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Price: EUR 3

(Continued overleaf)

⁽¹⁾ Text with EEA relevance

EN

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

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

DECISIONS

2010/569/EU:

- ★ **Commission Decision of 23 June 2010 concerning tax aid granted by France to the *Fonds de prévention des aléas pêche et aux entreprises de pêche* (Fund for the prevention of risks to fishing and fisheries undertakings) (State aid C 24/08 (ex NN 38/07)) (notified under document C(2010) 3938) ⁽¹⁾.....** 23



⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) No 837/2010**of 23 September 2010****amending Regulation (EC) No 1418/2007 concerning the export for recovery of certain waste to certain non-OECD countries****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste ⁽¹⁾, and in particular the third subparagraph of Article 37(2) thereof,

After consultation of the countries concerned,

Whereas:

The Commission has received a reply from Liberia to its written requests seeking confirmation in writing that certain waste which is listed in Annex III or IIIA to Regulation (EC) No 1013/2006 and the export of which is not prohibited under its Article 36 may be exported from the European Union for recovery in that country and requesting an indication from it as to which control procedure, if any, would be

followed there. The Commission has also received further information relating to Andorra, China, Croatia and India. The Annex to Commission Regulation (EC) No 1418/2007 ⁽²⁾ should therefore be amended to take this into account,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 1418/2007 is amended in accordance with the Annex to this Regulation.

Article 2

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

It shall apply from the date of entry into force.

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

Done at Brussels, 23 September 2010.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 190, 12.7.2006, p. 1.

⁽²⁾ OJ L 316, 4.12.2007, p. 6.

ANNEX

- (1) The entry for Andorra is replaced by the following:

'Andorra

(a)	(b)	(c)	(d)
	all waste listed in Annex III of Regulation (EC) No 1013/2006'		

- (2) The entry for China is replaced by the following:

'China

(a)	(b)	(c)	(d)
From B1010: — Precious metals (except for gold, platinum) — Molybdenum scrap — Cobalt scrap — Manganese scrap — Scrap of Indium — Thorium scrap — Rare earths scrap — Chromium scrap			From B1010: — Precious metals (gold, platinum) — Iron and steel scrap — Copper scrap — Nickel scrap — Aluminium scrap — Zinc scrap — Tin scrap — Tungsten scrap — Tantalum scrap — Magnesium scrap — Bismuth scrap — Titanium scrap — Zirconium scrap — Germanium scrap — Vanadium scrap — Scrap of Hafnium, Niobium, Rhenium and Gallium
B1020-B1040			
			B1050
B1060			
			B1070
B1080-B1100			
			B1115
From B1120: all other waste			From B1120: Transition Metals only those containing > 10 % V ₂ O ₅ , excluding waste catalysts (spent catalysts, liquid used catalysts or other catalysts) on list A
B1130-B1200			

(a)	(b)	(c)	(d)
			B1210
B1220			
			B1230
B1240			
			B1250
From B2010: all other waste			From B2010: Mica waste
B2020			
From B2030: all other waste			From B2030: only tungsten carbide scrap
B2040			
B2060-B2130			
From B3010: Cured waste resins or condensation products including the following: — urea formaldehyde resins — melamine formaldehyde resins — epoxy resins — alkyd resins			From B3010 — all other waste provided that are thermoplastic
			B3020
From B3030 — all other waste			From B3030: — Waste of wool or of fine or coarse animal hair, including yarn waste but excluding garnetted stock — Cotton waste (including yarn waste and garnetted stock) — Waste (including noils, yarn waste and garnetted stock) of man-made fibres
B3035			
From B3040 — all other waste			From B3040: only unvulcanized rubber
			B3050
B3060-B3070			
From B3080 — all other waste			From B3080: only unvulcanized rubber
B3090-B4030			
From GB040 — all other waste			From GB040 — only converter slag from copper smelt containing > 10 % copper
			GC010

(a)	(b)	(c)	(d)
From GC020 — all other waste			From GC020 — only waste cable & wire, e-motor scrap
			GC030
GC050-GG040			
			GH013
GN010-GN030'			

- (3) The entry for Croatia is replaced by the following:

'Croatia

(a)	(b)	(c)	(d)
			all waste listed in Annex III of Regulation (EC) No 1013/2006'

- (4) The entry for India is replaced by the following:

'India

(a)	(b)	(c)	(d)
			all waste listed in Annex III of Regulation (EC) No 1013/2006'

- (5) After the entry for Lebanon, the following entry is inserted:

'Liberia

(a)	(b)	(c)	(d)
			B3020'

COMMISSION REGULATION (EU) No 838/2010**of 23 September 2010****on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 714/2009 of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 ⁽¹⁾, and in particular the first sentence of Article 18 (5) thereof,

Whereas:

(1) Commission Regulation (EU) No 774/2010 of 2 September 2010 on laying down guidelines relating to inter-transmission system operator compensation and a common regulatory approach to transmission charging ⁽²⁾ establishes a mechanism for the compensation of transmission system operators for the costs of hosting cross-border flows of electricity and a common regulatory approach to transmission charging. However, that Regulation will expire on 2 March 2011.

(2) In order to ensure the continuity of implementation the inter-transmission system operator compensation mechanism, new guidelines specified in Article 18(1) and (2) of Regulation (EC) No 714/2009 of 13 July 2009 should be adopted which reflect the institutional framework established by that Regulation. In particular, the Agency for the Co-operation of Energy Regulators (hereinafter 'the Agency'), established by Regulation (EC) No 713/2009 of the European Parliament and of the Council ⁽³⁾ should be responsible for monitoring the implementation of the inter-transmission system operator compensation mechanism.

(3) Binding guidelines establishing an inter-transmission system operator compensation mechanism should establish a stable basis for the operation of the inter-transmission system operator compensation mechanism and fair compensation to transmission system operators for the costs of hosting cross-border flows of electricity.

(4) Transmission system operators from third countries or from territories which have concluded agreements with

the Union whereby they have adopted and are applying Union law in the field of electricity should be entitled to participate in the inter-transmission system compensation Mechanism on an equivalent basis to transmission system operators from Member States.

(5) It is appropriate to allow transmission system operators in third countries which have not concluded agreements with the Union whereby they have adopted and are applying Union law in the field of electricity to enter into multi-party agreements with the transmission system operators in the Member States which enable all parties to be compensated for the costs of hosting cross-border flows of electricity on a fair and equitable basis.

(6) Transmission system operators should be compensated for energy losses resulting from hosting cross-border flows of electricity. Such compensation should be based on an estimate of what losses would have been incurred in the absence of transits of electricity.

(7) A fund should be established to compensate transmission system operators for the costs of making infrastructure available to host cross-border flows of electricity. The value of this fund should be based on a Union-wide assessment of the long run average incremental costs of making infrastructure available to host cross-border flows of electricity.

(8) The Union-wide assessment of electricity transmission infrastructure associated with facilitating cross-border flows of electricity should be carried out by the Agency as the body responsible for coordinating the activities of regulatory authorities who must carry out a similar function at a national level.

(9) Transmission system operators in third countries should face the same costs for using the Union transmission system as transmission system operators in Member States.

(10) Variations in charges faced by producers of electricity for access to the transmission system should not undermine the internal market. For this reason average charges for access to the network in Member States should be kept within a range which helps to ensure that the benefits of harmonisation are realised.

⁽¹⁾ OJ L 176, 15.7.2003, p. 1.

⁽²⁾ OJ L 233, 3.9.2010, p. 1.

⁽³⁾ OJ L 211, 14.8.2009, p. 1.

- (11) The measures provided for in this Regulation are in accordance with the opinion of the Committee set up by Article 46 of Directive 2009/72/EC of the European Parliament and of the Council ⁽¹⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Transmission system operators shall receive compensation for costs incurred as a result of hosting cross-border flows of electricity on their networks on the basis of the guidelines set out in Part A of the Annex.

Article 2

Charges applied by network operators for access to the transmission system shall be in accordance with guidelines set out in Part B of the Annex.

Article 3

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

It shall apply from 3 March 2011.

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

Done at Brussels, 23 September 2010.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 211, 14.8.2009, p. 55.

ANNEX

PART A

Guidelines on the Inter-Transmission System Operator Compensation Mechanism

1. General Provisions

- 1.1. The Inter-Transmission System Operator Compensation (ITC) mechanism shall provide for compensation for the costs of hosting cross-border flows of electricity including providing cross-border access to the interconnected system.
- 1.2. The European Network of Transmission System Operators for Electricity (ENTSO for Electricity) set up in accordance with Article 5 of Regulation (EC) 714/2009 shall establish an ITC fund for the purpose of compensating transmission system operators for the costs of hosting cross-border flows of electricity.

The ITC fund shall provide compensation for:

- (1) the costs of losses incurred national transmission systems as a result of hosting cross-border flows of electricity;

and

- (2) the costs of making infrastructure available to host cross-border flows of electricity.

- 1.3. Contributions to the ITC Fund shall be calculated in accordance with points 6 and 7.

Payments from the ITC Fund shall be calculated in accordance with points 4 and 5.

ENTSO for Electricity shall be responsible for establishing arrangements for the collection and disbursement of all payments relating to the ITC Fund, and shall also be responsible for determining the timing of payments. All contributions and payments shall be made as soon as possible, and at the latest within six months of the end of the period to which they apply.

- 1.4. The Agency shall oversee the implementation of the ITC mechanism and report to the Commission each year on the implementation of the ITC mechanism and the management of the ITC fund.

ENTSO for Electricity shall co-operate with the Commission and with the Agency in this task and shall provide the Agency with all information necessary for this purpose.

Each transmission system operator shall provide ENTSO for Electricity and the Agency with all information necessary for the implementation of the ITC Mechanism.

- 1.5. Until such time as ENTSO for Electricity has been established, transmission system operators shall co-operate amongst themselves to carry out the tasks assigned to ENTSO for Electricity in relation to the ITC mechanism.
- 1.6. Transit of electricity shall be calculated, normally on an hourly basis, by taking the lower of the absolute amount of imports of electricity and the absolute amount of exports of electricity on interconnections between national transmission systems.

For the purpose of calculating transits of electricity the amount of imports and the amount of exports at each interconnection between national transmission systems shall be reduced in proportion to the share of capacity allocated in a manner which is not compatible with Point 2 of the guidelines on congestion management set out in Annex I of Regulation (EC) No 714/2009.

Notwithstanding the provisions of the second subparagraph of this point imports and exports of electricity on interconnections with third countries to which the provisions of point 7.1 apply shall be included in the calculation of transit of electricity.

- 1.7. For the purposes of this part of the Annex, the net flow of electricity shall mean the absolute value of the difference between total exports of electricity from a given national transmission system to countries where the TSOs participate in the ITC Mechanism and total imports of electricity from countries where the TSOs participate in the ITC Mechanism to the same transmission system.

For ITC mechanism parties with a common border with at least one third country to which the provisions of Point 7.1 apply the following adjustments to the calculation of net flow shall be made:

- (1) if total exports of electricity to countries where the TSOs participate in the ITC Mechanism are greater than total imports of electricity from countries where the TSOs participate in the ITC Mechanism, net flows shall be reduced by the lower of:
- (a) net import flows from those third countries; or
 - (b) net export flows to countries where the transmission system operator participates in the ITC Mechanism;
- (2) if total imports of electricity from countries where the TSOs participate in the ITC Mechanism are greater than total exports of electricity to countries where the TSOs participate in the ITC Mechanism then net flows shall be reduced by the lower of
- (a) net export flows to those third countries; or
 - (b) net import flows from countries where the transmission system operator participates in the ITC mechanism.

- 1.8. For the purposes of this annex load shall mean the total amount of electricity which exits the national transmission system to connected distribution systems, end consumers connected to the transmission system and to electricity producers for consumption in the generation of electricity.

2. Participation in the ITC mechanism

- 2.1. Each regulatory authority shall ensure that transmission system operators in its area of competence participate in the ITC mechanism and that no additional charges for hosting cross-border flows of electricity are included in charges applied by transmission system operators for access to networks.
- 2.2. Transmission system operators from third countries which have concluded agreements with the Union whereby they have adopted and are applying Union law in the field of electricity shall be entitled to participate in the ITC mechanism.

In particular, the transmission system operators operating in the territories referred to in Article 9 of the Energy Community Treaty ⁽¹⁾ shall be entitled to participate in the ITC mechanism.

Each transmission system operator from a third country participating in the ITC mechanism shall be treated on an equivalent basis to a transmission system operator of a Member State.

3. Multi-Party Agreements

- 3.1. ENTSO for Electricity shall facilitate the conclusion of multi-party agreements relating to the compensation for the costs of hosting cross-border flows of electricity between transmission system operators participating in the ITC mechanism and those transmission system operators from third countries which have not concluded agreements with the Union whereby they have adopted and are applying Union law in the field of electricity, and which, on 16 December 2009, signed the voluntary agreement between transmission system operators on inter-transmission system operator compensation.
- 3.2. Such multi-party agreements shall aim at ensuring that the transmission system operator from the third country be treated on an equivalent basis to a transmission system operator in a country participating in the ITC Mechanism.

⁽¹⁾ OJ L 198, 20.7.2006, p. 18.

- 3.3. Where necessary such multi-party agreements may recommend appropriate adjustment to total compensation for the compensation for making infrastructure available to host cross-border flows of electricity determined in accordance with point 5. Any such adjustment shall be subject to approval by the Commission, taking account of the opinion of the Agency.
- 3.4. The treatment of the transmission system operator from the third country shall not be more favourable in comparison to that which would apply to a transmission system operator participating in the ITC Mechanism.
- 3.5. ENTSO for Electricity shall submit all such multi-party agreements to the Commission for its opinion as to whether continuation of the multi-party agreement promotes the completion and functioning of the internal market in electricity and cross-border trade. The opinion of the Commission shall address in particular:
- (1) whether the agreement relates only to compensation between transmission system operators (TSOs) for the costs of hosting cross-border flows of electricity;
 - (2) whether the requirements of points 3.2 and 3.4 are respected.
- 3.6. In preparing the opinion referred to in point 3.5 the Commission shall consult all the Member States, taking particular account of the views of those Member States sharing a border with the relevant third country.

In preparing its opinion the Commission may consult the Agency.

4. Compensation for Losses

- 4.1. Compensation for losses incurred on national transmission systems as a result of hosting cross-border flows of electricity shall be calculated separately from compensation for costs incurred associated with making infrastructure available to host cross-border flows of electricity.
- 4.2. The amount of losses incurred on a national transmission system shall be established by calculating the difference between:
- (1) the amount of losses actually incurred on the transmission system during the relevant period;
- and
- (2) the estimated amount of losses on the transmission system which would have been incurred on the system during the relevant period if no transits of electricity had occurred.
- 4.3. ENTSO for Electricity shall be responsible for carrying out the calculation referred to in point 4.2 and shall publish this calculation and its method in an appropriate format. This calculation may be derived from estimates for a number of points of time during the relevant period.
- 4.4. The value of losses incurred by a national transmission system as a result of the cross-border flow of electricity shall be calculated on the same basis as that approved by the regulatory authority in respect of all losses on the national transmission systems. The Agency shall verify the criteria for the valuation of losses at national level taking particular account that losses are valued in a fair and non-discriminatory way.

Where the relevant regulatory authority has not approved a basis for the calculation of losses for a period of time for which the ITC mechanism applies, the value of losses for the purposes of the ITC mechanism shall be estimated by ENTSO for Electricity.

5. Compensation for provision of infrastructure for cross-border flows of electricity

- 5.1. Following a proposal from the Agency made in accordance with point 5.3, the Commission shall determine the annual cross-border infrastructure compensation sum which shall be apportioned among TSOs as compensation for the costs incurred as a result of making infrastructure available to host cross-border flows of electricity. If the Commission disagrees with the proposal of the Agency, it shall ask the Agency for a second opinion.

5.2. The annual cross-border infrastructure compensation sum shall be apportioned amongst transmission system operators responsible for national transmission systems in proportion to:

- (1) transit factor, referring to transits on that national transmission system state as a proportion of total transits on all national transmission systems;
- (2) load factor, referring to the square of transits of electricity, in proportion to load plus transits on that national transmission system relative to the square of transits of electricity in proportion to load plus transit for all national transmission systems.

The transit factor shall be weighted 75 % and the load factor 25 %.

5.3. The Agency shall make the proposal on the annual cross-border infrastructure compensation sum referred to in point 5.1 based on a Union-wide assessment of the infrastructure of electricity transmission associated with facilitating cross-border flows of electricity. The Agency shall undertake its best endeavours to carry out an assessment within two years of the date of application of this Regulation. ENTSO for Electricity shall provide the Agency with all assistance necessary for the purposes of carrying out this assessment.

This assessment shall consist of a technical and economic assessment of the forward-looking long-run average incremental costs on an annual basis of making such electricity transmission infrastructure available for cross-border flows of electricity over the relevant period, and shall be based on recognised standard-costing methodologies.

Where infrastructure is financed by sources other than charges for access to networks applied in accordance with Article 14 of Regulation (EC) No 714/2009 the assessment of costs of making infrastructure available for cross-border flows of electricity shall be appropriately adjusted to reflect this.

This Union-wide assessment of the electricity transmission infrastructure shall include infrastructure in all Member States and third countries participating in the ITC mechanism and in systems operated by transmission system operators who have concluded multi-party agreements referred to in point 3.

5.4. Until such time as the Agency has carried out the assessment referred to in point 5.3 and the Commission has determined the annual cross-border infrastructure compensation sum in accordance with point 5.1, the annual cross-border infrastructure compensation sum shall be EUR 100 000 000.

5.5. When making the proposal referred to in point 5.1, the Agency shall also provide its opinion to the Commission as to suitability of using long run average incremental costs for the assessment of the costs of making infrastructure available for hosting cross-border flows of electricity.

6. Contributions to the ITC Fund

6.1. The transmission system operators shall contribute to the ITC fund in proportion to the absolute value of net flows onto and from their national transmission system as a share of the sum of the absolute value of net flows onto and from all national transmission systems.

7. Transmission system use fee on third country imports and exports of electricity.

7.1. A transmission system use fee shall be paid on all scheduled imports and exports of electricity from all third countries where:

- (1) that country has not concluded agreement with the Union whereby it has adopted and is applying Union law in the field of electricity;

or

- (2) the transmission system operator responsible for the system from which electricity is imported or to which electricity is exported has not concluded a multi-party agreement referred to in point 3.

This fee shall be expressed in Euros per megawatt hour.

- 7.2. Each participant in the ITC Mechanism shall levy the transmission system use fee on scheduled imports and exports of electricity between the national transmission system and the transmission system of the third country.
- 7.3. The transmission system use fee for each year shall be calculated in advance by ENTSO for Electricity. It shall be set at the estimated contribution per megawatt hour transmission system operators from a participating country would make to the ITC Fund based on projected cross-border flows of electricity for the relevant year.

PART B

Guidelines for A Common Regulatory Approach to Transmission Charging

1. Annual average transmission charges paid by producers in each Member State shall be within the ranges set out in point 3.
2. Annual average transmission charges paid by producers is annual total transmission tariff charges paid by producers divided by the total measured energy injected annually by producers to the transmission system of a Member State.

For the calculation set out at Point 3, transmission charges shall exclude:

- (1) charges paid by producers for physical assets required for connection to the system or the upgrade of the connection;
 - (2) charges paid by producers related to ancillary services;
 - (3) specific system loss charges paid by producers.
3. The value of the annual average transmission charges paid by producers shall be within a range of 0 to 0,5 EUR/MWh, except those applying in Denmark, Sweden, Finland, Romania Ireland, Great Britain and Northern Ireland.

The value of the annual average transmission charges paid by producers in Denmark, Sweden and Finland shall be within a range of 0 to 1,2 EUR/MWh.

Annual average transmission charges paid by producers in Ireland, Great Britain and Northern Ireland shall be within a range of 0 to 2,5 EUR/MWh, and in Romania within a range of 0 to 2,0 EUR/MWh.

4. The Agency shall monitor the appropriateness of the ranges of allowable transmission charges, taking particular account of their impact on the financing of transmission capacity needed for Member States to achieve their targets under the Directive 2009/28/EC ⁽¹⁾ of the European Parliament and of the Council and their impact on system users in general.
5. By 1 January 2014 the Agency shall provide its opinion to the Commission as to the appropriate range or ranges of charges for the period after 1 January 2015.

⁽¹⁾ OJ L 140, 5.6.2009, p. 16.

COMMISSION REGULATION (EU) No 839/2010**of 23 September 2010****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽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 24 September 2010.

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

Done at Brussels, 23 September 2010.

*For the Commission,
On behalf of the President,**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	MA	72,7
	MK	76,7
	TR	64,0
	XS	58,9
	ZZ	68,1
0707 00 05	TR	124,4
	ZZ	124,4
0709 90 70	TR	120,2
	ZZ	120,2
0805 50 10	AR	138,0
	CL	107,8
	IL	127,1
	TR	118,8
	UY	134,8
	ZA	115,7
	ZZ	123,7
0806 10 10	EG	75,0
	TR	121,1
	US	185,0
	ZZ	127,0
0808 10 80	AR	78,0
	BR	74,7
	CL	125,9
	NZ	112,4
	US	128,5
	ZA	97,2
	ZZ	102,8
0808 20 50	CN	84,3
	ZA	98,9
	ZZ	91,6
0809 30	TR	149,8
	ZZ	149,8
0809 40 05	BA	53,5
	IL	178,5
	MK	45,0
	ZZ	92,3

⁽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 (EU) No 840/2010
of 23 September 2010
fixing the export refunds on beef and veal

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products ⁽¹⁾, and in particular Article 164(2), and Article 170, in conjunction with Article 4 thereof,

Whereas:

- (1) Article 162(1) of Regulation (EC) No 1234/2007 provides that the difference between prices on the world market for the products listed in Part XV of Annex I to that Regulation and prices for those products on the Union market may be covered by an export refund.
- (2) Given the present situation on the market in beef and veal, export refunds should therefore be set in accordance with the rules and criteria provided for in Articles 162, 163, 164, 167, 168 and 169 of Regulation (EC) No 1234/2007.
- (3) Article 164(1) of Regulation (EC) No 1234/2007 provides that the refund may vary according to destination, especially where the world market situation, the specific requirements of certain markets, or obligations resulting from agreements concluded in accordance with Article 300 of the Treaty make this necessary.
- (4) Refunds should be granted only on products that are allowed to move freely in the Union and that bear the health mark as provided for in Article 5(1)(a) of Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin ⁽²⁾. Those products must also satisfy the requirements laid down in Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs ⁽³⁾ and Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption ⁽⁴⁾.

- (5) The third subparagraph of Article 7(2) of Commission Regulation (EC) No 1359/2007 of 21 November 2007 laying down the conditions for granting special export refunds on certain cuts of boned meat of bovine animals ⁽⁵⁾ provides for a reduction of the special refund if the quantity of cuts of boned meat to be exported amounts to less than 95 %, but not less than 85 %, of the total weight of cuts produced by boning.
- (6) The currently applicable refunds have been fixed by Commission Regulation (EU) No 649/2010 ⁽⁶⁾. Since new refunds should be fixed, that Regulation should therefore be repealed.
- (7) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

1. Export refunds as provided for in Article 164 of Regulation (EC) No 1234/2007 shall be granted on the products and for the amounts set out in the Annex to this Regulation subject to the conditions provided for in paragraph 2 of this Article.
2. The products eligible for a refund under paragraph 1 shall meet the relevant requirements of Regulations (EC) No 852/2004 and (EC) No 853/2004, and, in particular, shall be prepared in an approved establishment and comply with the health marking requirements laid down in Annex I, Section I, Chapter III to Regulation (EC) No 854/2004.

Article 2

In the case referred to in the third subparagraph of Article 7(2) of Regulation (EC) No 1359/2007, the rate of the refund on products falling within product code 0201 30 00 9100 shall be reduced by EUR 3,5/100 kg.

Article 3

Regulation (EU) No 649/2010 is hereby repealed.

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 139, 30.4.2004, p. 55

⁽³⁾ OJ L 139, 30.4.2004, p. 1.

⁽⁴⁾ OJ L 139, 30.4.2004, p. 206.

⁽⁵⁾ OJ L 304, 22.11.2007, p. 21.

⁽⁶⁾ OJ L 191, 23.7.2010, p. 3.

Article 4

This Regulation shall enter into force on 24 September 2010.

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

Done at Brussels, 23 September 2010.

*For the Commission,
On behalf of the President,
Jean-Luc DEMARTY
Director-General for Agriculture and
Rural Development*

ANNEX

Export refunds on beef and veal applicable from 24 September 2010

Product code	Destination	Unit of measurement	Refunds
0102 10 10 9140	B00	EUR/100 kg live weight	12,9
0102 10 30 9140	B00	EUR/100 kg live weight	12,9
0201 10 00 9110 ⁽¹⁾	B02	EUR/100 kg net weight	18,3
	B03	EUR/100 kg net weight	10,8
0201 10 00 9130 ⁽¹⁾	B02	EUR/100 kg net weight	24,4
	B03	EUR/100 kg net weight	14,4
0201 20 20 9110 ⁽¹⁾	B02	EUR/100 kg net weight	24,4
	B03	EUR/100 kg net weight	14,4
0201 20 30 9110 ⁽¹⁾	B02	EUR/100 kg net weight	18,3
	B03	EUR/100 kg net weight	10,8
0201 20 50 9110 ⁽¹⁾	B02	EUR/100 kg net weight	30,5
	B03	EUR/100 kg net weight	17,9
0201 20 50 9130 ⁽¹⁾	B02	EUR/100 kg net weight	18,3
	B03	EUR/100 kg net weight	10,8
0201 30 00 9050	US ⁽³⁾	EUR/100 kg net weight	3,3
	CA ⁽⁴⁾	EUR/100 kg net weight	3,3
0201 30 00 9060 ⁽⁶⁾	B02	EUR/100 kg net weight	11,3
	B03	EUR/100 kg net weight	3,8
0201 30 00 9100 ⁽²⁾ ⁽⁶⁾	B04	EUR/100 kg net weight	42,4
	B03	EUR/100 kg net weight	24,9
	EG	EUR/100 kg net weight	51,7
0201 30 00 9120 ⁽²⁾ ⁽⁶⁾	B04	EUR/100 kg net weight	25,4
	B03	EUR/100 kg net weight	15,0
	EG	EUR/100 kg net weight	31,0
0202 10 00 9100	B02	EUR/100 kg net weight	8,1
	B03	EUR/100 kg net weight	2,7
0202 20 30 9000	B02	EUR/100 kg net weight	8,1
	B03	EUR/100 kg net weight	2,7
0202 20 50 9900	B02	EUR/100 kg net weight	8,1
	B03	EUR/100 kg net weight	2,7
0202 20 90 9100	B02	EUR/100 kg net weight	8,1
	B03	EUR/100 kg net weight	2,7
0202 30 90 9100	US ⁽³⁾	EUR/100 kg net weight	3,3
	CA ⁽⁴⁾	EUR/100 kg net weight	3,3

Product code	Destination	Unit of measurement	Refunds
0202 30 90 9200 ⁽⁶⁾	B02	EUR/100 kg net weight	11,3
	B03	EUR/100 kg net weight	3,8
1602 50 31 9125 ⁽⁵⁾	B00	EUR/100 kg net weight	11,6
1602 50 31 9325 ⁽⁵⁾	B00	EUR/100 kg net weight	10,3
1602 50 95 9125 ⁽⁵⁾	B00	EUR/100 kg net weight	11,6
1602 50 95 9325 ⁽⁵⁾	B00	EUR/100 kg net weight	10,3

N.B.: The product codes and the 'A' series destination codes are set out in the Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1).

The destination codes are set out in Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19).

The other destinations are defined as follows:

B00: all destinations (third countries, other territories, victualling and destinations treated as exports from the Union).

B02: B04 and destination EG.

B03: Albania, Croatia, Bosnia-Herzegovina, Serbia, Kosovo (*), Montenegro, former Yugoslav Republic of Macedonia, stores and provisions (destinations referred to in Articles 33 and 42, and if appropriate in Article 41, of Commission Regulation (EC) No 612/2009 (OJ L 186, 17.7.2009, p. 1)).

B04: Turkey, Ukraine, Belarus, Moldova, Russia, Georgia, Armenia, Azerbaijan, Kazakhstan, Turkmenistan, Uzbekistan, Tajikistan, Kyrgyzstan, Morocco, Algeria, Tunisia, Libya, Lebanon, Syria, Iraq, Iran, Israel, West Bank/Gaza Strip, Jordan, Saudi Arabia, Kuwait, Bahrain, Qatar, United Arab Emirates, Oman, Yemen, Pakistan, Sri Lanka, Myanmar (Burma), Thailand, Vietnam, Indonesia, Philippines, China, North Korea, Hong Kong, Sudan, Mauritania, Mali, Burkina Faso, Niger, Chad, Cape Verde, Senegal, Gambia, Guinea-Bissau, Guinea, Sierra Leone, Liberia, Côte-d'Ivoire, Ghana, Togo, Benin, Nigeria, Cameroun, Central African Republic, Equatorial Guinea, Sao Tome Principe, Gabon, Congo, Congo (Democratic Republic), Rwanda, Burundi, Saint Helena and dependencies, Angola, Ethiopia, Eritrea, Djibouti, Somalia, Uganda, Tanzania, Seychelles and dependencies, British Indian Ocean Territory, Mozambique, Mauritius, Comoros, Mayotte, Zambia, Malawi, South Africa, Lesotho.

(*) As defined by United Nations Security Council Resolution 1244 of 10 June 1999.

⁽¹⁾ Entry under this subheading is subject to the submission of the certificate appearing in the Annex to Commission Regulation (EC) No 433/2007 (OJ L 104, 21.4.2007, p. 3).

⁽²⁾ The refund is granted subject to compliance with the conditions laid down in amended Commission Regulation (EC) No 1359/2007 (OJ L 304, 22.11.2007, p. 21), and, if applicable, in Commission Regulation (EC) No 1741/2006 (OJ L 329, 25.11.2006, p. 7).

⁽³⁾ Carried out in accordance with Commission Regulation (EC) No 1643/2006 (OJ L 308, 8.11.2006, p. 7).

⁽⁴⁾ Carried out in accordance with Commission Regulation (EC) No 1041/2008 (OJ L 281, 24.10.2008, p. 3).

⁽⁵⁾ The refund is granted subject to compliance with the conditions laid down in Commission Regulation (EC) No 1731/2006 (OJ L 325, 24.11.2006, p. 12).

⁽⁶⁾ The lean bovine meat content excluding fat is determined in accordance with the procedure described in the Annex to Commission Regulation (EEC) No 2429/86 (OJ L 210, 1.8.1986, p. 39).

The term 'average content' refers to the sample quantity as defined in Article 2(1) of Commission Regulation (EC) No 765/2002 (OJ L 117, 4.5.2002, p. 6). The sample is to be taken from that part of the consignment presenting the highest risk.

COMMISSION REGULATION (EU) No 841/2010
of 23 September 2010
fixing the export refunds on poultrymeat

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products ⁽¹⁾, and in particular Article 164(2), and Article 170, in conjunction with Article 4 thereof,

Whereas:

- (1) Article 162(1) of Regulation (EC) No 1234/2007 provides that the difference between prices on the world market for the products referred to in Part XX of Annex I to that Regulation and prices in the Union for those products may be covered by an export refund.
- (2) In view of the current situation on the market in poultrymeat, export refunds should be fixed in accordance with the rules and criteria provided for in Articles 162, 163, 164, 167 and 169 of Regulation (EC) No 1234/2007.
- (3) Article 164(1) of Regulation (EC) No 1234/2007 provides that refunds may vary according to destination, especially where the world market situation, the specific requirements of certain markets, or obligations resulting from agreements concluded in accordance with Article 300 of the Treaty make this necessary.
- (4) Refunds should be granted only on products which are authorised to move freely in the Union and bear the identification mark provided for in Article 5(1)(b) of Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin ⁽²⁾. Those products should also comply with the requirements of Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs ⁽³⁾.

(5) The currently applicable refunds have been fixed by Commission Regulation (EU) No 525/2010 ⁽⁴⁾. Since new refunds should be fixed, that Regulation should therefore be repealed.

(6) 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

1. Export refunds as provided for in Article 164 of Regulation (EC) No 1234/2007 shall be granted on the products and for the amounts set out in the Annex to this Regulation subject to the conditions provided for in paragraph 2 of this Article.

2. The products eligible for a refund under paragraph 1 shall meet the relevant requirements under Regulations (EC) No 852/2004 and (EC) No 853/2004 and, in particular, shall be prepared in an approved establishment and comply with the identification marking conditions laid down in Section I of Annex II to Regulation (EC) No 853/2004.

Article 2

Regulation (EU) No 525/2010 is hereby repealed.

Article 3

This Regulation shall enter into force on 24 September 2010.

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

Done at Brussels, 23 September 2010.

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

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

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 139, 30.4.2004, p. 55.

⁽³⁾ OJ L 139, 30.4.2004, p. 1.

⁽⁴⁾ OJ L 152, 18.6.2010, p. 5.

ANNEX

Export refunds on poultrymeat applicable from 24 September 2010

Product code	Destination	Unit of measurement	Amount of refund
0105 11 11 9000	A02	EUR/100 pcs	0,24
0105 11 19 9000	A02	EUR/100 pcs	0,24
0105 11 91 9000	A02	EUR/100 pcs	0,24
0105 11 99 9000	A02	EUR/100 pcs	0,24
0105 12 00 9000	A02	EUR/100 pcs	0,47
0105 19 20 9000	A02	EUR/100 pcs	0,47
0207 12 10 9900	V03	EUR/100 kg	32,50
0207 12 90 9190	V03	EUR/100 kg	32,50
0207 12 90 9990	V03	EUR/100 kg	32,50

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1), as amended.

The other destinations are defined as follows:

V03: A24, Angola, Saudi Arabia, Kuwait, Bahrain, Qatar, Oman, United Arab Emirates, Jordan, Yemen, Lebanon, Iraq and Iran.

COMMISSION REGULATION (EU) No 842/2010**of 23 September 2010****fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of 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 Article 143 thereof,

Having regard to Council Regulation (EC) No 614/2009 of 7 July 2009 on the common system of trade for ovalbumin and lactalbumin ⁽²⁾, and in particular Article 3(4) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1484/95 ⁽³⁾ lays down detailed rules for implementing the system of additional import duties and fixes representative prices for poultrymeat and egg products and for egg albumin.
- (2) Regular monitoring of the data used to determine representative prices for poultrymeat and egg products and for

egg albumin shows that the representative import prices for certain products should be amended to take account of variations in price according to origin. The representative prices should therefore be published.

- (3) In view of the situation on the market, this amendment should be applied as soon as possible.
- (4) 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

Annex I to Regulation (EC) No 1484/95 is replaced by the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 23 September 2010.

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

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

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 181, 14.7.2009, p. 8.

⁽³⁾ OJ L 145, 29.6.1995, p. 47.

ANNEX

to the Commission Regulation of 23 September 2010 fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95

‘ANNEX I

CN code	Description of goods	Representative price (EUR/100 kg)	Security under Article 3(3) (EUR/100 kg)	Origin ⁽¹⁾
0207 12 10	Fowls of the species <i>Gallus domesticus</i> , not cut in pieces, presented as “70 % chickens”, frozen	137,4	0	BR
		146,0	0	AR
0207 12 90	Fowls of the species <i>Gallus domesticus</i> , not cut in pieces, presented as “65 % chickens”, frozen	127,2	0	BR
		143,2	0	AR
0207 14 10	Fowls of the species <i>Gallus domesticus</i> , boneless cuts, frozen	212,6	26	BR
		269,1	9	AR
		334,7	0	CL
0207 14 50	Fowls of the species <i>Gallus domesticus</i> , breasts, frozen	188,4	7	BR
0207 14 60	Fowl of the species <i>Gallus domesticus</i> , legs, frozen	137,9	2	BR
0207 27 10	Turkeys, boneless cuts, frozen	283,3	4	BR
		314,5	0	CL
0408 11 80	Egg yolks	318,9	0	AR
0408 91 80	Eggs, not in shell, dried	347,8	0	AR
1602 32 11	Preparations of fowls of the species <i>Gallus domesticus</i> , uncooked	285,8	0	BR
3502 11 90	Egg albumin, dried	544,8	0	AR

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). The code “ZZ” represents “other origins”.

COMMISSION REGULATION (EU) No 843/2010**of 23 September 2010****fixing the minimum selling price for skimmed milk powder for the seventh individual invitation to tender within the tendering procedure opened by Regulation (EU) No 447/2010**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Article 43(j), in conjunction with Article 4 thereof,

Whereas:

- (1) Commission Regulation (EU) No 447/2010 ⁽²⁾ has opened the sales of skimmed milk powder by a tendering procedure, in accordance with the conditions provided for in Commission Regulation (EU) No 1272/2009 of 11 December 2009 laying down common detailed rules for the implementation of Council Regulation (EC) No 1234/2007 as regards buying-in and selling of agricultural products under public intervention ⁽³⁾.
- (2) In the light of the tenders received in response to individual invitations to tender, the Commission should fix a minimum selling price or should decide not to fix a

minimum selling price, in accordance with Article 46(1) of Regulation (EU) No 1272/2009.

- (3) In the light of the tenders received for the seventh individual invitation to tender, a minimum selling price should be fixed.
- (4) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

For the seventh individual invitation to tender for selling of skimmed milk powder within the tendering procedure opened by Regulation (EU) No 447/2010, in respect of which the time limit for the submission of tenders expired on 21 September 2010, the minimum selling price for skimmed milk powder shall be EUR 214,00/100 kg.

Article 2

This Regulation shall enter into force on 24 September 2010.

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

Done at Brussels, 23 September 2010.

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

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

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 126, 22.5.2010, p. 19.

⁽³⁾ OJ L 349, 29.12.2009, p. 1.

DECISIONS

COMMISSION DECISION

of 23 June 2010

concerning tax aid granted by France to the *Fonds de prévention des aléas pêche et aux entreprises de pêche* (Fund for the prevention of risks to fishing and fisheries undertakings) (State aid C 24/08 (ex NN 38/07))

(notified under document C(2010) 3938)

(Only the French text is authentic)

(Text with EEA relevance)

(2010/569/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof ⁽¹⁾,

Having regard to the Agreement on the European Economic Area ⁽²⁾, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments ⁽³⁾ pursuant to the provisions cited above,

Whereas:

1. PROCEDURE

- (1) In the context of the investigation of the aid granted to the Fund for the prevention of risks to fishing (*Fonds de prévention des aléas pêche*, hereinafter: FPAP) and fisheries undertakings, which resulted in Commission Decision 2008/936/EC ⁽⁴⁾, the Commission became aware of the existence of a specific tax scheme in favour of FPAP and its members.
- (2) The tax regime was not investigated during the procedure resulting in the Decision of 20 May 2008, as this was new information of which the Commission had not been aware when the formal investigation procedure was opened ⁽⁵⁾.
- (3) Whereas, however, the information at the Commission's disposal was sufficient for it to identify the existence of

illegal aid, the Commission decided to carry out a preliminary investigation of the tax aid ⁽⁶⁾. Following this analysis, also by a decision adopted on 20 May 2008 ⁽⁷⁾, the Commission opened the formal investigation procedure with regard to this aid.

- (4) The Commission invited interested parties to submit their comments within one month of the date of publication. No comments were received from any third parties.

- (5) France submitted its observations on the initiation of the formal investigation procedure by letter dated 8 September 2008.

- (6) Furthermore, during the aid recovery procedure pursuant to Decision 2008/936/EC, France reported in a letter dated 29 November 2008 that the FPAP had been dissolved on 27 February 2008 and the balance of the advances received from the state had been repaid.

2. DESCRIPTION OF THE AID

- (7) The Commission refers to Decision 2008/936/EC for a detailed description of the operation and activities of the FPAP.
- (8) The specific tax regime in favour of the FPAP and its members is described in two letters from the French ministry responsible for the budget, which were sent to the Commission following the publication of the initiation of the investigation procedure which led to Decision 2008/936/EC ⁽⁸⁾.

⁽¹⁾ With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty became Article 107 and Article 108 respectively of the Treaty on the functioning of the European Union (TFEU). The provisions laid down in the respective articles are identical in both cases. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88 respectively of the EC Treaty, where appropriate.

⁽²⁾ OJ L 1, 3.1.1994, p. 3.

⁽³⁾ OJ C 161, 25.8.2008, p. 19.

⁽⁴⁾ OJ L 334, 12.12.2008, p. 62.

⁽⁵⁾ OJ C 91, 19.4.2006, p. 30.

⁽⁶⁾ NN 38/07.

⁽⁷⁾ See footnote 3.

⁽⁸⁾ Copies of two letters from the ministry responsible for the budget demonstrating the existence of a specific tax regime in favour of the FPAP were attached to one of the letters sent to the Commission by the Nantes-based legal firm, Ménard, Quimbert et associés, acting as legal counsel for the FPAP, following the publication of the decision initiating the formal investigation procedure in the Official Journal. The first letter was signed by the Deputy Minister for the Budget and Budgetary Reform, Alain Lambert, and the second by the Minister of State for the Budget and Budgetary reform, Dominique Bussereau. Both letters were addressed to Mr Merabet, President of the FPAP.

(9) The first letter, dated 5 February 2004, relates to the creation of the FPAP, the articles of association of which were approved by the constituent assembly which took place on 10 February 2004. The letter states that:

‘— the fund set up in the form of a trade association will not be subject to corporation tax in respect of the contributions paid by the fishermen-owners and the financial income resulting from investment of its liquid assets;

— the contributions paid will be deductible from the fishermen-owners’ taxable results in respect of the year in which they were paid. As an exceptional measure, initial contributions paid by 30 March 2004 at the latest will be accepted as deductions in respect of the 2003 results.’

(10) The letter also indicates the amounts which could be subject to the deduction mentioned: the annual contributions of member fishermen-owners, which would be deductible from taxable income, would be between EUR 1 000 and 15 000.

(11) The second letter, dated 28 November 2004, relates to the deduction from income of the contributions paid by members. The second letter was written in connection with an amendment of the guarantee agreement between the FPAP and its members, which would henceforth provide for the refund to members of contributions which had been paid but not used.

(12) The letter states that:

‘— contributions paid by members in application of the new agreement will be deductible in respect of the year in which they were paid, up to a limit of EUR 10 000 per year and per member, where this ceiling is increased by 25 % of the part of the profit between EUR 40 000 and 80 000;

— the contributions paid in excess of the limits set out above in respect of a guarantee project implemented by the Fund will be entirely deductible from members’ taxable income in respect of the year in which they were paid.’

(13) The letter indicates that ‘an assessment of this exercise’ would be produced at the end of 2006, and ‘any necessary amendments examined’. This is not therefore a tax scheme to be applied on a permanent basis.

(14) Moreover, although the letter of 28 November 2004 states that the contributions would be deductible from taxable income in respect of the year in which they were paid, there is no indication of any change with regard to the provision set out in the letter of 5 February 2004 regarding the deduction of contributions paid before the end of March 2004 from income in respect of 2003.

(15) It follows from the two letters mentioned above that the tax scheme granted by the Ministry of Finance to the FPAP and its members comprises two aspects:

— firstly, in respect of the FPAP, exemption from corporation tax,

— secondly, the option for FPAP members to deduct their contributions to the fund from their taxable result.

3. REASONS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

(16) The Commission considered that the tax scheme granted by the French authorities in respect of the FPAP and its members should, as previously for case C-9/06, be analysed under the State aid scheme in relation to the advantages it conferred, on the one hand on the FPAP itself and, on the other hand, on its member fisheries undertakings.

3.1. Existence of State aid

3.1.1. State aid at the level of the FPAP

(17) As explained in Decision 2008/936/EC, the FPAP must be considered as an undertaking within the meaning of European Union competition law. The non-profit-making character of the FPAP and its association status are without relevance in this respect.

(18) Consequently, the Commission considered that the tax scheme granted by the French authorities conferred a double advantage on the FPAP in relation to other private investors active on futures markets for petroleum products:

— firstly, the exemption from corporation tax, described in recital 9, granted to the FPAP constitutes a mitigation of the charges which are normally included in the budget of undertakings operating in this field,

— secondly, the tax advantage granted to FPAP members, whichever form it may take, constitutes an incentive to contribute to the income of the FPAP; it thus enables the FPAP to increase its liquidity, whereas other undertakings operating in this sector do not have an equivalent mechanism at their disposal.

(19) After its preliminary investigation, the Commission considered that the advantage referred to in recital 17 had been granted by the state and that it involved the waiving of state resources.

(20) Lastly, as a result of the tax measures referred to in recital 17, the FPAP had benefitted from a financial advantage in relation to other companies operating on futures markets, both in France and in other Member States.

- (21) In its decision to initiate the formal investigation procedure, the Commission also indicated that it assumed that the legal basis which had enabled the FPAP to benefit from the exemption from tax on profits was Article 206(1a) of the General Tax Code ⁽⁹⁾, which provides for exemption of trade associations under certain conditions. Under these circumstances, the FPAP may also have qualified for an exemption from business tax, as provided for under Article 1447 of the same Code for organisations which qualify for the exemption provided for under Article 206(1a) of the Code.

3.1.2. State aid in favour of fisheries undertakings

- (22) The financial advantage referred to under recital 17 enabled member fisheries undertakings to purchase fuel at a preferential rate as a result of the investments made by the FPAP on futures markets for petroleum products.
- (23) The effect of the option granted to fisheries undertakings of deducting their contributions to the FPAP from their income was to mitigate the charges which are normally included in their budgets. This deduction option was granted by the ministry responsible for the budget and is, therefore, imputable to the state.
- (24) The undertakings which have been able to apply the deduction referred to in recital 22 have benefitted from a financial advantage in relation to other fisheries undertakings in the Union. This advantage has thus affected trade between Member States and distorted or threatened to distort competition. For this reason, it constitutes State aid within the meaning of Article 107(1) TFEU.
- (25) Moreover, in its analysis of the information set out in the 'Detailed rules of procedure of the Fund for the prevention of risks to fishing' ('Mode d'emploi détaillé du Fonds de prévention des aléas pêche'), which were also forwarded to the Commission in connection with the formal investigation procedure C-9/06, the Commission found that, when contributions to the FPAP determined on a declarative basis in relation to projected fuel consumption for the year ahead were calculated on a basis which was higher than actual consumption, shipowners retained in full the tax deduction granted. The system appeared to constitute an incentive for shipowners to overestimate their cover requirements with the sole objective of benefitting from the tax deduction.
- (26) On the basis of the same document, the Commission also found that some members whose professional activities were not connected to fishing but who were 'prepared to provide moral support for the trade association' were also entitled to a tax deduction in

respect of their contributions to the FPAP, even though the latter were not linked to a guarantee risk.

3.2. Compatibility with the common market

- (27) With regard to this point, the Commission referred to the analysis presented in Decision 2008/936/EC. The Commission found that the aid in question was operating aid in respect of the FPAP and fisheries undertakings and that no provision of the TFEU or any State aid instrument adopted by the Commission constituted a basis for asserting that such aid was compatible with the common market.
- (28) Consequently, the Commission informed France of its serious doubts as to the compatibility of the aid measures with the common market.

4. COMMENTS FROM FRANCE

4.1. Tax measure in favour of fisheries undertakings

- (29) France considers that the tax measures in favour of fisheries undertakings are not State aid because the contributions paid to the FPAP by fisheries undertakings constitute part of these undertakings' overheads for the exercise of their professional activities. In application of Article 39 of the General Tax Code, these costs are deductible from taxable income. The deduction of these contributions therefore corresponds to the implementation of a general measure and, consequently, does not constitute State aid.
- (30) France recognises that the letters referred to under recital 7 did not contain any information on the scheme for the reimbursement of contributions. However, France emphasises that this does not mean that the reimbursement was without tax effect. In accordance with common law principles for determining taxable results, the reimbursement of the contributions to FPAP member fisheries undertakings constituted income subject to tax on the profit of these undertakings. France also states that, in the case where the price of fuel exceeded the threshold laid down in the guarantee agreement, the compensation received by FPAP member undertakings constituted a gain subject to tax on profits. Consequently, there was no incentive for member undertakings to overestimate their cover requirements, as this would have resulted in additional taxation.
- (31) In addition, France states that the selective nature of an aid measure may be justified on account of the nature and general scheme of the system. Consequently, there may be legitimate reasons which justify differentiated treatment and thus, where appropriate, the granting of the advantages which may ensue. However, in this case, France has not presented any information which could justify differentiated treatment in favour of fisheries undertakings.

⁽⁹⁾ Available online at the following address: <http://www.legifrance.gouv.fr/initRechTexte.do>

4.2. Tax measure in favour of the FPAP

- (32) France considers that the exemption from corporation tax granted to the FPAP is justified on account of its non-profit-making character and its trade association status.
- (33) France asserts that this is compliant with European Union law. The very objective of corporation tax is to levy a tax on profit-making activities. In application of this principle, France recalls that the Commission itself, in its communication on the application of the State aid rules to measures relating to direct business taxation⁽¹⁰⁾ (hereinafter: 'direct taxation communication'), considers that the nature of the tax system may justify exemption from business tax for not-for-profit organisations.

5. ASSESSMENT

- (34) The assessment set out in the decision to initiate the procedure must be reviewed and developed in the light of the information presented by France on 8 September and 29 November 2008 (see recitals 5 and 6).
- (35) The analysis examines the double objective of the FPAP, that is to say, on the one hand, to acquire financial options on futures markets for petrol and derivative products and, on the other hand, to pay the member fisheries undertakings a sum equal to the difference between the average monthly reference price and the 'maximum price covered' or the price of 30 euro cents per litre depending on the period.

5.1. Tax measure in favour of fisheries undertakings

- (36) The tax measure in question involves the option of deducting the contributions paid by fisheries undertakings to the FPAP from taxable income.
- (37) France considers that this deduction does not constitute State aid since the contributions constitute part of the overheads of the undertakings and the French tax system provides for the deduction of such expenses from taxable income. Consequently, it is claimed that the measure constitutes the implementation of a general measure and that the deduction does not constitute State aid.
- (38) The Commission notes that overheads are deductible from undertakings' results in application of Article 39 of the General Tax Code. This is a general measure which applies to all undertakings, irrespective of their field of activity. The deduction option therefore falls under the category of tax measures open to all economic operators referred to under point 13 of the 'direct taxation communication'. Accordingly, a measure of this kind which applies without distinction to all undertakings and the production of all goods does not constitute State aid.
- (39) France argues that the eligibility of charges for deduction as overheads is determined on the basis of the object of

the charges. If the charges were incurred in the company's interest, they are in principle deductible. Accordingly, contributions paid to professional bodies (associations, chambers of commerce, etc.) by definition constitute expenditure committed in the interest of the professional activity in question and are always eligible for deduction from the taxable result. As the FPAP is a trade association, the eligibility for deduction of its members' contributions follows the same principle.

- (40) Moreover, the Commission stated in recital 20 of Decision 2008/936/EC that 'the FPAP is thus designed to be a mutual insurance company providing a number of benefits for its members in exchange for their contributions'.

- (41) Insurance contributions form part of the charges borne by undertakings to protect themselves against various risks. The risk of fluctuations in the cost of oil may constitute one of these risks. These charges are directly linked to the carrying out of the professional activity and do not increase the assets of the undertaking; they are also deductible from taxable income as overheads. It can therefore be considered that the contributions to the FPAP used to offset the risk of fluctuations in the price of oil are deductible from undertakings' results in application of Article 39 of France's General Tax Code. Under these conditions, the measure corresponds to the implementation of a general measure. The deduction option does not therefore constitute State aid.

5.2. Tax measure in favour of the FPAP

- (42) The Commission notes that the FPAP was dissolved on 27 February 2008. The tax provisions in respect of the FPAP lapsed on the same date.
- (43) The Commission also observes that, following the liquidation procedure, the FPAP ceased all economic activity. The activities and assets of the FPAP have not been transferred to any other undertaking. Moreover, the funds which were still available to the FPAP on the date of its disbandment were transferred to the state, via OFIMER, a state-funded public body.
- (44) For these reasons, the Commission considers that, even supposing that the tax measures in favour of the FPAP had constituted an advantage for the FPAP and a distortion of competition, such distortion came to an end when the FPAP ceased to operate and when the measures relating to it came to an end. Under these circumstances, a decision by the Commission on the existence of such tax aid and its potential compatibility with the common market would be devoid of practical effect.
- (45) Consequently, the formal investigation initiated under Article 108(2), TFEU no longer serves any purpose with regard to the FPAP.

⁽¹⁰⁾ OJ C 384, 10.12.1998, p. 3, paragraph 25.

6. CONCLUSION

(46) On the basis of the analysis set out in section 5.1, the Commission notes that the tax advantages conferred upon the members of the FPAP do not constitute State aid within the meaning of Article 107(1) TFEU.

(47) On the basis of the considerations set out in section 5.2, the Commission finds that the procedure against the FPAP has no purpose,

HAS ADOPTED THIS DECISION

Article 1

The tax measures granted by France in respect of fisheries undertakings do not constitute State aid within the meaning of Article 107(1) TFEU.

Article 2

The formal investigation initiated under Article 108(2) TFEU with regard to tax measures in respect of the FPAP is closed.

Article 3

This Decision is addressed to France.

Done at Brussels, 23 June 2010.

For the Commission

Maria DAMANAKI

Member of the Commission

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