments made in previous accounting years,
 - in Table J are recorded:
 - all direct payments concerning production, areas or livestock are related to the current accounting year, even if not yet received,
 - for rural development payments, only the amounts received during the accounting year,
 - in Table M, the direct payments recorded are related to areas or livestock present during the current accounting year, even if not yet received.
- (g) The data in a farm return should be given in the following units and with the following degrees of accuracy:
- values: values in euro or in national monetary units without decimal points. However, for national currencies where the unit represents a low relative value compared to the euro, it may be agreed between the liaison agency of the Member State in question and the staff of the Commission which manages the Farm Accountancy Data Network, to express the values in hundreds or thousands of national currency units,

- physical quantities: in quintals (q = 100 kg) except in the case of eggs, which will be expressed in thousands, and wine and related products which will be expressed in hectolitres,
- areas: in ares, except in the case of mushrooms which will be expressed in square metres of total cropped area,
- average livestock numbers: to one decimal place, except for poultry and rabbits, which are to be given in whole numbers, and bees which are to be given in number of occupied hives,
- labour units: to two decimal places.

Fixed positions (see Tables A to J of Annex I) where nothing is to be indicated should be filled in with zeros.

For the products entered in Table K, transactions relating to quotas and other prescribed rights entered in Table L, direct payments entered in Table M and details of purchases and sales of livestock entered in Table N, zeros should be filled in for the positions where there is nothing to be indicated.

II. DEFINITIONS AND INSTRUCTIONS IN RESPECT OF INDIVIDUAL ITEMS IN THE FARM RETURN

A. GENERAL INFORMATION ON THE HOLDING

1. Holding number

A number is assigned to each returning holding when it is selected for the first time. The holding retains this number permanently for the duration of its inclusion in the accountancy network. A number once assigned is never allotted to another holding.

However, where the holding undergoes a fundamental change, and in particular where this change is the result of a subdivision into two separate holdings or of a merger with another holding, it may be considered as a new holding. In this case a new number is to be assigned to it. A change in the type of farming practised on the holding does not call for a new number. Where confusion with any other returning holding might result from the holding keeping the number it has (e.g. when new regional subdivisions are created), the number should be changed. A table showing the equivalence of old and new numbers is then to be forwarded to the Commission.

The holding number comprises three groups of indications as follows:

Serial No 1 — Division: a code number is to be given, corresponding to the code set in Annex I to Commission Regulation (EEC) No 1859/82 ⁽¹⁾.

Serial No 2 — Subdivision: a code number is to be given.

The subdivisions chosen should be based on the common system of classification of the regions, referred to as the nomenclature of territorial statistical units (NUTS) established by the Statistical Office of the European Communities in cooperation with the national institutes for statistics.

In any case, the Member State concerned will transmit to the Commission a table indicating, for each subdivision code used, the corresponding NUTS regions, as well as the corresponding region for which specific values of standard gross margin are calculated.

Serial No 3 — Serial number of the holding.

2. Particulars concerning computer records

The data corresponding to the first five serial numbers constitute the label of a holding. They are repeated at the top of each record. The sixth datum of each holding gives the number of indivisible 10-data groups.

3. Organisational form of the holding

1. = Individual (family) farms: holdings where the economic result covers the compensation for the unpaid labour input and own capital of the holder/manager and his family.
2. = Partnerships: holdings where the economic result covers the compensation for the production factors brought into the holding by several partners, of which at least half participate in the work on the farm as unpaid labour.

⁽¹⁾ OJ L 205, 13.7.1982, p. 5.

3. = Other: holdings with no unpaid labour and other holdings not classified into categories 1 and 2.

4. National sampling and weighting factors

Serial No 20: national weight of the farm calculated by the Member State. Values must be expressed in hundredths.

Serial No 21:

Serial No 22:

5. Location of the holding

The number given is that of the most appropriate basic geographical unit (preferably the parish) in which the holding is located.

A map of these units with their numbers is to be sent to the Commission. Any significant changes to the boundaries of these geographical units should be brought to the attention of the Commission.

6. Category of holding

Serial No 32 — Organic farming: an indication is to be given whether the holding applies organic production methods, within the meaning of Regulation (EEC) No 2092/91 in particular Article 6 thereof. The following code numbers are to be used:

1. = the holding does not apply organic production methods;

2. = the holding applies only organic production methods;

3. = the holding is converting to organic production methods or applies both organic and other production methods.

Serial No 33: Holding type of farming code in accordance with Annex II to Commission Decision 85/377/EC ⁽¹⁾ at the time of selection for the accounting year in question.

Serial No 34: Holding type of farming code in accordance with Annex II to Decision 85/377/EC on the basis of the accountancy data for the year in question.

Serial No 35: Economic size class code of holding (in accordance with Annex III to Decision 85/377/EC) at the time of selection for accounting year in question.

Serial No 36: Economic size class code of holding in accordance with Annex III to Decision 85/377/EC on the basis of the accountancy data for the year in question.

7. Dates of closure of accounts and creation of the information medium

Serial No 37 — Date of closure of the accounting year: e.g. 30 June 2009 or 31 December 2009.

Serial No 38 — Date of creation of the information medium: e.g. 15 August 2010.

8. Less-favoured area

An indication is to be given of whether the majority of the utilised agricultural area of the holding is situated in an area covered by Articles 18 to 20 of Regulation (EC) No 1257/1999 ⁽²⁾. The following code numbers are to be used:

1. = the majority of the utilised agricultural area of the holding is not situated in a less-favoured area, within the meaning of Articles 18 to 20 of Regulation (EC) No 1257/1999;

⁽¹⁾ OJ L 220, 7.8.1985, p. 1.

⁽²⁾ OJ L 160, 26.6.1999, p. 80.

2. = the majority of the utilised agricultural area of the holding is situated in a less-favoured area, within the meaning of Articles 19 to 20 of Regulation (EC) No 1257/1999;
3. = the majority of the utilised agricultural area of the holding is situated in a mountainous area within the meaning of Article 18 of Regulation (EC) No 1257/1999;
4. = the areas are so small and numerous in these Member States that the information is not significant.

9. Other particulars concerning the holding

Serial No 40 — Irrigated UAA

Utilised agricultural area other than under glass, actually irrigated during the year with fixed or movable equipment, whatever the process used (sprinklers, flooding).

Serial No 41 — Altitude

The altitude should be indicated by the corresponding code number:

1. = the major part of the holding is located at < 300 m;
2. = the major part of the holding is located at 300 to 600 m;
3. = the major part of the holding is located at > 600 m;
4. = data not available.

Serial No 42 — Grazing on mountain or other pasture not included in the UAA: Number (whole) of livestock unit (LSU) grazing days by farm animals on land not included in the UAA.

The LSU grazing day is a unit equivalent to one day's grazing by one dairy cow, or one bovine animal or one horse more than two years old. The grazing days for cattle and horses less than two years old, goats and sheep are converted into grazing days per LSU by applying the coefficients 0,5, 0,2 and 0,15 respectively.

Serial No 43 — Total area under shelter: expressed in ares on which, in principle, crops of type 5 may be grown: i.e. crops 138, 141 and 156 and also crops 143, 285 and 157 of type 5.

'Under shelter' means greenhouses, permanent frames and accessible tunnels but does not include not accessible plastic tunnels, cloches or any other portable frame (see the definition for crops 138, 141 and 156 in Table K).

'Total' area means the total land surface area 'under shelter', whatever its use (hence including paths). For 'multi-storey' greenhouses the surface area is counted only once.

Serial No 44 — Structural Funds Area: an indication is to be given of whether the majority of the utilised agricultural area of the holding is situated in an area covered by Articles 5, 6, or 8 of Regulation (EC) No 1083/2006. The following code numbers are to be used:

6. = the majority of the utilised agricultural area of the holding is situated in a Convergence objective area, within the meaning of Regulation (EC) No 1083/2006, in particular Article 5 thereof;
7. = the majority of the utilised agricultural area of the holding is situated in a Regional competitiveness and employment objective area, within the meaning of Regulation (EC) No 1083/2006, in particular Article 6 thereof;
8. = the majority of the utilised agricultural area of the holding is situated in an area eligible for transitional support, within the meaning of Article 8 of Regulation (EC) No 1083/2006.

Serial No 45 — Areas with environmental restrictions: an indication is to be given of whether the majority of the utilised agricultural area of the holding is situated in an area covered by Article 38 of Regulation (EC) No 1698/2005. The following code numbers are to be used:

1. = the majority of the utilised agricultural area of the holding is not situated in an area eligible for Natura 2000 payments or payments linked to Directive 2000/60/EC of the European Parliament and of the Council ⁽¹⁾, within the meaning of Article 38 of Regulation (EC) No 1698/2005;
2. = the majority of the utilised agricultural area of the holding is situated in an area eligible for Natura 2000 payments or payments linked to Directive 2000/60/EC, within the meaning of Article 38 of Regulation (EC) No 1698/2005.

B. TYPE OF OCCUPANCY OF UAA

Land of holdings held in common by two or more partners should be recorded as owner-occupied, rented or sharecropped according to the arrangement in force between the partners.

10. UAA in owner occupation

Utilised agricultural area (arable land, grassland and permanent pasture, permanent crops) of which the farmer is the owner, tenant for life or leaseholder and/or UAA held on similar terms. Includes land leased to others ready for sowing (heading 149).

11. Rented UAA

Utilised agricultural area (arable land, grassland and permanent pasture, permanent crops) worked by a person other than the owner, tenant for life or leaseholder, holding a tenancy on the said area (the rent is payable in cash and/or in kind; being generally fixed in advance, it does not normally vary with the farming results) and/or utilised agricultural area held on similar terms of tenure.

Rented area does not include land the harvest of which is bought as a standing crop. The sums paid for the purchase of standing crops should be given in Table F under headings 65 to 67 (purchased feedingstuffs) in the case of grassland or fodder crops and under heading 76 (other specific crop costs) in the case of marketable crops (products which are usually marketed). Marketable crops bought standing should be given without specifying the area in question (see instructions concerning area, column 4, Table K).

Land rented for less than one year on an occasional basis and the production thereof is treated in a similar way as land the harvest of which is bought as a standing crop.

12. UAA in sharecropping

Utilised agricultural area (arable land, grassland and permanent pasture, permanent crops) farmed jointly by the grantor and the sharecropper on the basis of a sharecropping agreement and/or utilised agricultural area farmed on similar terms.

C. LABOUR

By labour is meant all persons who have been engaged on work on the farm during the accounting year (see hereafter). However, this does not include persons who have done this work on behalf of another person or undertaking (agricultural contract work, of which the costs appear in Table F under heading 60).

In the case of mutual assistance between holdings, where this assistance consists of an exchange of work, the assistance received being equivalent in principle to the assistance given, the time worked by the farm labour and any related wages are specified in the farm return.

⁽¹⁾ OJ L 327, 22.12.2000, p. 1.

Sometimes assistance received is offset by assistance of another kind (e.g. aid received in the form of work is offset by the supply of machinery). When the exchange of services is on a limited scale, nothing is indicated in the farm return (in the above example, the aid received is not shown under labour; machinery costs, however, include the costs of making the equipment available). In exceptional cases, when the exchange of services is on a large scale, the procedure is one of the following:

- (a) assistance received in the form of work is offset by a service of another kind (e.g. the supply of machinery): working time received is recorded as paid farm work (headings 20 or 21, depending on whether the labour is employed on the farm on a regular basis or otherwise); the value of the assistance given is recorded both as production under the corresponding heading (in this example, heading 177 'Contract work for others, including hiring out of equipment') and as a cost (under heading 59 'Wages and social security');
- (b) assistance given in the form of work is offset by services of a different kind (e.g. the supply of machinery): in this situation the working time provided and any related wages are left out of consideration; the value of the service received is recorded as an input under the corresponding heading (in this example, heading 60 'Contract work and machinery hire').

The following categories of labour are to be distinguished:

A. Regular unpaid labour

Unpaid labour or labour which receives less remuneration (in cash or in kind) than the amount normally paid for the services rendered (such payment should not appear in farm costs) and which during the accounting year participated (outside normal holidays) for at least a whole day of each week.

A person employed regularly but who, for special reasons, has been engaged on the farm only for a limited period in the accounting year is nevertheless entered (for the number of hours actually worked) as regular labour.

The following cases or similar ones may arise:

- (a) special production conditions on the farm for which labour is not required throughout the year: e.g. olive or vine holdings, and farms specialising in the seasonal fattening of animals or in the production of fruit and vegetables in the open;
- (b) absence from work other than for normal holidays, e.g. military service, illness, accident, maternity, extended leave, etc.;
- (c) joining or leaving the holding;
- (d) total cessation of work on the holding due to accidental causes (flood, fire, etc.).

The following are subcategories:

13. Holder/manager

Person who assumes economic and legal responsibility for the holding and undertakes its day-to-day management. In the case of sharecropping, the sharecropper is indicated as holder/manager.

14. Holder/not manager

Person who assumes economic and legal responsibility for the holding without undertaking its day-to-day management.

15. Manager/not holder

Person who undertakes day-to-day management of the holding without assumption of economic and legal responsibility for it.

16. Spouse(s) of holder(s)**17. Other regular unpaid labour**

Regular unpaid labour not included in the preceding headings. Includes also foreman and submanagers not responsible for management of the whole farm.

B.18. Casual and seasonal unpaid labour

Unpaid labour which has not worked regularly on the holding during the accounting year is aggregated under this heading.

C. Regular paid labour

Labour paid (in cash and/or in kind) on the normal scale for services rendered and which during the accounting year (excluding normal holidays) worked for at least one whole day per week for the holding.

The following subcategories are to be shown:

19. Farm manager

Salaried person responsible for the day-to-day management of the holding.

20. Others

All regular paid labour (excepting the holding's salaried manager) is aggregated under this heading. Includes also foreman and submanagers not responsible for management of the whole farm.

D.21. Casual and seasonal paid labour

Paid labour which did not regularly work on the holding during the accounting year (including piece workers) is aggregated under this heading.

COLUMNS IN TABLE C**Functions performed (code)** (column 1, positions 51, 55, 59, 63 and 67)

The function performed is indicated by a code number, i.e.:

1. = holder/manager;

2. = holder/not manager;

3. = manager/not holder.

When the function is performed by several persons (e.g. two brothers, father and son, etc.) each one is recorded in decreasing order of responsibility; in the event of equal responsibility, decreasing order of age is used. Thus the data concerning the person assuming the greatest responsibility are recorded in positions 51 to 54; those concerning the person next in responsibility in positions 55 to 58, etc.

Number of persons (column 1, positions 71 and 74)

The number of spouses and the number of persons in the category 'Other regular unpaid labour' should be indicated. Where there are several holders, there may be more than one spouse.

Year of birth (column 2)

The year of birth should be given only for the holder(s) and/or manager(s) (categories 13 to 15 and 19) using the last two figures of the year.

Total work force: number of annual units (column 3)

Regularly employed work force is converted into annual work units. One annual work unit is equivalent to one person working full-time on the holding. One person cannot exceed one work unit equivalent, even if his actual working time exceeds the norm for the region and type of holding. A person who does not work the whole year on the holding represents a fraction of an 'annual unit'. The 'annual work unit' of each such person is obtained by dividing his actual annual working time by the normal annual working time of a full-time worker in the region under consideration and on the same type of holding.

In the case of less able workers the annual work unit equivalent should be reduced in proportion to their capacities.

Time worked (column 4)

Time worked should be indicated in hours. It should refer to the time actually devoted to the work of the holding. In the case of less able workers the time worked should be reduced in proportion to their capacities.

The time worked by piecework labour is estimated by dividing the total amount paid for the work by the hourly wage of a worker employed on a time basis.

Work on an agricultural holding

Work on the holding includes all the work of organisation, supervision and execution, both manual and administrative, done in connection with the normal running of the holding, e.g.:

- financial organisation and management (farm sales and purchases, bookkeeping, etc.),
- work in the field (ploughing, sowing, harvesting, orchard maintenance, etc.),
- livestock husbandry (feed preparation, feeding of animals, milking, care of livestock, etc.),
- preparation of products for market, storage and processing on the farm,
- maintenance of buildings, machinery, equipment, hedges, ditches, etc.,
- transport for the holding and carried out by the labour force of the holding,
- other work directly connected with farm work:
 - forestry work on woodland included in the agricultural holding,
 - work concerning tourism (maintenance of camping, sport or recreation grounds, riding facilities, letting of cottages, etc.) where these are ancillary to and overlap with the work of the holding to such an extent that it is in practice impossible to dissociate the tourism activities from the normal agricultural work of the holding (in this case the earnings and inputs relating to tourism are included under products (see heading 179) and farm inputs respectively),
 - contract work for others where this is occasional and done with farm equipment (payment for this is included in the production of the holding).

The following are not included in the work of the holding:

- work in production of fixed assets (construction or major repairs of buildings or machinery, planting of orchards, demolition of buildings, grubbing up of orchards, etc.),
- work performed for the household of the holder or manager.

D. NUMBER AND VALUE OF ANIMALS

The following categories of stock should be distinguished:

22. EQUINES (all ages)

Includes also race- and riding horses, donkeys, mules, hinnies etc.

23. CALVES FOR FATTENING

Calves for fattening usually slaughtered at the age of about six months.

24. OTHER CATTLE LESS THAN ONE YEAR OLD

25. MALE CATTLE FROM ONE TO LESS THAN TWO YEARS OLD

26. FEMALE CATTLE FROM ONE TO LESS THAN TWO YEARS OLD

Excluding female bovine animals which have calved.

27. MALE CATTLE TWO YEARS OLD OR MORE

28. BREEDING HEIFERS

Female bovine animals two years old or more which have not yet calved and which are intended for breeding.

29. HEIFERS FOR FATTENING

Female bovine animals two years old or more which have not yet calved and which are not intended for breeding.

30. DAIRY COWS

Female bovine animals which have calved (including those less than two years old) which are kept exclusively or principally for milk production for human consumption or processing as dairy products.

31. CULL DAIRY COWS

Dairy cows after their final lactation. If data available in the holding's accounts.

32. OTHER COWS

1. Female bovine animals which have calved (including those less than two years old) which are kept exclusively or principally for production of calves and whose milk is not used for human consumption or processing as dairy products.

2. Cows for work.

3. Non-dairy cull cows (whether or not fattened before slaughter).

Headings 23 to 32 also include the corresponding categories of buffaloes and female buffaloes.

33. BEEHIVES, to be indicated in number of occupied hives

34. RABBITS, BREEDING FEMALES

35. to 37. (Unused)

38. GOATS, BREEDING FEMALES

39. OTHER GOATS

Goats other than breeding females.

40. EWES

Ewes one year old or more intended for breeding.

41. OTHER SHEEP

Sheep of all ages excluding ewes.

42. Unused

43. PIGLETS

Piglets of less than 20 kg live weight.

44. BREEDING SOWS

Breeding sows of 50 kg or more excluding cull sows (see heading 46 'Other pigs').

45. PIGS FOR FATTENING

Pigs for fattening of 20 kg live weight or more, excluding cull sows and boars (see heading 46 'Other pigs').

46. OTHER PIGS

Pigs of 20 kg live weight or more excluding breeding sows (see heading 44) and pigs for fattening (see heading 45).

47. TABLE CHICKENS

Excluding laying hens and cull hens. Not including chicks.

48. LAYING HENS

Including pullets, laying hens and cull hens. Pullets are young hens which have not yet begun to lay. Not including chicks.

49. OTHER POULTRY

Includes ducks, turkeys, geese, guinea fowl and ostriches. Includes breeding females. Not including chicks.

50. OTHER ANIMALS

Valuations only. Includes chicks, rabbits other than breeding females, deer, bison and fish. Includes also ponies and other animals used for farm tourism. Excludes products of other animals (see Table K, heading 170).

COLUMNS IN TABLE D

Opening valuation (columns 1 and 2)

Number (column 1)

Number of livestock belonging to the holding at the beginning of the accounting year, whether or not they are on the holding at that time.

Value (column 2)

Value of livestock belonging to the holding at the beginning of the accounting year, determined at current prices.

Closing valuation (columns 3 and 4)*Number* (column 3)

Number of livestock belonging to the holding at the end of the accounting year, whether or not they are on the holding at that time.

Value (column 4)

Value of livestock belonging to the holding at the end of the accounting year, determined at current prices.

Average number (column 5)

The average number is expressed to one decimal place, except for poultry and rabbits where whole numbers should be given. Each unit refers to the presence of one animal on the holding for one year. Animals are counted in proportion to the length of time they have been on the holding during the year.

The average number is determined either by means of periodical inventories or by the recording of arrivals and departures. It includes all animals present on the holding, also animals raised or fattened under contract (animals not belonging to the holding, which are raised or fattened there in such a manner that the activity merely constitutes a service rendered by the holder, who does not assume the financial risk normally associated with the rearing or fattening of such animals) and animals taken or given into agistment for the period of the year during which they are present on the holding.

E. LIVESTOCK PURCHASES AND SALES

The following categories of animals are specified:

51. Equines

52. Cattle

Heading 52 also includes sales and purchases of buffaloes.

53. Unused

54. Sheep

55. Goats

56. Pigs

57. Poultry

Includes also the amount paid for eggs for hatching and purchases and sales of chicks.

58. Other animals

Includes rabbits and occupied beehives.

COLUMNS IN TABLE E**Livestock purchases** (column 1)

Total livestock purchases during the accounting year (including purchasing costs). The related grants and subsidies are not deducted from the total of these purchases, but are specified under heading 116 (see instructions regarding this heading).

Livestock sales (column 2)

Total livestock sales during the accounting year. The related grants and subsidies are not included in the sales total, but are specified under heading 112 (see instructions regarding this heading).

When the marketing costs, if any, are known they are not deducted from the sales total, but are given under heading 71 (Other specific livestock costs).

Farmhouse consumption and benefits in kind (column 3)

Value of the livestock consumed by the farm household or used for benefits in kind during the accounting year, assessed at the farm gate price.

F. COSTS

Farm costs (in cash and in kind) relate to the 'consumption' of productive resources (including farm use) corresponding to the output of the farm during the accounting year or to the 'consumption' of those resources during the accounting year. When certain expenditure relates partly to private use and partly to farm costs (e.g. electricity, water, heating fuels and engine fuels, etc.) only the latter part should be included in the farm return. The proportion of the expenditure on private cars corresponding to their use for farm purposes should also be included.

In calculating costs relating to the output of the accounting year the purchases and farm use during the year should be adjusted for valuation changes (including changes in cultivations). For each item the total of costs paid for and the value of the farm use should be shown separately.

Where the costs indicated are for the total 'consumption' of inputs during the accounting year but do not correspond to production during that year, changes in stocks of inputs (including costs accruing to growing crops) should be indicated under heading 102 'circulating capital'.

The costs relating to 'consumption' of capital assets are represented by depreciation, hence expenditure on acquisition of capital assets should not be treated as a farm cost. For instructions on depreciation see headings 94 to 103.

Expenditure on cost items compensated during the accounting year or later (e.g. repairs to a tractor as a result of an accident covered by an insurance policy or by a third party liability) should not be entered as farm costs, and the corresponding receipts should not be included in the farm's accounts.

Receipts from resale of purchased supplies are to be deducted from corresponding inputs.

Grants and subsidies related to costs are not deducted from the corresponding cost items but are entered under heading 114 (see instructions regarding that heading). Investment grants and subsidies are shown under headings 94 to 103.

Costs also include any expenditure on purchases relating to each cost item.

Costs are classified as follows:

59. Wages and social security costs for paid labour

This item includes the following:

- salaries and wages actually paid in cash to wage earners irrespective of the basis of remuneration (piecework or by the hour), with deduction of any social allowances paid to the holder as employer to offset the payment of a salary which does not correspond to actual work done (e.g. absence from work due to an accident, vocational training, etc.),
- salaries and wages in kind (e.g. lodging, board, housing, farm produce, etc.),
- bonuses for productivity or qualifications, gifts, gratuities, share of profits,

- other expenditure associated with labour (recruitment expenses),
- social security payments incumbent upon the employer and those paid by him on behalf of and instead of the employee,
- occupational accident insurance.

The holder's personal social security charges and insurance and those of unpaid labour should not be regarded as farm costs.

The amounts received by unpaid workers (which by definition are lower than a normal wage — see definition of unpaid labour) should not appear in the farm return.

Allowances (in cash or in kind) paid to retired paid workers no longer employed on the holding should not be entered under this item but under the heading 'Other farming overheads'.

60. Contract work and machinery hire

This item includes the following:

- total expenditure in respect of work on the farm carried out by agricultural contractors. This generally includes the cost of the use of equipment (including fuel) and the work. In case the cost of the materials employed other than fuel (i.e. crop protection products, fertilisers and seeds) is also included in the contract, the cost of these materials should be excluded. This amount (if necessary by estimation) should be entered under the corresponding cost item (e.g. pesticides to be recorded under heading 75 'Crop protection products'),
- cost of hiring machines operated by the farm's labour. The fuel costs related to the use of the rented machinery, should be recorded under heading 62 'Motor fuels and lubricants',
- cost of leasing machines operated by the farm's labour. The fuel and maintenance costs of leased machines should be recorded under the relevant headings (headings 61 'Current upkeep of machinery and equipment' and 62 'Motor fuels and lubricants').

61. Current upkeep of machinery and equipment

Cost of upkeep of machinery and equipment and of minor repairs not affecting the market value of the appliances (payment of mechanic, cost of replacement parts, etc.).

This code number includes purchases of minor equipment, the cost of saddlery and horse shoeing, the purchase of tyres, forcing frames, protective clothing for unsanitary work, detergents for the cleaning of equipment in general, and the proportion of the cost of private cars corresponding to their use for farm purposes (see also heading 63). Detergents used for cleaning livestock equipment (e.g. milking machines) are entered under heading 71 'Other specific livestock costs'.

Major repairs which increase the value of equipment, compared with its value before repairs, are not included under this heading (see also instructions on depreciation in Table G).

62. Motor fuels and lubricants

This heading also includes the proportion of fuel and lubricant costs for private cars corresponding to their use for farm purposes (see also heading 63 below).

Where petroleum products are employed both as motor fuels and as heating fuels, the total sum is divided into two headings:

62. 'Motor fuels and lubricants'.

80. 'Heating fuels'.

63. Car expenses

Where the farm proportion of expenditure on private cars is calculated arbitrarily (e.g. a fixed amount per km), these costs are indicated under this heading.

Feedingstuffs

Feedingstuffs are divided into those purchased and those produced and used on the farm.

The purchased feedingstuffs include mineral licks, milk products (bought or returned to the farm) and products for the preservation and storage of feedingstuffs, as well as the expenditure on agistment, on the use of common pasture and grazing land not included in the UAA and on renting forage land not included in the UAA. Purchased litter and straw are also included with purchased feedingstuffs.

Feedingstuffs purchased for grazing stock are subdivided into concentrated feedingstuffs and coarse fodder (including agistments and expenditure on the use of common pastures, grazing land and forage land not included in the UAA, and purchased litter and straw).

The heading 'Concentrated feedingstuffs' includes in particular oilcakes, compound feeds, cereals, dried grass, dried sugar beet pulp, fish meal, milk and dairy products, minerals and products for the preservation and storage of such feedingstuffs.

Expenditure on work carried out by agricultural contractors for the production of coarse fodder, e.g. silage, is entered under heading 60 'Contract work'.

Feedingstuffs produced and used on the farm include saleable farm products used as feedingstuffs (including milk and milk products but excluding milk suckled by calves, which is not taken into account). Litter and straw produced on the holding are only included if they are a saleable product in the region and year in question.

The following breakdown is to be given:

Purchased feedingstuffs:

64. Concentrated feedingstuffs for grazing stock (equines, cattle, sheep, goats)

65. Coarse fodder for grazing stock (equines, cattle, sheep, goats)

66. Purchased feedingstuffs for pigs

67. Purchased feedingstuffs for poultry and other small animals

Farm-produced feedingstuffs used on farms for:

68. Grazing stock (equines, cattle, sheep, goats)

69. Pigs

70. Poultry and other small animals

71. Other specific livestock costs

All expenditure relating directly to livestock production for which there is no separate provision in the other cost headings: veterinary fees, medicines, stud fees, artificial insemination, castration, milk tests, subscription and registration in herdbooks, detergents for cleaning livestock equipment (e.g. milking machines), packing materials for livestock products and supplies for processing of livestock products, costs of storage and market preparation of livestock products of the farm done outside the farm, cost of marketing the livestock products of the farm, occasional purchases, complementary to the production of the holding, of animal products (e.g. milk) processed on the holding, etc. It includes also short-term rent of buildings used to house animals or store products in connection therewith.

72. Seeds and seedlings purchased

All purchased seeds and seedlings, including bulbs, corms and tubers. The costs of young trees and bushes for a new plantation represent an investment and should appear either under heading 96 'Permanent crops' or under heading 100 'Forest land'. However the costs of young trees and bushes for a minor replanting operation are to be considered costs for the accounting year and are to be indicated under the present heading except for those relating to forests linked to the agricultural holding which are to be entered under heading 77 'Specific forestry costs'.

The costs of processing the seeds (sorting, disinfection) are also included under this heading.

73. Seeds and seedlings produced and used on the farm

All seeds and seedlings (including bulbs, corms and tubers) produced and used on the farm.

74. Fertilisers and soil improvers

All purchased fertilisers and soil improvers (e.g. lime) including compost, peat and manure (excluding manure produced on the holding).

Fertilisers and soil improvers used for forests forming part of the agricultural holding are to be entered under heading 77 'Specific forestry costs'.

75. Crop protection products

All material for the protection of crops and plants against pests and diseases, predators, bad weather, etc. (insecticides, fungicides, herbicides, poisoned baits, bird scarers, anti-hail shells, frost protection, etc.). If the crop protection operations are carried out by a contractor and if the cost of the protection materials used is not separately known, the total should be entered under heading 60 'Contract work'.

Protective materials used for forests forming part of the agricultural holding are to be entered under heading 77 'Specific forestry costs'.

76. Other specific crop costs (including permanent meadows and grassland)

All costs having a direct connection with crop production for which there is no separate provision in the other cost headings: packing and binding materials, string and rope, cost of soil analysis, crop competition costs, plastic coverings (e.g. for strawberry growing), supplies for the preservation and processing of crops, storage and market preparation of crops done outside the farm, cost of marketing the crop products of the farm, sums paid for the purchase of marketable standing crops or to rent land for a period of less than one year to grow marketable crops, occasional purchases, complementary to the production of the holding, of crop products (e.g. grapes), processed on the holding, etc. It includes also short-term rent of buildings used for marketable crops.

77. Specific forestry costs

Fertilisers, protective materials, miscellaneous specific costs. Labour costs, contract work and mechanisation are not included; these are shown under the appropriate cost headings.

78. Current upkeep of land improvements and buildings

Maintenance (tenant-type) of buildings and land improvements including greenhouses, frames and supports. The purchase of building materials for the current upkeep of buildings should be entered under this heading.

The purchase of building materials for new investments should be entered in the 'investments' column of headings 94 'Agricultural land and farm buildings', 97 'Land improvements' and/or 98 'Farm buildings'.

The cost of major repairs to buildings which increases their value (major maintenance) is not included under this heading, even if the cost of such work is borne by the tenant (see instructions concerning rent paid, heading 85). These costs are shown in heading 98 'Farm buildings'.

79. Electricity

Total consumption of electricity for farm business use.

80. Heating fuels

Total consumption of heating fuels for farm business use including the heating of glasshouses.

81. Water

Cost of connection to the mains and consumption of water for all farm purposes including irrigation. The costs of using farm-owned water equipment are to be entered in the appropriate headings: depreciation of machinery and equipment, current upkeep of machinery and equipment, motor fuels, electricity.

82. Insurance

All insurance premiums covering farm risks, such as the holder's third-party liability, fire, flood, insurance against death of livestock and damage to crops, etc., except insurance premiums covering accidents at work shown under heading 59. It includes insurance premiums for the buildings only if they are not already entered under heading 87.

83. Farm taxes and other dues

All taxes and other dues relating to the farm business, including those levied in connection with environmental protection measures, but excluding VAT and taxes levied on land, buildings or labour. Direct income taxes of the holder are not to be counted as farm costs.

84. Other farming overheads

All other farming costs not mentioned under the preceding headings (accountants' fees, secretarial services and office expenses, telephone charges, miscellaneous contributions and subscriptions, etc.). It includes also short-term rent of buildings used both for livestock farming and marketable crops and/or for general purposes.

85. Rent paid

Rent paid (in cash or in kind) for rented land, buildings, quotas and other rights for the farm business. This heading covers costs which are paid by the tenant on behalf of and in lieu of the owner (e.g. land tax and depreciation in respect of major repairs whose cost is borne by the tenant) and which cannot be recovered by the tenant. Only the farm business part of farmhouses and other rented buildings should be entered. Leasing or renting costs of quotas not attached to land should also be entered in Table L.

86. Of which: rent paid for land**87. Insurance for farm buildings**

This information is optional.

Insurance premiums (fire, flood, etc.) for the buildings in owner-occupation, which in the case of tenant farming are normally paid by the landlord. If all insurances are covered by a single policy, the part of the premiums relating to the holding's buildings is to be estimated.

88. Taxes and other charges on land and buildings

Taxes, rates and other charges payable in respect of the ownership of farmland and buildings in owner-occupation and sharecropping.

89. Interest and financial charges paid, total

Interest and financial charges on borrowed capital (loans) obtained for farm purposes. This information is compulsory.

Subsidies on interest are not deducted but are entered in Table J under heading 114.

90. Interest and financial charges paid on loans obtained for the purchase of land and buildings

This information is optional.

91. Of which: interest and financial charges paid on loans obtained for the purchase of land

This information is optional.

92. Interest and financial charges paid on loans obtained to finance working capital (livestock, deadstock and circulating capital) and to creditors

This information is optional.

93. Total costs

Total of headings 59 to 89.

G. LAND AND BUILDINGS, DEADSTOCK AND CIRCULATING CAPITAL

The following breakdown is required:

94. Agricultural land, farm buildings and rights

Total of headings 95 to 99 below. Headings 95, 97 and 99 are to be completed where the relevant data are available in the accounts.

95. Agricultural land

Agricultural land in owner-occupation.

96. Permanent crops

All plantations (excluding woods and forests and excluding value of land) belonging to the holder irrespective of type of occupancy of the land. The heading must be completed and the amounts included therein are subject to depreciation at column 7, position 316.

Growth of young plantations (permanent crops not yet in full production) should be included in 'Investments' (column 4). It should be also entered in Table K, heading 159, 'Closing valuation' (column 9).

97. Land improvements

Land improvements (e.g. fencing, drainage, fixed irrigation equipment) belonging to the holder irrespective of the type of occupancy of the land. The amounts entered are subject to depreciation at column 7, position 324.

98. Farm buildings

Buildings belonging to the holder whatever the type of occupancy of the land. The heading must be completed and the amounts entered are subject to depreciation at column 7, position 332.

99. Acquisition costs, quotas and other rights

Solicitor's fees, registration fees, etc. relating to the acquisition of agricultural land or farm buildings. Transactions relating to the sale and/or purchase of reference quantities of milk and sugar beet and to transfers of prescribed rights and obligations, such as the transfer of reference livestock. Quotas/rights are also returned in Table L. Acquisition costs of forest land are excluded.

Depreciation should not be applied to quotas in Table G but may be entered in Table L, column 7.

100. Forest land including standing timber

Forest land in owner occupation included in the agricultural holding, including the corresponding acquisition costs.

101. Machinery and equipment

Tractors, motor cultivators, lorries, vans, cars, major and minor farming equipment, including tools exceeding EUR 300 when new.

102. Circulating capital

Circulating capital consists of the following:

- (a) stocks: products of the holding and supplies in store;
- (b) other circulating capital:
 - value of cultivations not yet harvested (limited to the value of fertilisers, soil improvers, seeds and seedlings used for the growing crop, excluding seedlings for permanent crops),
 - shares of agricultural holdings (shares in cooperative or other organisations whose services are used by the holding),
 - receivables:
 - amounts receivable in the short term in respect of sales of produce or fixed assets or the provision of services,
 - sums paid in advance for goods and services,
 - cash balances (in hand, at the bank, in postal giro account) necessary for running the holding.

Interest received on bank accounts should be entered under heading 178.

Where it is not possible to determine the exact amount of circulating capital, a global assessment can be made. This may consist of an estimate of the average capital invested in the production process, allowance being made for the duration of the investment. In this case the totals of circulating capital at the opening valuation and at closing valuation are the same.

103. Total

Total of headings 94, 100, 101 and 102.

COLUMNS IN TABLE G**Opening valuation** (column 3)

Opening valuation is the value of goods at the beginning of the accounting year. For the farms present in the sample also in the previous year, the opening valuation should be equal to the closing valuation of the previous year. For new farms in the sample, the opening valuation is calculated as follows:

- for assets which are not subject to depreciation, it is equal to the replacement value,
- for assets subject to depreciation it is determined according to the period of depreciation still to run and on the basis of the replacement value (including any major repairs already done).

The **replacement value** is equal to the purchase price of a similar new asset at current prices. It can be also estimated on the basis of the prices index (general or specific) for the assets in question (machinery, buildings, etc.).

Land is valued on the basis of prices (net of acquisition costs) applying in the region for non-rented land of similar situation and quality sold for agricultural purposes (valuations made on the transfer of property between relatives are not taken into account in determining the value). Where the costs of private cars used for farming purposes are divided between headings 61 'current upkeep of equipment' and 62 'fuels and lubricants', the farm business share of the value of the cars is included under deadstock. However, if the cost of use of private cars for farming purposes is calculated arbitrarily (see heading 63) private cars are not to be included under deadstock.

Investments (column 4)

Total expenditure on purchases, major repairs and the production of fixed assets during the accounting year. Where grants and subsidies have been received in respect of these investments, the amount expended before deducting the said grants and subsidies is entered in column 4.

Purchases of minor items of machinery and equipment as well as of young trees and bushes for a minor replanting operation do not appear in these columns but are included in the costs for the accounting year (see heading 61 'Current upkeep of machinery and equipment', heading 72 'Seeds and seedlings purchased', heading 77 'Specific forestry costs').

When payment is made on fixed interest debenture bonds, these are assessed on the basis of their cash value.

Investment subsidies (column 5)

Subsidies received during the accounting year. May include those paid on investments made in previous accounting years.

Sales (column 6)

Total sales of assets during the accounting year.

Depreciation (column 7)

The depreciation to register is the actual amount of depreciation over the accounting year. It is determined on the basis of the replacement value (i.e. replacement value at the end of the accounting year, multiplied by the depreciation rate).

A table with the annual rates of depreciation applied by each Member State should be communicated to the Commission in the same time of the achievement of the introduction of the Farm Returns data.

Depreciation of plantations

The cost of young trees and bushes for a new plantation represents a capital asset subject to depreciation.

Only plantations which are the property of the holder (irrespective of the type of occupancy of the land) are subject to depreciation.

Depreciation of farm buildings, fixed equipment and land improvements

Depreciation of buildings, fixed equipment (including glasshouses and frames) and land improvements belonging to the holder, irrespective of the type of occupancy of the land.

Depreciation of machinery and equipment

Machinery and equipment subject to depreciation are defined as that having a value exceeding EUR 300 when new. The depreciation of minor equipment of lower value should not be calculated; purchases of such equipment are to be treated directly as costs for the accounting year (heading 61 'Current upkeep of machinery and equipment').

Major repairs which effectively increase the value of the machinery and equipment compared to their value before repair, are also included under this heading, either as an integral part of the machinery or equipment depreciation, which, as appropriate, will be adjusted to take account of the extended life (due to the repairs) of the item in question or by spreading the cost of the major repairs over several successive years.

The amount of annual depreciation should be calculated according to the linear or diminishing balance method.

The rate of depreciation is determined by various factors, which depend for the most part on the particular conditions of the region and of the production in question (amount of use in each year) but also on technical progress.

In view of the resulting differences in depreciation from one region to another, and even from one holding to another, accountancy offices may choose rates for each item of machinery or equipment appropriate to the region or holding, the aim being to keep as closely as possible to the actual depreciation in value of the machinery.

Closing valuation (column 8)

Closing valuation is the value of assets at the end of the accounting year. It is calculated on the basis of the replacement value at that time and the period of depreciation still to run.

H. DEBTS

The amounts indicated should relate only to amounts still outstanding i.e. loans contracted minus the repayments already made. Loans in the form of fixed interest debenture bonds are valued at their cash value. Information must be supplied at least for positions 374, 378, 382, 386, 390 and 394.

Loans are indicated according to duration, i.e.:

104. Long- and medium-term loans

Loans in respect of the holding for a duration of one year and over.

105. Short-term loans and creditors

Loans in respect of the holding for less than one year, debts and outstanding payments.

106. Total

Total of headings 104 and 105.

If data are available in the farm accounts, the loans should be subdivided according to the purpose of the loan, i.e.:

— loans for land and buildings (columns 2 and 6),

— of which: loans for the purchase of land (columns 3 and 7), loans for other assets (columns 4 and 8).

The sum of these items makes up the amounts shown in column 1 (total opening valuation) (= columns 2 + 4) and column 5 (total closing valuation) (= columns 6 + 8).

I. VALUE ADDED TAX (VAT)

Data in monetary terms in the farm return are expressed according to the Member State concerned:

— either exclusive of VAT; this method should be applied for all holdings subject to the normal VAT system,

— or inclusive of VAT. The Member States in which this method is used should provide annually, with the computer media containing the year's accounting data, a list of VAT rates applied during the year for each item of the farm return.

In the case of holdings subject to the normal VAT system nothing should be entered under headings 108 to 111. The same applies if purchases and sales in the farm return are entered with VAT included.

The following details on VAT should be provided:

107. VAT system

The VAT system (serial number 400) to which the holding is subject should be shown for each holding by the code number in the following list:

	Serial number 400 Code
BELGIUM	
Régime normal obligatoire	1
Régime normal sur option	2
Régime agricole	3
BULGARIA	
Exempt	1
Registered	2
CZECH REPUBLIC	
Registered	1
DENMARK	
Moms (= normal)	1
GERMANY	
Pauschalierender Betrieb	1
Optierender Betrieb	2
Getränke erzeugender Betrieb	3
Betrieb mit Kleinumsatz	4
ESTONIA	
Normal	1
Special	2
IRELAND	
Agricultural	1
Registered (= normal)	2
GREECE	
Normal system	1
Agricultural system	2
SPAIN	
Normal system	1
Simplified system	2
Agricultural system	3
FRANCE	
TVA sur option avec autorisation pour animaux vivants	2
Remboursement forfaitaire	3

	Serial number 400 Code
ITALY	
Regime esonerato	1
Regime speciale agricolo	2
Regime normale	3
CYPRUS	
Normal	1
Agricultural	2
VAT not applicable	3
LATVIA	
Normal	1
Agricultural	2
LITHUANIA	
Normal	1
Special	2
LUXEMBOURG	
Régime normal obligatoire	1
Régime normal sur option	2
Régime forfaitaire de l'agriculture	3
HUNGARY	
Normal	1
Agricultural	2
MALTA	
Normal	1
NETHERLANDS	
Algemene regeling verplicht	1
Algemene regeling op aanvraag	2
Landbouwregeling	3
AUSTRIA	
Pauschalierender Betrieb	1
Optierender Betrieb	2
POLAND	
Normal	1
Agricultural	2

	Serial number 400 Code
PORTUGAL	
Agricultural system	1
Normal system	2
ROMANIA	
Normal	1
Special	2
Small holdings	3
SLOVENIA	
Normal	1
Agricultural	2
SLOVAKIA	
Registered	1
Exempt	2
FINLAND	
Normal system	1
SWEDEN	
Normal system	1
UNITED KINGDOM	
Exempt	1
Registered	2

Subdivision of the VAT system (Spain, France, Italy, Hungary and Poland only)

	Serial number 401
SPAIN	Enter VAT system code (those used for serial number 400) for the minority system where two systems are in force on the holding
FRANCE	
Sans TVA obligatoire sur activités connexes	0
Avec TVA obligatoire sur activités connexes	1
ITALY	
VAT system for farm tourism (agriturismo) as secondary activity	
Regime speciale agriturismo	1
Regime normale agriturismo	2

	Serial number 401
HUNGARY	Enter VAT system code (those used for serial number 400) for the minority system where two systems are in force on the holding
POLAND	Enter VAT system code (those used for serial number 400) for the minority system where two systems are in force on the holding

Headings 108 to 111

Headings 108 to 111 shall be filled in only, if the holding is subject to the agricultural system (or similar systems).

The agricultural system (or similar systems) aims to give overall compensation for the VAT paid on the purchase of goods and services at current prices and on investments. In this case sales and purchases are entered without VAT.

108. VAT on sales

VAT collected during the accounting year on products sold.

109. VAT on purchases

VAT paid during the accounting year on the current purchase of goods and services. In Italy this heading also includes VAT paid to the fiscal authorities under the pro rata arrangement.

110. VAT on investments

VAT paid during the accounting year on the purchase of capital goods (investments).

111. VAT refunded by the tax authorities

Amount of reimbursement.

J. GRANTS AND SUBSIDIES

The grants and subsidies to be entered under headings 112 to 118 are those which have been granted from public funds, excluding grants and subsidies on investments entered under headings 94 to 103.

112. Grants and subsidies except those on costs and purchase of animals

Amount of grants and subsidies received or for which entitlements have been attributed, for livestock, products, and other payments received or due, except those on costs and purchase of animals. All entries must refer to livestock, surface areas and products from the holding corresponding to the activities during the accounting year.

113. Of which: details of the total in heading 112

1. Categories of livestock (codes 22 to 50 corresponding to the respective headings in Table D) excluding cattle subsidies in codes 700 and 770 below.

2. Products (codes 120 to 314 corresponding to headings or subheadings in Table K) excluding area payments in code 600 and payments in codes 670 and 680 below. The payments should be entered only once (whether under the appropriate heading or subheading) in order to avoid double counting.
3. Specific codes indicated in the following list:
 - Code 600 refers to the total of area payments, based on Regulation (EC) No 1782/2003, including area payments for set-aside and energy crops. This total amount and the details are to be registered also in Table M,
 - Code 670 refers to aid under the single payment scheme, based on Regulation (EC) No 1782/2003. This total amount and the details are to be registered also in Table M,
 - Code 680 refers to aid under the single area payment scheme, based on Regulation (EC) No 1782/2003. This total amount is to be registered also in Table M,
 - Code 700 refers to the total of direct payments for beef and veal, based on Regulation (EC) No 1782/2003. This total amount and the details are to be registered also in Table M,
 - Code 770 refers to the dairy premium and additional payments, based on Regulation (EC) No 1782/2003. This total amount and the details are to be registered also in Table M,
 - Code 800 refers to agri-environment and animal welfare payments, based on Regulation (EC) No 1698/2005,
 - Code 810 refers to Natura 2000 payments based on Regulation (EC) No 1698/2005 and payments linked to Directive 2000/60/EC,
 - Code 820 refers to natural handicap payments in mountain areas and payments in other areas with handicaps, based on Regulation (EC) No 1698/2005,
 - Code 830 refers to support provided for meeting standards based on Community legislation, according to Regulation (EC) No 1698/2005,
 - Code 835 refers to support for the costs of using advisory services, based on Regulation (EC) No 1698/2005,
 - Code 840 refers to support for the participation of farmers in food quality schemes, based on Regulation (EC) No 1698/2005,
 - Code 900 refers to support granted for the first afforestation of agricultural land, based on Regulation (EC) No 1698/2005,
 - Code 910 refers to other support to forestry (Natura 2000 payments, forest-environment payments, restoring forestry potential and introducing prevention actions), based on Regulation (EC) No 1698/2005,
 - Code 951 refers to grants and subsidies to animal production not included in the codes presented above,
 - Code 952 refers to grants and subsidies to crops not included in the codes presented above,
 - Code 953 refers to grants and subsidies to rural development not included in the codes presented above,
 - Code 955 refers to additional aid based on Regulation (EC) No 1782/2003,
 - Code 956 refers to direct payments granted for specific types of farming which are important for the protection or enhancement of the environment or for improving the quality and marketing of agricultural products, based on Article 69 of Regulation (EC) No 1782/2003,

- Code 998 includes disaster payments, compensation from public authorities for loss of production or means of production. (For private insurance compensation heading 181 in Table K is used),
- Code 999 includes grants and subsidies of exceptional character (e.g. agri-monetary compensation). Taking into account their exceptional character, these payments are registered on a cash basis,
- Codes 1052 and 2052 refer to compensations for the cessation of milk production. Annual payments are to be registered under 1052, lump-sum payments under 2052,
- Code 950 is to be used for general subsidies that cannot be allocated to any activity or cannot be registered under any of the above codes.

114. Grants and subsidies on costs

Amount of the grants and subsidies in respect of costs (codes to be used: 59 to 82, 84, 85, 87 and 89).

115. **Of which:** details of the total for heading 114 according to cost category (codes to be used: 59 to 82, 84, 85, 87 and 89).

116. Grants and subsidies on the purchase of animals

Amount of the grants and subsidies for the purchase of animals (codes to be used: 51, 52 and 54 to 58).

117. **Of which:** details of the total for heading 116 according to livestock category (codes to be used: 51, 52, 54-58).

118. Total grants and subsidies

Sum of headings 112, 114 and 116.

119. Differences from previous accounting years**K. PRODUCTION (excluding livestock)**

Certain product headings are subdivided into subheadings. In such cases information for columns 4 to 10 should be given under both subheadings and the parent heading. In this case the aggregate of the subheadings is entered into the parent heading.

Separate entries should be made for crops grown on set-aside in conformity with the Regulation (EC) No 1782/2003. Separate entries should be applied also if the same crop is cultivated both with irrigation and without irrigation.

Data for standing crops should be entered under the relevant heading with the exception of area, which should not be entered. The same applies for crops from land rented for less than one year on an occasional basis.

A. CROPS**Cereals**

Cereals for use as silage are not included in the products listed below under headings 120 to 128. They are to be entered under headings 326 'Forage maize' and 327 'Other silage cereals'. Millet, triticale, buckwheat and sorghum (except fodder sorghum) are included under heading 128 'Other cereals'. Fodder sorghum is to be included under heading 145 'Other fodder plants'.

Seeds are included in headings 120 to 128.

120. Common wheat and spelt

121. Durum wheat

122. Rye (including meslin)

123. Barley

124. Oats

125. Summer cereal mixes

126. Grain maize (including humid grain maize)

127. Rice

128. Other cereals

Other field crops

129. Protein crops

All protein crops grown for their seed, including seed and mixtures of dry pulses with cereals. Not included: legumes harvested green, e.g. alfalfa, which are to be entered under heading 145 'Other fodder plants', oil protein crops (e.g. soya), which are to be entered under heading 132 'Herbaceous oil seed crops' and leguminous crops grown as vegetables, which are to be entered under headings 136, 137 or 138.

Subheadings of heading 129 'Protein crops':

360. Peas, field beans and sweet lupins

361. Lentils, chickpeas and vetches

330. Other protein crops

130. Potatoes (including early potatoes and seed)

Subheadings of heading 130 'Potatoes':

Details are to be entered if they are available in the holding's accounts.

362. Potatoes for starch

363. Other potatoes

131. Sugar beet (excluding seed)

132. Herbaceous oil seed crops (including seed)

Subheadings of heading 132 'Herbaceous oil seed crops':

331. Rape

332. Sunflower

333. Soya

364. Flax other than fibre flax (if data available in the holding's accounts)

334. Other (including flax other than fibre flax, if not recorded under subheading 364, castor-oil plant, safflower, sesame, groundnuts, mustard, poppy and other oil seed crops)

133. Hops (excluding seed)

134. Tobacco (excluding seed)

Subheadings of heading 134 'Tobacco':

Subheadings correspond to groups of tobacco varieties, as defined by Article 171ca of Commission Regulation (EC) No 1973/2004 ⁽¹⁾. Details are to be entered if they are available in the holding's accounts.

365. Flue-cured (varieties included: Virginia, Virginia D and hybrids thereof and Bright)

366. Light air-cured (varieties included: Burley, Badischer Burley and hybrids thereof, and Maryland)

367. Dark air-cured (varieties included: Badischer Geudertheimer, Pereg, Korso, Paraguay and hybrids thereof, Dragon Vert and hybrids thereof, Philippin, Petit Grammont (Flobecq), Semois, Appel terre, Nijkerk, Misionero and hybrids thereof, Rio Grande and hybrids thereof, Forchheimer Havanna lic, Nostrano del Brenta, Resistente 142, Goyano, Hybrids of Geudertheimer, Beneventano, Brasile Selvaggio and similar varieties, Fermented Burley and Havanna)

368. Fire-cured (varieties included: Kentucky and hybrids thereof, Moro di Cori and Salento)

369. Sun-cured (varieties included: Xanthi-Yaka, Perustitza, Samsun, Erzegovina and similar varieties, Myrodata Smyrnis, Trapezous and Phi I, Kaba Koulak (non-classic), Tsebelia and Mavra)

370. Basmas (varieties included: Basmas)

371. Katerini (varieties included: Katerini and similar varieties)

372. Kaba-Koulak (classic) (varieties included: Elassona, Myrodata Agrinion and Zychnomyrodata)

135. Other industrial crops (excluding seed)

Also includes cotton or sugar cane, fibre flax and hemp.

Subheadings of heading 135 'Other industrial crops':

345. Medicinal plants, condiments, aromatics and spices, including tea, coffee and coffee chicory

346. Sugar cane

347. Cotton: production for the accounting year (column 5) is to be given by weight (100 kg) of seed cotton, i.e. of unginned fibre

373. Fibre flax (if data available in the holding's accounts)

374. Hemp (if data available in the holding's accounts)

348. Other industrial crops. Includes also fibre flax and hemp, if not recorded under headings 373 and 374

Vegetables and non-perennial fruit

136. Field scale fresh vegetables, melons and strawberries grown in the open: crops grown in rotation with agricultural crops — including pineapple and sweetcorn

⁽¹⁾ OJ L 345, 20.11.2004, p. 1.

137. Fresh vegetables, melons and strawberries grown in market gardens in the open: crops grown with other horticultural crops and under a short rotation system with almost continuous occupation of the land and with several harvests per year, including pineapple and sweetcorn
138. Fresh vegetables, melons, strawberries under shelter (including pineapple and sweetcorn): crops grown under shelter (greenhouses, permanent frames, accessible plastic tunnels) during the whole or greater part of the growing season. Crops grown in not accessible plastic tunnels, under cloches or portable frames are not considered as crops under shelter. In the case of a multistorey greenhouse, only the basic area is counted.

Subheadings of headings 136, 137 and 138 'Vegetables and non-perennial fruit':

Products are entered under the subheadings whatever their subsequent use (consumption in fresh state, drying, processing, canning, etc.). Details are to be entered if they are available in the holding's accounts.

335. Cabbages, cauliflower, broccoli, etc.
336. Leaf vegetables (leek, spinach, lettuce, etc.)
337. Tomatoes
375. Sweetcorn (if data available in the holding's accounts)
338. Vegetables grown for their fruit or their flowers, other than tomatoes (marrows and courgettes, aubergines, gherkins, globe artichokes, sweet peppers, etc.). Also sweetcorn, if not recorded under subheading 375
339. Vegetables grown for their roots, bulbs or tubers (except potatoes)
340. Leguminous vegetables (peas, beans, etc., except lentils and chickpeas)
341. Fruit of non-perennial plants (strawberries, melons, watermelons, pineapples, etc.)
139. Mushrooms: the total area under successive crops (basic area $\times$ number of complete harvests) should be given in square meters. This area is not included in the total (heading 183).

Flowers and ornamental plants

140. Flowers and ornamental plants grown in the open (excluding nurseries to be entered under heading 157) (basic area)
141. Flowers and ornamental plants grown under shelter (basic area)

Subheadings of headings 140 and 141 'Flowers and ornamental plants':

Details are to be entered if they are available in the holding's accounts.

342. Flower-bulbs, corms and tubers
343. Cut flowers and flower buds
344. Flowering plants and ornamental plants

Seeds

142. Grass seeds (grasses and forage legumes)
143. Other seeds (horticulture seed, seed and seedlings on arable land, excluding cereals, dry pulses, potatoes, oil seed plants and grass seeds)

Fodder crops and fallow

144. Fodder roots and brassicas (mangolds, swedes, fodder carrots and fodder turnips, half-sugar mangolds, other fodder roots and brassicas) (excluding seeds)

145. Other fodder plants

All green annual or multiannual feed crops grown in the crop rotation and which occupy the same land for less than five years, excluding grass crops.

Subheadings of heading 145 'Other fodder plants':

326. Fodder maize

327. Other silage cereals

328. Other fodder plants

146. Fallow land: land, not giving any harvest during the whole accounting year. Land set aside to comply with Regulation (EC) No 1782/2003, and not cultivated, is also to be entered. Includes also set-aside with green cover. Set-aside land cropped with allowed non-food crop in conformity with Regulation (EC) No 1782/2003 is to be entered under the relevant crop heading, with 'type of crop' codes 8 or 9.

147. Temporary grass: grass sown on arable land and given over to green fodder crop for less than five years; areas with less than one year included. The total for sales of hay and/or grass coming from this area is to be indicated under this heading.

148. Other arable crops not included under headings 120 to 147 or their subheadings.

149. Land ready for sowing leased to others, including land made available to employees as a benefit in kind.

150. Meadows and permanent pastures: utilised agricultural area, not cultivated under a rotation system but permanently assigned (for five years or more) to the production of green forage crops whether sown or wild, generally dressed with fertiliser and cultivated. The total for sales of hay and/or grass coming from this area is to be indicated under this heading.

151. Rough grazing: poor pastures including scrubland, generally not dressed with fertiliser and not cultivated.

314. Permanent grassland no longer used for production purposes and eligible for the payment of subsidies.

Permanent crops

152. Fruit and berry orchards

Also includes tropical and sub-tropical fruit; including bananas but not permanent crops grown under shelter to be entered under heading 156.

Subheadings of 152 'Fruit and berry orchards':

Products are entered under these subheadings whatever their subsequent use (consumption in fresh state, drying, processing, canning, etc.)

349. Pome fruit: apples, pears, etc., excluding raisins (subheading 291) and table grapes (subheading 285).

350. Stone fruit: plums, peaches, apricots, cherries, etc., excluding table olives (subheading 281).

351. Nuts: walnuts, hazelnuts, almonds, chestnuts, etc.

352. Small fruit and berries: red and white currants, raspberries, figs, etc. (not including strawberries, melons and pineapples: headings 136, 137 and 138)

353. Tropical and subtropical fruit: bananas, avocados, mangoes, papayas, etc.

153. Citrus fruit orchards

Subheadings of heading 153 'Citrus fruit orchards':

354. Oranges

355. Tangerines, mandarins, clementines and similar small fruit

356. Lemons

357. Other citrus fruit

154. Olive groves

Subheadings of heading 154 'Olive groves':

281. Table olives

282. Olives for oil production (sold in the form of fruit)

283. Olive oil

284. Olive by-products

155. Vines

Subheadings of heading 155 'Vines':

285. Table grapes

286. Grapes for quality wine with protected designation of origin (PDO)

292. Grapes for quality wine with protected geographical indication (PGI)

293. Grapes for other wines

288. Miscellaneous products of vines: grape must, juice, brandy, vinegar and others produced on the farm

289. Quality wine with protected designation of origin (PDO)

294. Quality wine with protected geographical indication (PGI)

295. Other wines

291. Raisins

304. Vine by-products (marc, lees)

156. Permanent crops grown under shelter

157. Nurseries: including vine nurseries; excluding tree nurseries in forests which serve the holding's needs

158. Other permanent crops (osier, rushes, bamboo, salix, etc.)
159. Growth of young plantations valued on the basis of the cost of inputs (only plantations which have not yet reached full production are taken into account). This amount is also entered under investments (column 4) for heading 96 'Permanent crops' (Table G).

Other crops products

160. Products processed from crops from the holding not separately mentioned; including alcohol other than from grapes, cider, perry or other.
161. By-products of crops (excluding by-products of vines and olive groves)

Subheadings of heading 161 'By-products of crops':

Details are to be entered if they are available in the accounts.

299. Straw

300. Sugar beet tops

301. Other by-products

B. ANIMAL PRODUCTS

162. Cow's milk
163. Products of cow's milk
164. Sheep's milk
165. Goat's milk
166. Wool
167. Products of sheep's milk
168. Products of goats' milk
169. Hens' eggs (including eggs for hatching)
170. Other animal products (manure sold, stud fees, eggs other than hens' eggs etc.)
313. Honey and products of bee-keeping: honey, hydromel and other products and by-products of bee-keeping, expressed in quintals (= 100 kg) of honey equivalents.
171. Contract rearing

Amount of receipts for contract rearing corresponding mainly to payment for services rendered and where the holder does not assume the economic risk normally involved in rearing or fattening these animals.

Subheadings of heading 171 'Contract rearing':

Details are to be entered if they are available in the holding's accounts.

307. Cattle under contract

308. Sheep and/or goats under contract

309. Pigs under contract

310. Poultry under contract

311. Other animals under contract

C. FORESTRY

173. Woodland area

Land covered by woods and forests, including nurseries located in the forest as well as poplar plantations. Isolated trees, spinneys and avenues are not included as woodland, their areas being included with the land surrounding them. Woodland is taken into account if managed by the holder, if maintained by the holder's labour with the holding's equipment and/or if the products it yields are used on the agricultural holding.

174. Sales of felled timber: value of sales of timber including farm use during the accounting year

175. Sales of standing timber: value of sales of standing timber during the accounting year

176. Other forestry products: value of sales of forestry products other than timber (cork, pine resin, etc.)

D. OTHER PRODUCTS

172. Receipts from occasional letting of fodder areas and agistment

177. Contract work for others, including the hiring out of equipment

178. Interest on liquid assets in the bank account of the holder necessary for running the holding. This heading is not filled in if the circulating capital is determined arbitrarily (see also instructions on circulating capital, heading 102).

179. Receipts of tourism, where tourism overlaps agricultural activity on the holding to such an extent that in practice it is impossible to distinguish them. They include rent from tourism (camping sites, cottages, riding facilities, hunting, fishing, etc.). The relevant costs and labour cannot be separated and, therefore, are all included under the corresponding headings.

180. Correction of receipts relating to previous accounting year: amounts received during the year relating to previous accounting years which were not included in the receivables of those accounting years. Grants, subsidies and direct aids relating to products, animals, surface area, costs and disasters should be entered for the current accounting year under headings 112 to 118, and for previous accounting years under the serial number 483.

181. Other products and receipts not listed above: value of employees' housing included in salaries and wages in kind (assessed on the basis of relevant costs), production of fixed assets (estimated value for all costs of production of fixed assets treated as current farm costs: see paragraph (b) of 'General definitions and instructions'), compensation received which cannot be attributed to anything in particular or deducted from costs, etc.

182. Other areas and their production

Heading 182 covers all other areas, e.g. the kitchen garden, the ground occupied by buildings, roads, stockyard, ponds, etc.

183. Total: sum of the headings 120 to 182 and 313 to 314.

However, the sum of areas does not include areas used for successive crops and mushrooms. Thus the sum of areas represents the total area of the holding.

COLUMNS IN TABLE K

Products (column 1)

Products should be indicated in the order of the numbers given above.

Type of crop (column 2)

The following are the types of crops and their corresponding codes:

Code 0: This code is to be used in the case of livestock products, processed products, stocks and by-products.

A. *Field-scale crops* (including fresh vegetables, melons and strawberries grown in the open in rotation with agricultural crops; excluding crops grown on land set aside in accordance with Regulation (EC) No 1782/2003).

Code 1: Non-irrigated main crops

Main crops comprise:

- single crops, i.e. crops which are the only ones grown on a given area during the accounting year,
- mixed crops: crops sown, cultivated and harvested together and producing a mixture as the final product,
- of the crops grown successively in the course of the accounting year on a given area, the crop which remains longest in the ground.

Code 2: Non-irrigated combined crops

Crops growing for some time together on the same land and each normally producing a distinct harvest in the course of the accounting year. The total area is divided between these crops in proportion to the area actually occupied by each.

Code 3: Non-irrigated follow-up crops (catch crops)

Crops grown in succession during the accounting year on a given area and not regarded as main crops.

Code 6: Irrigated main or combined crops

Code 7: Irrigated follow-up crops

A crop is regarded as being irrigated when water is normally supplied artificially.

These two types of crops are to be indicated if the information is available in the accounts.

B. *Market gardening and floricultural crops grown in the open*

Code 4: Fresh vegetables, melons and strawberries grown in market gardens in the open (see heading 137) and open-grown flowers and ornamental plants (see heading 140).

C. *Crops under shelter*

Code 5: Fresh vegetables, melons and strawberries under shelter (see heading 138), flowers and ornamental plants (annual or perennial) under shelter (see heading 141), permanent crops under shelter (see heading 156). If necessary, also headings 143, 285 and 157.

D. *Crops on land set aside in conformity to Regulation (EC) No 1782/2003*

Code 8: Non-irrigated crops on land set aside

Code 9: Irrigated crops on land set aside

E. *Energy crops*

Code 10: Energy crops as defined in Article 88 of Regulation (EC) No 1782/2003, whether they receive the aid for energy crops or not, excluding 'Non food crops on set aside land'.

Missing data (column 3)

Code 0: Code 0 is entered when no data are missing.

Code 1: Code 1 should be entered when the area covered by a crop is not given (see column 4), for example in the case of sales of marketable crop products purchased as standing crops or coming from land rented for a period of less than one year on an occasional basis, and in the case of production obtained by processing purchased animal or crop products.

Code 2: Code 2 should be entered for the crops under contract when, because of the conditions of sale, the actual production cannot be stated (column 5).

Code 3: Code 3 should be entered when, because of the conditions of sale, the actual production cannot be stated and the crops are not under contract.

Code 4: Code 4 should be entered when area and actual production are missing.

Code 8: Code 8 should be entered in the case of product code 146, where area is set aside as a measure to comply with Regulation (EC) No 1782/2003, and is not cultivated (possible green cover included).

Area (column 4)

Area is to be given in ares (100 ares = 1 hectare), except in the case of land used for mushroom growing (heading 139) which is given in square metres. The latter area is not included in the total area (see heading 183).

The area for each crop product is given in this column, except in the case of by-products (headings 161, 284, 299 to 301 and 304) and some processed products (headings 160 and 288). The products obtained by processing purchased crops and the products of marketable crops purchased as standing crops or coming from land rented for a period of less than one year on an occasional basis are given without indicating the area. Code 1 should be entered in column 3 (missing data).

For the subheadings concerning fresh vegetables, melons and strawberries (335 to 341), flowers and ornamental plants (headings 342 to 344), grown in market gardens in the open or under shelter, the area actually used for the crop (cropped area) is given. Example: if radishes and then leeks are grown on a single area of 1 ha of market garden in the open, the basic area to be entered under heading 137 would be 1 ha and the cropped area would be twice 1 ha, to be entered respectively under headings 339 and 336. If this information is not available in the accounts of the holding, code 1 should be entered in column 3 (missing data).

Production for the accounting year (column 5)

The quantities of animal products and crops produced during the accounting year (excluding any losses in the field and at the farm). These quantities are indicated for the principal products of the holding (except by-products).

These quantities should be indicated in quintals (100 kg) except in the case of eggs (heading 169), which are given in thousands, and wine and wine-related products (headings 286 to 289 and 292 to 295), which are expressed in hectolitres. The quantity for the main heading 155 Vines, even if it is related to wine products, should be given in quintals.

In the case of milk, the quantity of liquid milk is indicated regardless of the form in which it is sold, consumed on the farm or used for benefits in kind or for farm purposes (cream, butter, cheese, etc.). Milk suckled by calves is not included in the production.

When, because of the conditions of sale, actual production in quintals cannot be determined (see sales of standing crops and crops under contract), code 2 should be entered in column 3 (missing data) for the crops under contract and code 3 in the other cases.

Opening valuation (column 6)

The value of products in stock (storage) at the beginning of the accounting year, excluding livestock. The products should be valued at farm-gate prices on the day of valuation.

Sales (column 7)

Total value of sales (whether or not the proceeds have been received during the accounting year) of products in stock at the start of the accounting year and harvested during the year.

The total for products sold includes the value of products returned to the farm (skimmed milk, pulp, etc.). The latter value is also entered under farm costs.

Any compensation payments (e.g. insurance payments for hail damage) during the accounting year are to be added to the total for sales of the products concerned wherever they can be allocated to the production of such products. Otherwise they are entered under heading 181 'Other products and receipts'.

Grants and subsidies received for products during the accounting year are not included in the total for sales; they are entered under heading 112 (see instructions on this heading). When marketing costs, if any, are known, they are not deducted from the sales total, but are given under heading 71 'Other specific livestock costs' or 76 'Other specific crop costs'.

Farmhouse consumption and benefits in kind (column 8)

Products consumed by the holder's household (including products from the holding used for the preparation of meals for holidaymakers) and/or used for payments in kind for goods and services (including remuneration in kind). The products in question are valued at farm-gate prices.

Closing valuation (column 9)

The value of products in stock (storage) at the end of the accounting year, excluding livestock. Products should be valued at farm-gate prices on the day of valuation.

Farm use (column 10)

The farm-gate value of the holding's products in stock (storage) at the beginning of the accounting year and/or produced during the year, used as inputs on the holding during the year. This includes:

— animal feed:

the farm-gate value of the holding's saleable products (products which are currently marketable) used during the year as animal feed. The holding's straw used on the farm (as fodder and bedding) is valued only when it is a saleable product in the region and for the year under consideration. Milk suckled by calves is not included under farm use.

The products concerned are valued at the 'farm-gate' selling price,

— seeds:

the farm-gate value of saleable farm products used as seed for crops during the accounting year.

L. QUOTAS AND OTHER RIGHTS

The quantity of owned quota at the end of the accounting year should always be entered in column 9.

Enter also quotas originally acquired freely at current market values if they can be traded separately from land. The quotas which cannot be traded separately from associated land are only recorded in Table G.

Some data entries are simultaneously included, individually or as components of aggregates, at other headings in Tables F, G and/or K.

The following headings should be used:

401. Milk

402. Suckler cow premiums

404. Ewe and she-goat premiums

421. Sugar beet

422. Tobacco

423. Starch potatoes

441. Ammonia

442. Organic manure

470. Entitlements for payments under the single payment scheme (optional)

499. Other.

COLUMNS IN TABLE L

Quotas or other rights (column 1)

Heading of the quota or right.

Type of data (column 2)

Code 1: Asset related entries: purchases and sales

Code 2: Income related entries: leasing or renting of quotas

(Column 3): **Unused.**

Payments (column 4)

For code 1 in column 2:

Amount paid for purchase of quotas or other rights.

For code 2 in column 2:

Amount paid for leasing or renting of quotas or other rights. Also included in rent paid under heading 85 (Rent paid) in Table F.

Receipts (column 5)

For code 1 in column 2:

Amount received for sale of quotas or other rights.

For code 2 in column 2:

Amount received for renting or leasing of quotas or other rights. Also included under heading 181 (Other products and receipts) in Table K.

Opening valuation (column 6)

For code 1 in column 2:

The value at opening valuation of the quantities at the holder's own disposal, whether originally acquired freely or purchased, should be recorded at current market values, if the quotas can be traded separately from associated land.

For code 2 in column 2:

Not applicable.

Depreciation (column 7)

Depreciation of quotas and other rights may be entered in this column. However any depreciation of quotas and other rights must not be applied in Table G (position 340).

Closing valuation (column 8)

For code 1 in column 2:

The value at closing valuation of the quantities at the holder's own disposal, whether originally acquired freely or purchased, should be recorded at current market values if the quotas can be traded separately from associated land.

For code 2 in column 2:

Not applicable.

Quantity (column 9)

The units to be used are:

- headings 401, 421 to 441: quintals,
- heading 442: quintals or number of animals if it is foreseen in the national legislation,
- headings 402 and 404: number of basics units of premium,
- heading 470: number of entitlements,
- heading 499 no entry.

Taxes, additional levy (column 10)

Enter only once, with column 2 = 2.

Heading 401: additional levy on milk due on the production for the accounting year, otherwise the amount paid.

M. *DIRECT PAYMENTS under Regulation (EC) No 1782/2003 (headings 600 to 680 and 700 to 772)* ⁽¹⁾

600. Area payments under Regulation (EC) No 1782/2003.

The total of area payments is also to be entered in Table J, with code 600. It also includes area payments for set aside and aid for energy crops.

⁽¹⁾ When applicable, these codes can be used for Complementary National Direct Payments in Bulgaria, Czech Republic, Estonia, Cyprus, Latvia, Malta, Lithuania, Hungary, Poland, Romania, Slovakia and Slovenia.

Details of heading 600

Headings 621 to 638 are to be entered for irrigated crops only when these are specially treated in the national regionalisation plan. In such a case, the areas and payments are to be excluded from headings 601 to 618. If irrigated areas are not separately treated in the national regionalisation plan, they are included under headings 601 to 618.

601. Area payments for non-irrigated land

In column 4, Number of basic units for payments: sum of headings 602 to 618 excluding headings 608, 614 and 618 when the same basic units are also registered under any other heading in Table M. In column 5 Total aid: sum of headings 602 to 618.

The various subheadings should be completed, at least, when the Member State has provided in its regionalisation plan for a different compensation scheme (as regards reference yields, amount of unit aid, total eligible area) in respect of different eligible crops.

602. Area payments for cereals

603. Area payments for oilseed crops

604. Area payments for protein crops

605. Area payments for silage cereals

606. Area payments for grain maize

607. Area payments for silage maize

608. Supplement to area payments for durum wheat in traditional production areas or special aid for durum wheat as described in Regulation (EC) No 1782/2003.

609. Area payments for other arable crops

611. Area payments for grass silage

612. Area payments for flax grown for fibre

613. Area payments for hemp grown for fibre

614. Protein crop premium (if not included in 604)

618. Specific quality premium for durum wheat (if not included in 608)

621. Area payments for irrigated land

In column 4, Number of basic units for payments: sum of headings 622 to 638 excluding headings 628, 634 and 638 when the same basic units are also registered under any other heading in Table M. In column 5 Total aid: sum of headings 622 to 638.

The various subheadings should be completed, at least, when the Member State has provided in its regionalisation plan for a different compensation scheme (as regards reference yields, amount of unit aid, total eligible area) in respect of different eligible crops.

- 622. Area payments for irrigated cereals
- 623. Area payments for irrigated oilseed crops
- 624. Area payments for irrigated protein crops
- 625. Area payments for irrigated silage cereals
- 626. Area payments for irrigated grain maize
- 627. Area payments for irrigated silage maize
- 628. Supplement to area payments for irrigated durum wheat in traditional production areas or special aid as described in Regulation (EC) No 1782/2003
- 629. Area payments for other irrigated arable crops
- 632. Area payments for irrigated flax grown for fibre
- 633. Area payments for irrigated hemp grown for fibre
- 634. Protein crop premium for irrigated protein crop (if not included in 624)
- 638. Specific quality premium for irrigated durum wheat (if not included in 628)
- 650. Area payments for set-aside
- 655. Aid for energy crops
- 670. Single payment scheme pursuant to Regulation (EC) No 1782/2003

In column 4, Number of basic units for payments: sum of headings 671 to 673. In column 5, Total aid: sum of headings 671 to 674.

The total of aid in accordance with the single payment scheme is also entered in Table J, with code 670.

Details of heading 670

Headings		Number of basic units for payments	Total aid
671	Payments in accordance with the single payment scheme except those under headings 672 to 674; includes also payments to grassland/permanent pasture and for set-aside, if not differentiated	Compulsory	Compulsory
672	Payments in accordance with the single payment scheme for grassland/permanent pasture	Optional	Optional
673	Payments in accordance with the single payment scheme for set-aside	Optional	Optional
674	Payments in accordance with the single payment scheme, based on special entitlements	Compulsory	Compulsory

- 680. Single area payment scheme pursuant to Regulation (EC) No 1782/2003

The total of aid in accordance with the single payment scheme is also entered in Table J, with code 680.

700. Direct payments to beef pursuant to Regulation (EC) No 1782/2003

The total of direct payments to beef is also to be entered in Table J, with code 700.

The following table indicates headings for all types of direct payments to beef, in accordance with Regulation (EC) No 1782/2003,

Headings		Number of basic units for payments	Total aid
700	Total beef payments (sum of headings 710, 720, 730, 740, 750, 760)	—	Compulsory
710	Special premium (sum of headings 711 and 715)	Compulsory	Compulsory
711	Special premium for bulls	Compulsory	Compulsory
715	Special premium for steers	Compulsory	Compulsory
730	Suckler cow premium (sum of headings 731 and 735)	—	Compulsory
731	Suckler cow premium for suckler cows and heifers	Compulsory	Compulsory
735	Suckler cow premium: additional national premium	Compulsory	Compulsory
740	Slaughter premium (sum of headings 741 and 742)	—	Compulsory
741	Slaughter premium: 1 to 7 months	Optional	Compulsory
742	Slaughter premium: 8 months and over	Compulsory	Compulsory
750	Extensification payment	Compulsory	Compulsory
760	Additional payments (national envelope)	—	Compulsory

770. Dairy premium, including additional payments pursuant to Regulation (EC) No 1782/2003.

Heading		Number of basic units for payments	Total aid
770.	Dairy premium and additional payments (sum of headings 771 and 772)	Compulsory	Compulsory
771.	Dairy premium	Optional	Optional
772.	Additional payments	Optional	Optional

COLUMNS IN TABLE M

Product or product combination (column 1)

(Columns 2 and 3): **Unused.**

Number of basic units for payments (column 4)

For headings 600 to 655 and 680, the area in ares should be indicated in respect of which aid is payable to the producer. For headings 710 to 750 the number of animals receiving payments should be entered. For headings 670 to 673, the number of activated entitlements should be expressed in ares. For heading 674 the number of special entitlements should be recorded. For headings 770 to 772, the amount of individual reference quantity (in quintals) should be entered.

Total aid (column 5)

Total for the aids received or for which entitlement is established during the accounting year.

Reference amount (column 6)

For headings 602 to 613, 622 to 633 and 650, the crop reference yield (in kilograms per hectare) used for calculating the premiums to be received should be indicated. Where these data are not available in the holding's accounts, they can be inserted by the liaison agencies, using regional data on the basis of the holding's location.

(Columns 7 to 10): **Unused.**

N. DETAILS OF PURCHASES AND SALES OF LIVESTOCK

Categories of livestock are to be indicated using code numbers 22 to 50, corresponding to headings for the same categories of livestock used in Table D.

The subtotals of purchases and sales per animal species (equines, cattle, sheep, goats, pigs, poultry, other animals) are to be entered in Table E.

COLUMNS IN TABLE N

Category of livestock (column 1)

Corresponding to headings used in Table D.

(Columns 2 and 3): **Unused.**

Number of animals purchased (column 4)

Indicated in heads.

Livestock purchases (column 5)

Total livestock purchases during the accounting year (including purchasing costs). The related grants and subsidies are not deducted from the total of these purchases, but are specified under heading 116 (see instructions regarding this heading).

Number of animals sold (column 6)

Indicated in heads.

Livestock sales (column 7)

Total livestock sales during the accounting year. The related grants and subsidies are not included in the sales total, but are specified under heading 112 (see instructions regarding this heading). When the marketing costs, if any, are known they are not deducted from the sales total, but are given under heading 71 'Other specific livestock costs'.

(Columns 8 to 10): **Unused.**

ANNEX III

Correlation table

Regulation (EEC) No 2237/77	This Regulation
Article 1	Article 1
Article 2	—
—	Article 2
Article 3	—
—	Article 3
—	Article 4
Annex I	Annex I
Annex II	Annex II
Annex III	—
—	Annex III

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 11 March 2008

on State aid C 15/07 (ex NN 20/07) implemented by Italy on the tax incentives in favour of certain restructured banks

(notified under document number C(2008) 869)

(Only the Italian version is authentic)

(Text with EEA relevance)

(2008/711/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Article 88(3) of the EC Treaty. The Commission, however, initiated a preliminary review of the scheme.

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

- (3) By letter dated 26 September 2005 (D/57424), the Commission requested the Italian authorities to provide all the relevant information to examine the compatibility of the scheme with State aid rules and its lawfulness pursuant to the obligation to notify any plan to grant State aid under Article 88(3) of the EC Treaty.

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

- (4) By letter of 29 November 2005 (A/39913), Italy provided the information requested.

Having called on interested parties to submit their comments pursuant to the provision cited above ⁽¹⁾,

- (5) By letter dated 31 March 2006, the Commission requested additional clarifications to Italy as to the possible State aid nature of the scheme in review and its compatibility with the common market.

Whereas:

1. PROCEDURE

- (1) On 24 December 2003, the Italian Parliament enacted Law No 350 of 24 December 2003 (Law 350/2003) ⁽²⁾, which at Article 2(26) provides a special tax realignment scheme for the assets of certain banks resulting from or concerned with banking reorganisations pursuant to Law No 218 of 30 July 1990 (Law 218/1990) on the privatisation of the State-owned banking sector in Italy.

- (6) By letter of 5 May 2006 (A/33466), Italy provided the requested information.

- (2) The Italian authorities did not notify the scheme to the Commission for State aid review pursuant to

- (7) On 3 July 2006, the Commission met the Italian authorities to discuss the functioning and justification of the tax scheme in review. During the meeting the Commission took note of the explanations provided by the Italian authorities while it maintained some doubts about the possible State aid nature of the scheme and its compatibility with the common market.

⁽¹⁾ OJ C 154, 7.7.2007, p. 15.

⁽²⁾ Italy's Budget Law for 2004, Official Journal of the Italian Republic No 299 of 27.12.2003.

- (8) By letter of 28 July 2006 (A/36106), the Italian authorities provided a summary of the information presented by Italy including the clarifications made during the meeting of 3 July 2006.
- (9) By letter dated 30 May 2007 (D/203295), the Commission notified Italy of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty concerning the abovementioned measure. In its decision, published in the *Official Journal of the European Union* ⁽³⁾, the Commission invited interested parties to submit their comments on its opening of the formal investigation procedure.
- (10) By letter dated 5 July 2007 (A/35808), the Italian authorities submitted their comments.
- (11) The Commission received comments from interested parties. In particular, the *Paribas* banking group including *Banca Nazionale del Lavoro*, and the *Unicredit* banking group including *Capitalia*, *Banca di Roma* and *Banco di Sicilia* have provided comments.
- (12) By letters dated respectively 3 October 2007 (D/53926) and 22 November 2007 (D/54681), the Commission informed the Italian authorities of the comments received from interested parties and asked Italy to formulate its observations. By letters dated 5 November 2007 (A/39031) and 21 December 2007 (A/40631), the Italian authorities informed the Commission that they had no further comments to make.

2. DETAILED DESCRIPTION OF THE SCHEME

2.1. Capital gains taxation

- (13) Italy shares with most modern taxing jurisdictions certain fundamental principles of taxation of business entities. There is an entity-level income taxation that is applied to most business entities having legal personality (mainly companies) although with some possibility for mandatory or optional fiscal transparency as for partnerships and certain entities or associations without legal personality. Shareholders of the taxable entity are separate taxpayers from the company of which they own

participations and are in principle subject to tax on all gains and dividends earned in respect of stock held, although various reliefs exist to mitigate double taxation. Company capital gains are therefore separately taxable from the shareholders gains when the gains resulting from the sale or transfer of the company assets are realised and fiscally recognised. Company interest expense is in principle deductible, while the cost of equity capital is not, resulting in tax only at the debt holder level (and at the debt holder rate of tax) on earnings paid as interest but tax is applied at the company level and, at least in principle, again at the shareholder level on dividends accruing to equity investors.

- (14) An acquisition by a shareholder of an interest in a company does not occasion a change in the company's asset basis. On the other hand, the general rule is that a disposal of company assets generates a company-level taxable gain or loss. Since the tax on disposal is generally paid up front but the tax benefits of the stepped-up basis in the assets being sold arise over time (periodic depreciation), the effects of having a taxable sale of assets at the company level is generally an increase in the net aggregate tax of the seller company and the acquiring company.
- (15) The disposal of a company asset to its shareholders should also give rise to taxation of the inherent gain in the asset if there is a corresponding stepped-up basis in the relevant asset in the hands of shareholders, including if the latter are companies, because there should be no step-up in the basis of company assets without company-level tax recognition.

2.2. Assets revaluations and realignments in general

- (16) An assets revaluation in a company's commercial statements is an accounting operation by which the book value of fixed assets is stepped-up to the current value (fixed assets are normally depreciable so that their book value devaluates over time, while their current value may be higher than their depreciated value because the assets maintained their value or appreciated over time). As there should be no step-up in the basis of company assets without company-level tax recognition, the revaluation surplus is a capital gain. The surplus is depreciable over time together with the relevant assets. Finally, upon future sale of the assets (with stepped-up value), there will be a lower capital gain resulting from the lower difference between the consideration received for the sale and the book value of the assets.

⁽³⁾ See footnote 1.

- (17) Revaluations are extraordinary accounting operations because the accounting rules tend to give a prudential value for the companies' assets and a revaluation is based on the assumption that a given asset is worth more than it was paid for and, as with any assumption, it can be proven incorrect in the light of future market events. However, the recently introduced IFRS accounting principles, which became binding rules for certain companies and for banks in Italy, provide for fair values of assets to be booked, especially with respect to financial instruments (as a result, gains and losses will emerge). Furthermore, in company restructurings, assets are exchanged at their current value (which is normally higher than the book value) and re-valuations are accordingly booked.
- (18) Assets revaluations would normally be taxable events as far as capital gains are realised and increased tax values recognised. Capital gains would increase the taxable income and accordingly raise the current tax liability of the beneficiaries concerned even in case there is no cash realisation. To avoid paying tax on gains not yet realised in cash, the tax system generally freezes the tax gain by maintaining a lower tax value for the assets than the book value. In such case, the accounting gain (which is a profit realised but not recognised as taxable income) is deferred until the assets are eventually sold for cash.
- (19) The accounting gain deriving from the realisation exchange is normally booked for tax purposes in a special reserve representing the non-recognised gain. Until the moment the realised gain is fiscally recognised, there is a misalignment between the book value and the tax value of the assets. A realignment is therefore a tax operation by which the tax value is adjusted to the book value of the assets concerned and as a result a capital gain is fiscally recognised and subject to tax. The accounting gain is now released from the reserve and included in the ordinary earnings of the year, while the stepped-up value of assets accordingly becomes fiscally depreciable.
- (20) It should be noted that capital gains are particular items of income, which, unlike ordinary income, reflect an economic surplus matured over time, while its tax recognition is necessarily a one-time operation. For this reason, capital gains realised by companies are not only deferred until the time of the tax realignment of the value of the relative assets, but are also subject to a preferential tax in lieu of the ordinary company tax. The preferential tax is an advantage as the company concerned not only pays a lower tax on the gains but can distribute such gains as dividends to its shareholders, which give right to a tax credit or exemption for the corporate taxes paid. The tax advantage deriving from the substitute tax is however justified by the fiscal technique ⁽⁴⁾ in view of the specificity of capital gains as income vis-à-vis ordinary earnings.
- ### 2.3. Taxation of capital gains in Italy
- (21) In order to describe the nature of the scheme in review, it is necessary to summarise the Italian rules governing the taxation of capital gains resulting from the contributions of assets following certain company restructurings of the type foreseen by Law 218/1990 for the Italian banking system.
- Asset contributions relative to banking reorganisations pursuant to Law 218/1990*
- (22) Law 218/1990 had enacted a special scheme to facilitate the transfer of banking assets or branches of banking businesses held by the local public entities to newly created or existing private banks, with a view to rationalize the exercise of the banking activity in Italy (Article 1 of Law 218/1990). In 1990, the transfer of a branch of business was a sale of assets which would
- ⁽⁴⁾ Cf. Judgement of 10 January 2006, Case C-222/04, *Fondazione Cassa di Risparmio di San Miniato*, points 136 and 137.

have triggered company tax at the ordinary rate on the difference between the current value of the assets transferred and the cost of such assets pursuant to Articles 54(5) and 9 of DPR No 917 of 22 December 1986 (DPR 917/1986) in force at that time.

either the single assets as new tax basis recognised by the transferee bank or goodwill. The statute also provided that the cost basis of the assets contributed to the beneficiary bank was carried over to the recipient bank (carried-over assets basis) and substituted to the shares of the bank received by the contributing entity (substituted shares basis), except for the taxed 15 % gain which was recognised (basis step-up).

(23) To facilitate the transfer of the banking assets, Article 7(2) of Law 218/1990 provided, among other tax facilities, a derogatory tax scheme by which the gain realised from the transfer of assets contributed to private banks in the framework of a reorganisation foreseen by the said Article 1 in exchange for the stock of such banks is not recognised for taxation until such time when the gain is further realised either from the sale of the assets or is distributed to the shareholders (suspended recognition of gains).

(26) The scheme in essence provided for a regime of partial tax neutrality by which the contribution of a branch of business benefited from a roll-over relief provided that the tax basis of the business contributed was substituted to the shares received by the transferor and the business acquired is attributed by the transferee a tax basis equal to that which the assets had in the hands of the transferor prior to the contribution. Such a regime provided for a misalignment between the current values of the assets at the moment of the contribution and their tax basis. Pursuant to Article 7(2) of Law 218/1990 both the transferee and the transferor had to annex to their tax returns a prospectus to record the misalignment of values.

(24) The objectives of Law 218/1990 can be summarised as follows:

(i) permit the public entities exercising a banking activity (essentially retail banking) to transform their legal form into that of a joint-stock company, considered a more appropriate form for a commercial activity;

Asset contributions relative to company reorganisations pursuant to the Merger Directive

(27) By the D.Lgs. No 544 of 30 December 1992 (D.Lgs. 544/1992), Italy transposed in its national legal system the Merger Directive 90/434/EEC⁽⁵⁾. The Merger Directive since its original version covers mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States when the following three requirements are met: (1) the companies must be listed in the Annex to the Directive; (2) the companies must be fiscally resident in a Member State and (3) the company must be subject to one of the national company taxes listed in Article 3(c) of the Directive.

(ii) permit such public banking entities to recapitalise by raising new capital, attract investors and consolidate;

(iii) establish a level playing field between public and private banks by recognising to the latter companies the same tax neutrality privilege previously granted to the sole public banks.

(28) Under the Merger Directive, a transfer of assets is defined as a transaction whereby a company transfers without being dissolved all or one or more branches of its activity to another company in exchange for the transfer of securities representing the capital of the company receiving the transfer (either a newly established subsidiary whose initial capitalisation consists of the transferred shares or an existing company).

(25) Article 7(2) of Law 218/1990 provided that 15 % of the gain realised at the time of the transfers was taxed upon the contributing entity (the local public entity) at the ordinary company tax rate (at the time 52,2 %, including 36 % of company tax IRPEG and 16,2 % of local tax ILOR). The statute provided that the 15 % amount of the gain being taxed could be imputed to

⁽⁵⁾ Council Directive 90/433/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (OJ L 225, 20.8.1990, p. 1).

- (29) The Merger Directive requires the assets transferred to represent a branch of activity, which means all the assets and liabilities of a division of a company that from an organisational point of view constitute an independent business or entity capable of functioning by its own means (Article 2(i) of the Directive). In a recent judgement ⁽⁶⁾, the Court of Justice has clarified that in order to be covered by the Merger Directive a transfer of assets must encompass all the assets and liabilities relating to a branch of activity in their entirety. The Merger Directive requires the consideration for the transfer of assets to consist exclusively of shares, since in contrast to the other transactions such as the mergers, divisions and exchanges of shares covered by the Merger Directive, no cash payment is permitted in the case of the transfer of assets.
- (30) Article 4 of the Merger Directive as cross-referenced by Article 9 provides that no taxes on capital gains may be levied at the transferee company level as a result of a transfer of assets. Capital gains are defined as the full difference between the real values (the fair market value) of the assets and liabilities transferred and their values for tax purposes (tax basis), irrespective of any specific definition of values under domestic laws. The favourable treatment of realised gains pursuant to the Merger Directive dealing with transfers between companies of different Member States is based on a permanent establishment condition, meaning that only the assets that remain in a resident company or are effectively connected with a permanent establishment of the receiving company in the Member State of the transferring company may benefit from the tax deferral provided in Article 4 of the Directive.
- (31) The Merger Directive thus provides a system of tax neutrality or deferral, rather than an exemption, because the Member State of the transferee company retains the right to tax the capital gains realised upon transfer of the assets at the time of their future disposal. In order to remain taxable, the realised gains inherent in the transferred property have to be reflected in the tax accounts of the receiving company. To satisfy this condition, all assets and liabilities transferred must enter the tax accounts of the receiving company at their value immediately prior to the transfer. Therefore the receiving company has to take over the tax basis of the transferring company without benefiting from an option to step up the tax basis to fair market value. Therefore, the transfers of assets that qualify for the preferential treatment under the Merger Directive are in essence similar to those foreseen by Article 1 of Law 218/1990, except that the Merger Directive does not provide any rules for the valuation of the shares received by the transferee company in exchange of assets, while the use of the substituted basis is expressly foreseen by Article 7(2) of Law 218/1990, thus resulting in a system of double misalignment.
- Asset contributions relative to company reorganisations pursuant to D.Lgs. 358/1997*
- (32) As the Merger Directive — transposed in Italy's law by D.Lgs. 544/1992 — only dealt with reorganisations of companies of different Member States, Italy has voluntarily extended the tax neutrality system to domestic reorganisations. By the D.Lgs. No 358 of 8 October 1997 (D.Lgs. 358/1997), Italy provided general tax provisions for company reorganisations in Italy including the transfer of assets relating to contribution of a branch of a business in exchange of shares.
- (33) The general system of taxation of gains deriving from company reorganisations in Italy and more particularly for contributions of assets pursuant to D.Lgs. 358/1997 was indeed based on two alternative optional systems.
- (34) On the one hand, Article 3 of D.Lgs. 358/1997 provided for an optional substitute capital gain tax regime for the contributions of a branch of business or a qualified participation to a recipient company in exchange of its shares. Article 3 first set a discipline to determine the relative gains as the difference between the tax basis of the assets transferred in the hands of the transferor prior to the transfer and either the accounting value attributed by the transferor to the shares received as a result of the contribution or if higher the accounting value attributed by the transferee to the branch of business transferred. Article 3 further provided that the gains could be recognised if a substitute tax of 19 % was paid. Under the new system, the tax bases inclusive of the realised
- ⁽⁶⁾ Judgement of 15 January 2002, Case C-43/00, Andersen of Jensen ApS, [2002] ECR I-00379, point 34 et seq.

gains were recognised as the new values of the assets both for the transferor and the transferee so that no misalignment between tax and accounting values was produced (contributions in accounting neutrality).

(35) On the other hand, Article 4 of D.Lgs. 358/1997 provided that the parties of the transfer could opt for a roll-over relief system comparable to the one available under the Merger Directive. Under this system the contribution of the assets of a branch of business between companies in Italy was fiscally neutral, meaning that the gains realised from the transfer of assets in exchange of shares were not fiscally recognised provided that the tax basis of the business contributed was substituted over to the shares received by the transferor and the assets acquired received the carried-over basis that the assets had in the hands of the transferor (contribution in tax neutrality).

(36) The Italian company tax system eventually underwent a major reform in 2003, at the same time that the realignment scheme of Law 350/2003 entered into force (1 January 2004). The reform was enacted by the D.Lgs. No 344 of 12 December 2003, which for what is of interest of this review provided for:

(i) the abolition of IRPEG (the old company tax) and the introduction of a new company tax (IRES) at the rate of 33 %, with the abolition of the Dual Income Tax consisting of the application of a reduced IRPEG rate of 19 % to the amount of the taxable income reinvested in the company;

(ii) the repeal of the credit imputation system, by which dividends were taxed again when received by the shareholders, but the company tax paid was deducted by imputation of a tax credit, and its replacement with an exemption system applicable to both domestic and foreign dividends;

(iii) the introduction of a participation exemption regime for capital gains deriving from the sale of qualified shareholdings along with the repeal of the possibility to deduct the write-downs of participations held;

(iv) the repeal of the 19 % substitute tax on capital gains arising from company restructuring pursuant to Article 3 of D.Lgs. 358/1997. With the repeal of D.Lgs. 358/1997 by D.Lgs. 344/2003, the tax-neutrality regime for all company reorganisations such as company mergers and divisions was transposed in the amended general tax code Articles 170 to 174 of DPR 917/1986. The contributions of branches of activity and of qualifying shareholdings were not however transposed in the amended tax code, giving rise to a disparity of treatment between contributions of branches which are subject to the scheme of contribution in accounting neutrality pursuant to Article 175 of DPR 917/1986 and other company reorganisations subject to the tax neutrality scheme.

(37) With the tax reform of D.Lgs. 344/2003, all reorganisations between companies of different Member States keep on being governed by the tax-neutrality regime of the Merger Directive based on the option that allowed a contribution in tax neutrality. The option to apply the substitute tax of 19 % pursuant to Article 3 of D.Lgs. 358/1997 was repealed as of 1 January 2004, while the system of determination of capital gains deriving from the contribution of business branches in accounting neutrality was maintained. The optional system of taxation provided by Article 4 of D.Lgs. 358/1997 was also repealed. As a result of the reform, the tax regime of capital gains realised through the sale or contribution of a branch of business is the same as that provided for the sale of the single assets.

(38) In conclusion, as the law stood at the time of Law 350/2003 it was still more convenient from a tax viewpoint to transfer assets by way of an exchange of shares rather than the sale of assets because the sale of qualified participations was exempt (participation exemption), while the disposition of the underlying assets was taxable.

(39) The Commission considered it necessary to describe the framework set by the above described Merger Directive and D.Lgs. 358/1997 with a view to examining the various schemes for companies to revalue or realign the value of their capital assets.

2.4. The realignments under Laws 342/2000, 448/2001 and 350/2003

Banking reorganisations under Law 218/1990

- (40) Law 218/1990 concerned the privatisation by transformation and asset-reorganisations of certain registered public banks (under Article 29 of the Royal Decree No 375 of 12 March 1936, converted into Law No 141 of 7 March 1938) into private joint stock companies to operate in the banking sector (Article 1 of Law 218/1990). Pursuant to Article 7(2) of Law 218/1990, the capital gains realised from the contribution of banking assets were not fiscally recognised to ensure tax neutrality. 15 % of such gains, however, was recognised and subject to the general company tax rate of the time. As a result, the tax base of the assets transferred under Article 7(2) of Law 218/1990 was adjusted upward (realigned) by only 15 %, leaving the remainder 85 % of the gain unrecognised.
- (41) The balance resulting from the difference between, on the one hand, the value of the stocks received and the assets contributed and, on the other hand, the book value of such assets (only realigned by 15 %) was a suspended capital gain. Its tax recognition was deferred until the moment the assets concerned would be sold for cash or the accounting reserve corresponding to the unrecognised balance would be distributed to the company's shareholders as dividends.
- (42) As a result, under the tax accounting of Law 218/1990, the capital gains relative to the assets exchanged in the course of the reorganisations covered by the Law were fiscally unrecognised for 85 % of their economic value. The banking reorganisations in question took place, according to the Italian authorities, between 1990 and 1998. The gains realised at that time were frozen since then and for the following years, with the obligation for the companies concerned to keep track of the misaligned values by specific documents to attach to the annual tax returns.
- (43) Pursuant to Article 17 of Law No 342 of 21 November 2000 ⁽⁷⁾ (Law 342/2000), the companies resulting from the banking reorganisations under Law 218/1990 were allowed to realign the tax bases with the accounting gains realised from the exchange of the assets in such reorganisations and still resulting from the companies' books at the date of 31 December 1999, provided such companies paid a substitute company tax of 19 % on the amount of the gains in lieu of the 42,4 % global tax rate of the time (including 37 % company tax and 5,4 % local business tax). The realignment was limited to the initial 85 % unrecognised or suspended gain.
- (44) By payment of the 19 % capital gain tax, both the companies holding the banking assets, and the companies holding the stock of the companies in question could realign their tax bases, respectively, of the assets and of the stocks concerned. In case the stocks had been contributed or exchanged with other companies without cash realisation, such latter companies could also realign the value of the stocks exchanged.
- (45) The capital gain tax was however reduced to 15 % (in lieu of the 19 % substitute tax), if the banking company elected to only realign the tax value of its assets, rather than both the value of the assets and of the stock. In this case, the sole beneficiaries of the realignment scheme were the banking companies holding the assets exchanged *ab origine*.
- (46) As a result of the capital gain tax payment, the beneficiaries eventually release the gains realised at the time of the original transactions (and held as non-distributable profit reserves) and may distribute them to shareholders as dividends.
- (47) In parallel to the realignment of the assets and shares exchanged in the described banking reorganisations, Article 19 of Law 342/2000 provided that the same substitute capital gain tax could be paid by the companies willing to realign the tax bases of the assets and shares held following any other company reorganisations which benefited from the tax neutrality regime pursuant to the said D.Lgs. 358/1997.
- (48) The latter parallel scheme of Article 19 (providing substitute capital gain taxes of 19 % and 15 % on assets and shares realignments) effectively equalised the recognition of gains resulting from tax realignments relative to the company reorganisations carried out under D.Lgs. 358/1997 with those made by banks under the Law 218/1990.

Realignments under Law 342/2000

⁽⁷⁾ Official Journal of the Italian Republic No 276 of 21.11.2000.

- (49) Moreover, Article 20 of Law 342/2000 provided detailed rules for the substitute capital gain tax to be paid and for the tax credit relative to such tax in favour of the shareholders receiving dividends resulting from the capital gains recognised.

Realignments pursuant to Law 448/2001

- (50) Law No 448 of 28 December 2001 (Law 448/2001) extended the time scope of the realignment schemes provided by Law 342/2000 with respect to assets resulting from the balance sheet of a company and whose value had not yet been realigned.

- (51) Article 3(11) of Law 448/2001 provided that the realignment scheme under Articles from 17 to 20 of Law 342/2000 would apply to unrecognised gains relative both to the assets and shares deriving from the banking reorganisations pursuant to Law 218/1990 and to the assets deriving from other reorganisations under Legislative Decree No 358/1997, still held at the date of 31 December 2001. Law 448/2001 provided that the substitute taxes due on the gains recognised were set at 12 % and 9 % respectively for dual realignments (realignment of both the assets held by the operating company and the stocks received by the participating company) and single realignment (only the assets held by the operating company are realigned) in lieu of the company tax of 41 % applicable at the time of the realignment (36 % company tax plus 5 % local business tax).

Realignments under Law 350/2003

- (52) Finally, Article 2(26) of Law 350/2003 provided that the realignment scheme foreseen by Article 17 of Law 342/2000 could also apply to the realised but unrecognised gains relative to the assets concerned with the banking reorganisations pursuant to Law 218/1990, still resulting from the company's accounting at the date of 31 December 2003. Law 350/2003 provided that the substitute capital gain taxes on the realignments of such gains were 12 % and 9 %, respectively for dual realignments (realignment of both the assets held by the banking company and the stocks received by the banking holding) and single realignment (only the

assets held by the banking company are realigned). Article 26 of Law 350/2003, however, did not foresee any other asset realignments relative to general company reorganisations under D.Lgs. 358/1997.

- (53) In particular, pursuant to Article 2(26) of Law 350/2003, the historic gains realised under Law 218/1990 with respect to the contributions of banking assets to newly created or existing private banks in exchange for the stocks of such banks could be fiscally recognised by payment of a substitute capital gain tax under the preferential tax rates of 12 % or 9 % in lieu of the company tax of 37,25 % of the time (33 % company tax plus 4,25 % local business tax). Law 350/2003 also provided that the substitute tax was payable in three instalments (50 % in 2004, 25 % in 2005 and 25 % in 2006), without interest.

- (54) According to the information provided by the Italian authorities, nine banking groups realigned their assets pursuant to Article 26(26) of Law 350/2003, by payment of the substitute capital gain tax of 9 % (single realignment). The global capital gains thereto recognised totalled over EUR 2 059 millions. The nine beneficiaries borne a substitute tax of EUR 180 615 534. To compute the effective equivalent of the tax for State aid purposes, the instalments payable in 2005 and 2006 shall be compounded by the applicable 3,7 % reference rate for the recovery of unlawful aid provided under the Commission Regulation (EC) No 794/2004⁽⁸⁾. The tax effectively incurred accordingly amounts to EUR 185 505 996⁽⁹⁾, which is the term of reference to compute the eventual aid grant equivalent.

Revaluations under Law 350/2003

- (55) Article 2(25) of Law 350/2003 provided that all taxable companies may revalue the tax bases of their assets existing at the date of 31 December 2002 to mark them to their market value of the time, by payment of a substitute tax of 19 % in case of revaluation of depreciable assets and 15 % in case of non-depreciable assets, payable in three instalments (50 % in 2004, 25 % in 2005 and 25 % in 2006).

⁽⁸⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (Chapter V — Interest rate for the recovery of unlawful aid) (OJ L 140, 30.4.2004, p. 1).

⁽⁹⁾ The amounts paid are: (a) EUR 92 760 506 in 2004; (b) EUR 46 380 253 payable in 2005, corresponding to a net present value of EUR 44 725 412 in 2004; and (c) EUR 46 380 253 payable in 2006, corresponding to a net present value of EUR 43 129 616,9 in 2004.

(56) As indicated above, revaluations are extraordinary operations which are occasionally allowed by special tax regulations to reconcile the historic value of assets with their current value. A tax revaluation is distinct from a realignment, because in the revaluation the tax base of the assets held by a company may be stepped up to the current market value at the time of the revaluation, while in a realignment the fiscal gain recognised is capped at the value realised at the time of a prior realisation event as for example a reorganisation.

3. GROUNDS FOR INITIATING THE PROCEDURE

(57) By its decision of 30 May 2007⁽¹⁰⁾, the Commission initiated the formal investigation procedure laid down in Article 88(2) of the EC Treaty on the tax realignment scheme provided for by Article 2(26) of Law 350/2003 because it appeared to fulfil all the conditions to be considered State aid within the meaning of Article 87(1) EC and there were doubts about its compatibility with the common market as none of the exceptions provided for in Articles 87(2) and (3) seemed applicable.

(58) In particular, the Commission considered that Article 2(26) of Law 350/2003 provided a financial advantage represented by the difference between the tax effectively paid in 2004 to realign the value of the assets and the tax which would have been normally borne if the same realignment would have been made in the absence of the same Article 2(26) of Law 350/2003. The effective tax rate applicable in 2004 on such gains would have been 37,25 % (including 33 % company tax and 4,25 % local business tax), while the substitute tax effectively paid was 9 %. The Commission further considered that, under Law 350/2003, the substitute tax was payable in three instalments (50 % in 2004, 25 % in 2005 and 25 % in 2006) without interests, while the tax which would have ordinarily be applied in the absence of Article 2(26) of Law 350/2003 would have been payable in 2004. The Commission has computed that the grant equivalent value of the tax effectively paid by the nine beneficiaries of the scheme in review was EUR 185 505 996, while the tax ordinarily due would have been EUR 771 991 022 (37,25 % of the realised gain totalling over EUR 2 059 millions). The difference between the tax ordinarily payable and the tax paid thus amounted to EUR 586 485 026.

(59) The Commission also considered that while the beneficial tax realignments obtained under the abovementioned Laws 342/2000 and 448/2001 constituted general measures to ensure equitable taxation of the gains realised, the realignment provided for by Article 2(26) of Law 350/2003 was only limited to the banks concerned with the reorganisations governed by Law 218/1990, and therefore could not be considered a general measure, nor did it ensure neutrality of treatment between the capital gains concerned and those realised from comparable company reorganisations. The Commission also held that the fact that certain Italian banks had cleared their suspended tax liabilities relative to unrecognised capital gains in their balance-sheets at a nominal tax cost was susceptible to increase their attractiveness as potential company targets and could have distorted the market of banking acquisitions.

(60) The Commission concluded that the scheme in review could represent incompatible State aid and accordingly opened the procedure laid down in Article 88(2) of the EC Treaty. The Commission warned that should it conclude at the closing of the abovementioned procedure that the scheme in review is incompatible State aid, recovery would have to take place in accordance with Article 14 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⁽¹¹⁾. The Commission considered, however, that in the light of its past practice regarding certain fiscal aid schemes⁽¹²⁾, recovery should only concern the taxes paid in defect of what a beneficiary of the scheme would have paid had the beneficiary applied other tax schemes available at that time, provided this did not lead to reconstruct merely hypothetical choices which could have been made by the beneficiary concerned⁽¹³⁾. The Commission invited the Italian authorities and interested parties to comment on the question whether recovery should take place with sole respect to the difference between the tax which would have been paid under the revaluation scheme foresee by Article 2(25) of Law 350/2003 and the substitute tax effectively paid by the beneficiary banks pursuant to the realignment scheme of Article 2(26) of the said Law 350/2003.

⁽¹¹⁾ OJ L 83, 27.3.1999, p. 1.

⁽¹²⁾ See Section VI of the Commission Decision 2006/748/EC of 4 July 2006 on State aid No C 30/04 (ex NN 34/04) implemented by Portugal exempting from corporation tax on capital gains certain operations/transactions by public undertakings (OJ L 307, 7.11.2006, p. 219).

⁽¹³⁾ See points 113 to 119 of the Judgement of the Court of 15 December 2005, Case C-148/04, Unicredito Italiano.

⁽¹⁰⁾ Cf. footnote 1.

4. COMMENTS BY ITALY

- (61) By their submissions, the Italian authorities have essentially (a) rejected the State aid qualification of the scheme in review, and (b) observed in suborder that the possible advantage effectively granted was much less than the one provisionally calculated by the Commission and was *de minimis*.
- (62) In particular, Italy argues that Article 2(25) of Law 350/2003 would have implicitly allowed all companies having taken part to company reorganisations to benefit from the possibility to realign the value of their assets. This general realignment scheme was made available by an implicit reference of Article 2(25) to Article 14 of Law 342/2000, providing the recognition of gains suspended following tax neutral reorganisations and therefore covered all misalignments resulting from the company reorganisations carried out under D.Lgs. 358/1977.
- (63) For Italy, this general realignment could be effectuated by payment of a substitute tax of 19 % in case of revaluation of depreciable assets and 15 % in case of non-depreciable assets in three instalments (50 % in 2004, 25 % in 2005 and 25 % in 2006) pursuant to Article 12 of Law 342/2000. Thus, for Italy the regime provided by Article 2(26) would have to be appraised against this implicit realignment scheme set forth by Article 14 of Law 342/2000 rather than the general company tax revaluation system offered by Article 2(25) of Law 359/2003 as alleged by the Commission. Both the implicit realignment and the explicit revaluation schemes would have provided for the same substitute taxes of 19 % and 15 % as described. Unlike what the Commission alleged in its opening of the formal investigation procedure however, the possible advantage resulting from by Article 2(26) of Law 350/2003 would, according to Italy, only amount to the difference between the substitute tax of 9 % paid by the beneficiary banks on their unrecognised gains and the tax of 15 % payable on the same possible gains of all the other companies eligible to realign their asset values. This difference would have to be further discounted by the fact that the beneficiary banks had paid a relatively higher tax on 15 % of their initial gains realised as opposed to all other companies which could have opted for the full tax neutrality under D.Lgs. 358/1977.
- (64) Italy further considers that the realignments provided for the gains resulting from the banking reorganisations made under Law 218/1990 are not comparable to all other measures for recognition of gains: first because the banking reorganisations in question were ontologically unique and not comparable to other reorganisations; second, because the tax measure devised to defer the recognition of the realised gains was specific to such reorganisations in that it provided a partial tax neutrality regime for both the transferor and the transferee entities.
- (65) As to the uniqueness of the banking reorganisations, Italy maintains that the measure only concerned certain banking reorganisations carried out between 22 August 1990 and 31 December 1995, mainly aimed at privatising the public banking sector in Italy. The joint stock company form was considered the most optimal business form for Italian public banks to ensure the formation of private banking groups in Italy and promoting a level playing field with other banks in the common market. Under Law 218/1990, the stocks of the former-public banks following their reorganisations were either attributed directly to State holding companies where the public ownership was predominant or to newly created banking or pre-existing private (banking) foundations where public ownership was spread among different local governments. Both the State and the foundation holdings were entrusted to temporarily manage and progressively sell the stocks of the newly created companies on the market to allow the consolidation of the banking sector and formation of banking groups in Italy.

- (66) As to the special nature of the tax neutral regime for such banking reorganisations, this was justified by the fact that at that time there was no general scheme to ensure neutrality of company reorganisations and contributions of business branches. The legislator intended to facilitate the privatisation of certain publicly-held banks by way of their restructuring and change of their business form into stock companies privately held, while avoiding to provide unnecessary advantages to such banks. To prevent competition distortions vis-à-vis other private banks, the Italian legislator provided for (a) partial tax neutrality for both the transferor and the transferee entities (15 % of the realised gain was fiscally recognised and taxed at the ordinary rate of 52,2 % at the time), (b) the provision of special tax-suspended reserves for unrecognised gains, and (c) the opening of the same partial tax-neutrality regime to the reorganisations of non-public banks to ensure an equal tax treatment of company reorganisations to which both the public and private banks were permitted to participate.
- (67) The Italian authorities consider that the Commission's conclusions that the tax neutrality regimes, provided by both Law 218/1990 and D.Lgs. 358/1999 were not State aid because they are justified by the logic of the tax system are correct (point (30) of the Decision opening the formal investigation procedure). Italy further considers that if such conclusions are correct, the tax realignment regime of Article 2(26) of Law 350/2003 should also be considered as not being State aid as this was the necessary completion of the partial tax-neutrality regime provided by Article 7(2) of Law 218/1990 and in view of the special nature of such banking reorganisations.
- (68) Italy stresses that the sole gains that could be realigned were the remainder of the historical gains resulting from the original reorganisations carried out between 22 August 1990 and 31 December 1995, following the taxable recognition of 15 % of the gains. For such gains, which are not new but have been realised in such prior years, the application of a reduced substitute tax would be fully justified by the specific nature of the revenues in question, and more particularly by the special nature of the banking reorganisations under Law 218/2000 for which a tax of 52,2 % on 15 % of the realised gains was paid. If one averages the 52,2 % tax rate applied with the 9 % and 12 % substitute taxes foreseen by Article 2(26) of Law 350/2003 on the remaining 85 % of the gain the comprehensive rate applied would have ranged between 15,48 % and 17,85 %. For Italy, such rates would be effectively comparable to the rates of 15 % and 19 % applicable under the implicit realignment scheme provided by Law 350/2003, respectively for depreciable and non-depreciable assets of all companies.
- (69) Furthermore, Italy considers that the realignment scheme of Article 2(26) of Law 350/2003 was less flexible as it provided to opt for the realignment of all the remaining gains resulting from the historic reorganisation, while the implicit realignment scheme of Article 2(25) provided for the possibility to realign the single assets registering an inherent gain. For Italy, this flexibility would be highly valuable for the beneficiary companies as these could have opted to realign the sole assets being depreciable and not those whose sale gave rise to non-exempt gains. For example, the sale of qualified shareholdings under the participation exemption scheme is 95 % exempt as of 1 January 2004 and therefore it would not be convenient for a company to pay the tax to recognise gains relative to assets which would in any event be almost fully tax exempt. This is not an anodyne difference, for Italy, as many of the assets historically contributed to the newly formed banking companies in the '90s consisted of company participations being exempt following the above-described 2003 tax reform.
- (70) Finally, Italy considers that even if the Commission should conclude that the tax rate paid under Article 2(26) of Law 350/2003 was more favourable than the one which would have been paid under the 'general' realignment scheme under Article 2(25) of the same Law, the concrete difference would be minimal and should be considered as *de minimis* aid.

5. COMMENTS BY INTERESTED PARTIES

(71) In their submissions, the interested parties have presented several arguments to reject the State aid qualification of the tax realignment scheme in review. They argued that it would be a technical tax measure aimed at addressing a specific situation, namely that of the realignment of certain unrecognised tax values relative to assets exchanged upon certain company reorganisations in the banking sector, and that it would not even provide an advantage to the banking groups concerned because it would in fact result in the payment of extra charges, which are not normally due by other companies having taken part to comparable reorganisations under the applicable general tax-neutrality scheme provided for by D.Lgs. 358/1997 and the Merger Directive.

(72) The interested parties in essence claim that the scheme in review is not selective because it is justified by the specificities of the banking sector and more particularly by the specificities of the banking restructurings in Italy. The Commission would have already considered the partial tax-neutrality scheme foreseen by Law 218/1990 as compatible with the common market in its prior practice, such as, for example, its Decision 2002/581/EC of 11 December 2001 on the tax measures for banks and banking foundations implemented by Italy⁽¹⁴⁾, which further refers to its Notice opening the formal investigation procedure on the aid granted by Italy to *Banco di Napoli*⁽¹⁵⁾.

(73) The interested parties also claim that there would be no specific advantage in favour of the restructured banks, should one compare the substitute tax paid to realign their gains and the tax payable by other companies having undergone similar tax-neutral reorganisations. The different tax rates applied in 2003 to the restructured banks as opposed to other companies can be explained by the different tax regimes for the two sets of restructurings. The parties observed that while the unrecognised gains resulting from the D.Lgs. 358/1997

restructurings were 'freely distributable gains' in that such gains could be distributed to shareholders without further company taxation, the gains realised under Law 218/1990 were 'suspended' for both the transferee and the transferor companies until such gains would have been distributed to respective shareholders.

(74) The different tax regimes of the realised gains resulting from the two situations would have been interpretatively confirmed by the *Risoluzione* No 82/2000 of the Italian Ministry of Finance⁽¹⁶⁾, whereby the tax administration would have recognised that the difference between the fair market value of a contributed branch and its tax basis did not give rise to a taxable gain, under the contribution in tax neutrality regime, provided that the tax bases of both the transferor and the transferee were not stepped up to the fair value. The *Risoluzione* would have further stated *in fine* that the difference realised from the transfer of the branch had a mere accounting relevance until the assets included in the branch are effectively sold and thus the 'suspended gain' was distributable to shareholders without any company tax. On the other hand, the accounting difference resulting from a partial tax-neutral contribution following the bank restructurings in question is, pursuant to Article 7(2) of Law 218/1990, expressly taxed not only if the assets are sold but also if the gain is distributed.

(75) According to the comments received from interested parties, the fact that the tax rates set under Laws 342/2000 and 448/2001 for gain realignments in 2000 and 2001 were the same for banks and other company restructurings while in 2003 the tax rates were apparently more advantageous for the banks can be explained by the change introduced by the Italian company tax reform enacted in 2003 with the replacement of the tax imputation system with the 95 % exemption system to avoid double economic taxation of dividends.

⁽¹⁴⁾ Cf. point 32 of the Decision (OJ L 184, 13.7.2002, p. 27)

⁽¹⁵⁾ Cf. point 3.2.1 of the Decision (OJ C 328, 1.11.1996, p. 23).

⁽¹⁶⁾ *Risoluzione* No 82/E-67004 of 6 June 2000, in the tax database of the Italian Ministry of Finance: <http://dt.finanze.it/doctrib/PDF/Documento.pdf?Request=0&DocumentID=14000008220000606FIN110000006700400&Info=1,0,0>

(76) According to the comments received from interested parties, the restructured companies (unlike the restructured banks) could have distributed their historical gains without payment of any company tax. Under the imputation system applicable until 31 December 2003, however, the relative dividends would have been taxable at the level of the beneficiary-shareholder. In case a substitute company tax was imposed to recognise such gains (like in the case of the tax realignment schemes of 2000 and 2001), the tax paid would have been credited against the tax payable by the shareholder upon receipt of the dividend. Thus, under the old imputation system, the shareholder-level tax would have in any event absorbed the company tax possibly paid and therefore would have equalised the tax treatment of any realignment schemes. This would have justified the same substitute tax rate applicable to both restructured banks and other reorganised companies at that time.

(77) The situation would have substantively changed after 31 December 2003 with the 95 %-dividend exemption system applicable to gains being further distributed as dividends. As of 2004, the tax on the gains realised from company reorganisations and further distributed as dividends would have been only applicable on 5 % of the gain distributed as dividend, with the latter being the only tax applicable (in the absence of any substitute tax), while the ordinary company tax rate would have applied to the gains of the reorganised banks in case distributed (also in the absence of any substitute tax). To correct this difference of treatment, the legislator would have provided the nominal substitute tax rate set forth by Article 2(26) of Law 350/2003 to recognise the gains suspended with sole respect of the reorganised banks in question, while excluding the gains suspended under D.Lgs. 358/1997 because they were less severely taxed upon distribution (95 % excluded from taxation at the level of the recipient).

(78) In sum, according to interested parties, the 2003 tax realignment scheme did not provide an advantage to the restructured banks but it was a measure to readjust the disparity between the considerably harsher tax realignment regime of restructured banks under Law 218/1990 and the more generous regime of gains

distributed by reorganised companies under the general regime of D.Lgs. 358/1997.

(79) Finally, the interested parties have subordinately suggested that even if the Commission were to conclude that the tax realignment scheme of Article 2(26) of Law 350/2003 provided a specific advantage only of the banks having taken part to the restructurings under Law 218/1990, the advantage would not amount to that preliminarily identified by the Commission. The advantage would in fact only consist in the difference between the realignment tax paid and the distinct tax payable to revalue single depreciable or non-depreciable assets pursuant to Article 2(25) of Law 350/2003. Such difference would total a fraction of the tax on the revaluation made and should even be reduced by the tax in excess paid to realign assets that do not give rise to taxable gains if sold (assets the transfer of which gives rise to exempt capital gains).

6. ASSESSMENT

6.1. State aid within the meaning of Article 87(1) of the EC Treaty

(80) Under the settled case law of the Court⁽¹⁷⁾, to be considered State aid, a measure must fulfil all the criteria set by Article 87(1) of the EC Treaty; that is the measure must be granted by the State or through State resources, provide an advantage selectively favouring certain undertakings or productions without there being a justification deriving from the logic of the tax scheme, distort or threaten to distort competition and affect trade.

State resources

(81) The Commission considers that the scheme in review is clearly financed through State resources as the payment of a nominal substitute tax in lieu of the ordinary company tax on the gains recognised by effect of Article 2(26) of Law 350/2003 amounts to a relief from the company tax that should have been paid, at the expense of the State treasury.

⁽¹⁷⁾ Cf., *inter alia*, the judgement of the Court of 10 January 2006, Case C-222/04, *Fondazione Cassa di Risparmio di San Miniato*, point 129.

Presence of a selective advantage

(82) The Italian authorities and the interested parties have observed that, in its prior Decisions 2000/600/EC⁽¹⁸⁾ on the conditional approval of the aid granted by Italy to the public banks *Banco di Sicilia* and *Sicilcassa*, and 1999/288/EC⁽¹⁹⁾ on the conditional approval of the aid granted by Italy to *Banco di Napoli*, the Commission would have examined and approved the partial tax-neutrality scheme of Law 218/1990 because it concluded that the measure did not constitute State aid. For this reason, the scheme in review would also not constitute State aid as it would be the natural outcome of the tax suspension scheme set forth by Law 218/1990.

(83) The Commission considers that Article 7(2) of Law 218/1990 provided that the transfers of assets and stocks effected in the context of the banking reorganisations in question were treated as partially tax neutral. This implied the partial non-recognition of gains realised from the transfer of the banking branches both for the transferor and the transferee entities, provided that the assets composing the transferred branch take the same tax basis they had in the hands of the transferor (carried-over basis) and the stock received by the transferor takes the same basis of the assets transferred (substituted basis).

(84) Under that regime, since there was no step-up in the tax bases of the assets and stocks exchanged, there was no tax advantage granted to the reorganising parties and the taxation of the gain realised from the transfer was only temporarily deferred for future recognition (such as the sale of the assets by the transferee or the stocks by the transferor). As there was no basis step-up both for the transferor and of the transferee, there was no aid resulting from deferring the company-level gain recognition.

(85) This tax deferral under the regime of Law 218/1990 was indeed consistent with the founding principles of company taxation according to which income taxation

is applied to all revenues and gains realised by any company, and the realised gains were not recognised because there was no corresponding stepped-up tax basis for the assets concerned, so that taxation could still take place at a later stage.

(86) In the light of the foregoing, the Commission confirms the initial assessment made in its Decision opening the formal investigation procedure that both (a) the non-recognition of 85 % of the capital gains realised in the transactions governed by Law 218/1990, and (b) the non-recognition of the gains realised in the transactions governed by D.Lgs. 358/1997 are not State aid because the fiscal values of the assets exchanged remained unaltered⁽²⁰⁾, so that the fiscal gains did not materialise and no tax advantage was in conclusion granted. As the realised gains were frozen, the relative earnings could not be distributed, nor could the correspondingly increased value of the assets be depreciated, amortised or otherwise deducted from the taxable income of the companies resulting from such transactions. The Commission therefore concludes that the tax neutrality was justified by the inherent logic of the tax system and does not constitute State aid.

(87) By contrast, the tax realignment scheme foreseen by Article 2(26) of Law 350/2003 gave right to basis step-up, for which the ordinary company tax would have been paid, should a special substitute tax payable like the one in review not have been available. The Commission understands that to facilitate the taxation of capital gains, the national legislator may apply a substitute tax at a more convenient rate than the ordinary tax. Since the tax on disposition is generally paid up front but the tax benefits of the stepped-up basis in the assets being transferred arise over time through their periodic depreciation or at the time of disposition of the assets, ordinary taxation of such gains would generally lead to an increase in the net aggregate tax of the transferor-company and the transferee-company. Thus, a lower substitute tax on the gains realised from company reorganisations could be justified in principle as a technical measure to facilitate capital gain recognition.

⁽¹⁸⁾ OJ L 256, 10.10.2000, p. 21.

⁽¹⁹⁾ OJ L 116, 4.5.1999, p. 36.

⁽²⁰⁾ Or if the realised value was recognised, it was subject to tax as in the case of the 15 % gain recognised in the transactions governed by Law 218/1990.

- (88) Such a favourable tax realignment may however only be justified if it is objectively open to all similar recognitions of capital gains, such as those resulting from other reorganisations not covered by Law 218/1990 including those relating to other banks.
- (89) The Commission considers that the realignments provided for by Laws 342/2000 and 448/2001 allowed the undertakings concerned with the reorganisations governed by both Law 218/1990 and Legislative Decree 358/1997 to recognise the historical gains realised by payment of a substitute tax set at the same level for all the undertakings concerned. The Commission therefore concludes that the possibility to realign was a general tax measure and the reduced substitute tax as opposed to the ordinary company tax applicable at the time did not provide any competitive advantage to the companies in question because it was applied under identical conditions to all undertakings choosing to recognise the historical gains realised but temporarily non-recognised under the relevant provisions of Law 218/1990 or Legislative Decree 358/1997. The Commission therefore concludes that such realignments are general measures justified by the logic of the tax system and do not constitute State aid.
- (90) By contrast the Commission considers that the tax realignment foreseen by Article 2(26) of Law 350/2003 was not a general measure because it was only applicable to the capital gains derived by certain banks from the reorganisations effected under Law 218/1990.
- (91) The Commission considers in particular that the tax scheme in review provided an advantage represented by the difference between the tax effectively paid to realign the value of the assets and the tax which would have been normally paid if the same realignment would have been made in the absence of the same Article 2(26) of Law 350/2003. The effective tax rate applicable in 2004 on such gains would have been 37,25 % (including 33 % company tax and 4,25 % local business tax), while the substitute tax effectively paid was 9 % (excluding the allowance for deferred payments).
- (92) The Commission further considers that, under Law 350/2003, the substitute tax was payable in three instalments (50 % in 2004, 25 % in 2005 and 25 % in 2006) without interests, while the tax which would ordinarily have been applied in the absence of Article 2(26) of Law 350/2003 would have been payable in 2004. The Commission therefore notes that the grant equivalent value of the tax effectively paid by the nine beneficiaries of the scheme in review was EUR 185 505 996, while the tax ordinarily payable would have been EUR 771 991 022 (37,25 % of the realised gain totalling over EUR 2 059 millions). As a result, the difference between the tax ordinarily payable and the tax paid amounts to EUR 586 485 026.
- (93) The Commission considers that the above advantage was effectively limited to the sole banks concerned with the transactions governed by Law 218/1990, while other banks and other companies concerned with equivalent transactions governed by D.Lgs. 358/1997 could not benefit from the same tax realignment scheme and its favourable conditions.
- (94) The Italian authorities and the interested parties have observed that none of the nine beneficiaries of the scheme would have ever accepted to realign the value of their assets had they known that they would have been subject to the ordinary company tax on the gains so recognised. Furthermore, as explained by the Italian authorities, the other companies not concerned by the reorganisations effected under Law 218/1990 would have benefited from the implicit tax realignment scheme of Article 2(25) of Law 350/2003 at the substantively equivalent conditions generally set by Article 17 of Law 342/2000.
- (95) For the Italian authorities and the interested parties, to rightly compute the advantage in question, account should be taken of the taxes paid at the time of the initial contributions at a global tax rate of over 40 %. The combined effective taxation on the capital gains in question in 1990 and 2004 would have largely exceeded the general rate for realignments applied in 2000 and therefore there would be no advantage.

- (96) The Commission maintains however that the scheme provided for by Article 2(25) of Law 350/2003 was not a tax realignment of values misaligned following tax neutral reorganisations but rather a tax revaluation scheme which permitted to realise the hidden gains deriving from the adjustment of the tax value of the assets held by the beneficiary companies to their current value. The Commission considers that the two schemes are not comparable, nor was the tax revaluation scheme of Article 2(25) of Law 350/2003 equivalent to the tax realignment provided for by Article 2(26) of Law 350/2003, considering the difference between the statutory substitute tax rates foreseen by the two schemes.
- (97) The Commission therefore concludes that the companies having realigned the tax bases of their assets pursuant to Article 2(26) of Law 350/2003 benefited from a specific tax advantage consisting in the difference between the ordinary tax rate on the gains recognised and the special substitute tax on the same gains.
- (98) The interested parties have objected that the lower substitute tax rate used by Article 2(26) of Law 350/2003 was not selective because it was justified by the legal and factual specificities of the taxation of the capital gains resulting from the reorganisations effected under Law 218/1990. Furthermore, they argued that Italy would not have been entitled to recognise these gains as taxable after so many years under the same conditions applicable to the capital gains resulting from other company reorganisations.
- (99) The Commission takes note of the fact that the reorganisations effected under Law 218/1990 provided specific conditions and provision to defer the fiscal recognition of the gains realised following such reorganisations, as also indicated by the said *Risoluzione*. It nonetheless considers that the partial tax neutrality regime provided by Law 218/1990 was in essence equivalent to the full tax neutrality regime provided by D.Lgs. 358/1997, as to the capital gains realised but not fiscally recognised. Since the two situations were indeed comparable they should have been treated alike when the legislator in 2003 provided for the fiscal recognition of the suspended gains.
- (100) The Commission further considers that the lower tax rate applied did not merely offset the harsher tax treatment of distributions to shareholders of the gains deriving from the banking restructurings of Law 218/1990 vis-à-vis the distributions of the gains relating to other tax-neutral reorganisations in the case of the distribution of the capital gains to shareholders, as indicated by the said *Risoluzione*. This view cannot be followed because the application of different substitute taxes to capital gains cannot always be imputed to a distribution of the capital gains suspended. The Commission considers that accepting this justification would effectively result into allowing the application of different effective company tax rates to some companies solely because these took part to certain types of reorganisations preferred by the State.
- (101) The Commission considers that the tax advantage resulting from the application of the tax realignment scheme foreseen by Article 2(26) of Law 350/2003 was not *de-minimis*. In determining the presence of an aid, the Commission shall indeed compare the nominal taxation applied under the scheme in review and the tax which would have been applied had the scheme in review not been available, and had the beneficiary banks stepped-up the tax bases of their assets and distributed the capital gains resulting from such fiscal realignments to their shareholders.
- (102) Furthermore the Commission considers that the alleged reduced amount of an advantage may not per se be sufficient to exclude its aid character. The Commission also notes that the *de minimis* exclusion provided by the Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid⁽²¹⁾ cannot be invoked because the measure gives rise to non-transparent aid as postulated by the Regulation and because the Italian authorities have not complied with the conditions of this Regulation.

⁽²¹⁾ OJ L 379, 28.12.2006, p. 5.

Justification by the Nature of the Scheme

(103) The Italian authorities and the interested parties have observed that the realignment scheme provided by Article 2(26) of Law 350/2003 would be justified by the peculiarities of the banking sector and for this reason it would not be State aid.

(104) Under the case law of the Court, a tax measure is specific only if it unreasonably discriminates between situations being legally and factually comparable in the light of the objectives set by the tax system⁽²²⁾ and 'the fact that undertakings are treated differently does not automatically imply the existence of an advantage for the purposes of Article 92(1) of the Treaty'⁽²³⁾.

(105) The Commission considers, however, that the scheme under examination does not seem to represent an adaptation of the general system to the distinctive features of banking, but, rather, a specific advantage having the effect of improving the competitiveness of certain undertakings, i.e. the banks concerned with certain reorganisations.

(106) The Italian authorities also argue that the scheme would be a mere repetition of the scheme enacted under Law 342/2000 which did not involve State aid as it applied to realised gains deriving from all company restructurings. The scheme under the Law 350/2003 should be compared to the one foreseen by the Law 342/2000 and would not provide any possible additional advantage. As illustrated above, the Commission disagrees with this opinion, because the realignment under Law 350/2003 has a more limited scope than the general realignment under Law 342/2000.

(107) In the light of the foregoing, the Commission concludes that the advantage granted to certain banks, consisting in the special substitute tax for the gains realised from certain contributions of assets in lieu of the ordinary tax rate, under the Law 218/1990 is specific and not justified by the nature of the tax system.

Distortion of competition and effect on trade between Member States

(108) Under the settled case law of the Court⁽²⁴⁾, for a State measure to distort competition it is sufficient that the

recipient of the aid competes with other undertakings on markets open to competition. Furthermore, a measure affects intra-Community trade when the financial aid received from the State strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade⁽²⁵⁾.

(109) The Commission considers that the considerable amount of the aid has strengthened the financial position of its beneficiaries belonging to the banking sector and competing on the liberalised market of financial services being open to competition with other undertakings being active in providing intra-Community services.

(110) The Commission further considers that the advantage granted in favour of the banks in question is also susceptible to distort competition in the current context characterised by consolidation opportunities in the Italian banking sector. The fact that certain Italian banks have eliminated their tax liabilities inherent to hidden gains in their assets at a nominal tax cost is susceptible to increase the attractiveness of such banks and their economic value both for investors and company acquirers. The Commission considers that the advantage provided by the tax scheme in review is susceptible of unduly altering the market for company acquisitions in the banking sector in Italy.

6.2. Compatibility

(111) Insofar as the scheme in review constitutes State aid within the meaning of Article 87(1) EC, its compatibility must be evaluated in the light of the exceptions provided for in Articles 87(2) and 87(3) EC. The Italian authorities or the interested parties have advanced no arguments to show that any of the above exceptions are applicable in this case.

(112) The exceptions provided for by Article 87(2) EC, concerning aid of a social character granted to individual consumers, aid to make good the damage caused by natural disasters or exceptional occurrences and aid granted to certain areas of the Federal Republic of Germany, do not apply in this case.

⁽²²⁾ Judgement of 8 November 2001, Case C-143/99, *Adria-Wien Pipeline GmbH and Wietersdorfer & Peggauer Zementwerke GmbH v Finanzlandesdirektion für Kärnten*, [2001] ECR I-8365.

⁽²³⁾ Judgement of 22 November 2001, Case C-53/00, *Ferring v ACOSS*, [2001] ECR I-9067.

⁽²⁴⁾ Judgement of the Court of First Instance in Case T-214/95 *Het Vlaamse Gewest v Commission*, [1998] ECR II-717.

⁽²⁵⁾ Judgement of the Court of Justice in Case 730/79, *Philip Morris v Commission*, [1980] ECR 2671, paragraph 11.

(113) The exception provided for in Article 87(3)(a) EC provides for the authorisation of aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious under-employment, but does not apply in this case as the aid does not favour economic development in such regions in Italy.

(114) The scheme cannot be considered either as a project of common European interest or to remedy a serious disturbance in the economy of a Member State, as provided for by Article 87(3)(b) EC, nor does it have as its object the promotion of culture and heritage conservation as provided for by Article 87(3)(d) EC.

(115) Finally, the scheme must be examined in the light of Article 87(3)(c), which provides for the authorisation of aid 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 that is contrary to the common interest. In this respect, it should first be noted that the aid in question does not fall under any of the frameworks or guidelines which define the conditions to consider certain types of aid compatible with the common market. In particular, it is not in line with the Community guidelines on State aid for rescuing and restructuring firms in difficulties in force at the time ⁽²⁶⁾. Second, since the tax advantage was granted retrospectively in respect of transactions which have already taken place, it cannot be considered to contain the necessary incentive effects to deem such an exception applicable.

(116) The Commission rather considers that the tax scheme in question results in a mitigation of the charges which should have been borne by the beneficiary banks in similar reorganisations and must therefore be considered to be operating aid. Such aid cannot be held compatible with the common market as it does not facilitate the development of any activities or economic areas and it is not limited in time, degressive or proportionate to what is necessary to remedy specific economic handicaps.

(117) The Commission concludes that the scheme in review is incompatible with the common market.

6.3. Recovery

(118) As the scheme was enacted without prior Commission approval, recovery should take place in accordance with Article 14 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 ⁽²⁷⁾. Nevertheless, the Commission considers that in the light of the past practice regarding certain fiscal aid schemes ⁽²⁸⁾, recovery shall only concern the taxes paid in defect of what a beneficiary of the scheme would have paid had the beneficiary applied other tax schemes available at that time. The Commission considers that in the case at hand the application of the alternative tax revaluation scheme provided by Article 2(25) of Law 350/2003 was not a mere hypothetical choice but a sensible option which could have been used by the beneficiaries concerned wishing to recognise the effective tax value of their assets ⁽²⁹⁾.

(119) It should be stressed that Article 2(25) of Law 350/2003 provided a general provision to recognise the gains realised by any undertakings deciding to revalue the assets booked in their accounts on 31 December 2002 to mark them to their market value of the time, by payment of a substitute tax of 19 % in case of revaluation of depreciable assets and 15 % in case of non-depreciable assets, payable in three instalments (50 % in 2004, 25 % in 2005 and 25 % in 2006). This general scheme was also open to the reorganised banks in question. Although realignments and revaluations are not the same, the Commission considers that had the realignment scheme not been available, the banks concerned would have opted for the general revaluation scheme under Article 2(25) of Law 350/2003 to any probable extent.

(120) In the light of the foregoing, the Commission concludes that recovery shall take place with sole respect to the difference between the tax payable to revalue the assets held pursuant to Article 2(25) of Law 350/2003 (19 % for depreciable assets, 15 % for non depreciable assets typically held by the reorganised banks in question) and the tax effectively paid under Article 2(26) of Law 350/2003.

⁽²⁷⁾ OJ L 83, 27.3.1999, p. 1.

⁽²⁸⁾ See Section VI of the Commission Decision 2006/748/EC of 4 July 2006 on State aid C 30/04 (ex NN 34/04) implemented by Portugal exempting from corporation tax on capital gains certain operations/transactions by public undertakings (OJ L 307, 7.11.2006, p. 219).

⁽²⁹⁾ See points 113 to 119 of the Judgement of the Court of 15 December 2005, Case C-148/04, Unicredito Italiano.

⁽²⁶⁾ OJ C 288, 9.1.1999, p. 2.

7. CONCLUSIONS

- (121) The Commission finds that Italy has unlawfully implemented Article 2(26) of Law 350/2003 in breach of Article 88(3) of the Treaty. The aid scheme is incompatible with the common market.
- (122) Only the aid granted by payment of taxes in defect of what a beneficiary of the scheme would have paid had the beneficiary applied other tax schemes available at that time has to be recovered.
- (123) The amount to recover shall therefore be limited to the difference between the tax which would have been paid according to Article 2(25) of Law 350/2003 and the one paid according to Article 2(26) of the same Law,

HAS ADOPTED THIS DECISION:

Article 1

The derogatory tax scheme implemented by Italy under Article 2(26) of Law 350/2003 constitutes State aid and is incompatible with the common market.

Article 2

Italy shall repeal the scheme referred to in Article 1.

Article 3

1. Italy shall take all necessary measures to recover from the beneficiaries the aid granted by payment of the substitute tax foreseen by Article 2(26) of Law 350/2003 in relation to the fiscal recognition of the capital gains resulting from the reorganisations carried out under Law 218/1990 and unlawfully made available to the beneficiaries.

2. The amount to recover shall be limited to the difference between the tax which would have been paid had the aid bene-

ficiaries applied the tax revaluation scheme according to Article 2(25) of Law 350/2003 and the one paid according to Article 2(26) of the same Law.

3. Recovery shall be carried out without delay and in accordance with the procedures under national law, provided these allow the immediate and effective implementation of this Decision.

4. The sums to be recovered shall bear interest throughout the period running from the date on which they were put at the disposal of the beneficiary until their actual recovery.

5. Interest shall be calculated in conformity with the provisions laid down in Chapter V of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty.

Article 4

Italy shall inform the Commission, within two months of notification of this Decision, of the measures planned or taken to comply with it. It will provide this information using the questionnaire attached in Annex I of this Decision. Italy shall inform within four months of notification of this Decision of the measures taken to execute it.

Article 5

This Decision is addressed to Italy.

Done at Brussels, 11 March 2008.

For the Commission

Neelie KROES

Member of the Commission

ANNEX I

Information regarding the implementation of the Commission Decision C 15/07 (ex NN 20/07), implemented by Italy, providing tax incentives in favour of certain reorganised banks

1. Total number of beneficiaries and total amount of aid to be recovered

1.1. Please explain in detail how the amount of aid to be recovered from individual beneficiaries will be calculated?

— The principal

— The interests

1.2. What is the total amount of unlawful aid granted under this scheme that is to be recovered (gross aid equivalents; prices of ...):

1.3. What is the total number of beneficiaries from which unlawful aid granted under this scheme is to be recovered:

2. Measures planned and already taken to recover the aid

2.1. Please describe in detail what measures are planned and what measures have already been taken to effect an immediate and effective recovery of the aid. Please also indicate where relevant the legal basis for the measures taken/planned.

2.2. By what date will the recovery of the aid be completed?

3. Information by individual beneficiary

Please provide details for each beneficiary from whom unlawful aid granted under the scheme is to be recovered in the table overleaf.

Identity of the beneficiary	Amount of unlawful aid granted (*) Currency: ...	Amounts reimbursed (°) Currency: ...

(*) Amount of aid put at the disposal of the beneficiary (in gross aid equivalents; in prices of ...).

(°) Gross amounts reimbursed (including interests).

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

POLITICAL AND SECURITY COMMITTEE DECISION BiH/13/2008

of 29 July 2008

amending Decision BiH/1/2004 on the acceptance of third States' contributions to the European Union military operation in Bosnia and Herzegovina and Decision BiH/3/2004 on the setting-up of the Committee of Contributors for the European Union military operation in Bosnia and Herzegovina

(2008/712/CFSP)

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Treaty on European Union, and in particular the third paragraph of Article 25 thereof,

Whereas:

(1) The Political and Security Committee adopted Decision BiH/1/2004 ⁽¹⁾ on 21 September 2004 and Decision BiH/3/2004 ⁽²⁾ on 29 September 2004.

(2) Following the invitation of Honduras, Guatemala, El Salvador and the Dominican Republic to participate in operation ALTHEA, the President of the Superior Council for the Central American Armed Forces Conference in his letter of 2 April 2008 forwarded an offer of contribution on behalf of these four States.

(3) Following recommendations on their contributions by the EU Operation Commander and the European Union Military Committee, the contributions from Honduras, Guatemala, El Salvador and the Dominican Republic should be accepted.

(4) Following the withdrawal of the contributions from Canada, Morocco, New Zealand and Norway and following the accession of Bulgaria and Romania to the European Union, the annexes to Decisions BiH/1/2004 and BiH/3/2004 need to be further revised.

(5) In conformity with Article 6 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not participate in the elaboration and implementation of decisions and actions of the European Union which have defence implications. Therefore, Denmark does not participate in the financing of the operation.

(6) The Copenhagen European Council adopted on 12 and 13 December 2002 a Declaration stating that the 'Berlin plus' arrangements and the implementation thereof will apply only to those EU Member States which are also either NATO members or parties to the 'Partnership for Peace', and which have consequently concluded bilateral security agreements with NATO,

HAS DECIDED AS FOLLOWS:

Article 1

The Annex to Decision BiH/1/2004 shall be replaced by the following:

'ANNEX

LIST OF THIRD STATES REFERRED TO IN ARTICLE 1

— Albania,

— Argentina,

— Chile,

— Dominican Republic,

⁽¹⁾ OJ L 324, 27.10.2004, p. 20.

⁽²⁾ OJ L 325, 28.10.2004, p. 64.

— El Salvador,
— former Yugoslav Republic of Macedonia,
— Guatemala,
— Honduras,
— Switzerland,
— Turkey’.

Article 2

The Annex to Decision BiH/3/2004 shall be replaced by the following:

‘ANNEX

LIST OF THIRD STATES REFERRED TO IN ARTICLE 3(1)

— Albania,
— Argentina,
— Chile,

— Dominican Republic,
— El Salvador,
— former Yugoslav Republic of Macedonia,
— Guatemala,
— Honduras,
— Switzerland,
— Turkey’.

Article 3

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

Done at Brussels, 29 July 2008.

For the Political and Security Committee

The Chairperson

C. ROGER

NOTE TO THE READER

The institutions have decided no longer to quote in their texts the last amendment to cited acts.

Unless otherwise indicated, references to acts in the texts published here are to the version of those acts currently in force.