

I

(Information)

COMMISSION

**COMMUNITY GUIDELINES FOR STATE AID IN THE AGRICULTURE AND FORESTRY SECTOR
2007 TO 2013**

(2006/C 319/01)

I. INTRODUCTION

- (1) Article 33 of the Treaty defines the objectives of the common agricultural policy. In working out the common agricultural policy and the special methods for its application, account has to be taken of the particular nature of agricultural activity, which results from the special structure of agriculture and from structural and natural disparities between the various agricultural regions, the need to effect the appropriate adjustments by degrees and the fact that agriculture constitutes a sector closely linked with the economy as a whole. Recourse to State aid can only be justified if it respects the objectives of this policy.

- (3) Because the economic effects of an aid do not change depending on whether it is partly financed by the Community, or whether it is financed by a Member State alone, the Commission considers that there should in principle be consistency and coherence between its policy in respect of the control of State aid, and the support which is granted under the Community's own common agricultural and rural development policy.

- (4) By letter of 30 May 2005, Member States were invited to present proposals for the simplification of State aid rules in the agriculture sector. The Working Group on conditions of competition in agriculture was consulted on these guidelines at its meetings of 22 and 23 June 2006 and 25 October 2006.

II. SCOPE AND DEFINITIONS

- (2) 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⁽¹⁾ enshrines a fundamental change in the way Community support to farmers is granted. Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)⁽²⁾ establishes the framework for rural development policy for the years 2007 to 2013, confirming the role of rural development as the second pillar of the common agricultural policy. Articles 88 and 89 of Regulation (EC) No 1698/2005 contain specific provisions in respect of State aid. Article 5 provides that support for rural development measures must be in conformity with the Treaty and any acts adopted under it.

- (5) These guidelines apply to all State aid, granted in connection with activities related to the production, processing and marketing of agricultural products falling within the scope of Annex I of the Treaty. They apply to any aid measure, in whatever form, including aid measures financed by parafiscal taxes, which falls within the definition of State aid laid down in Article 87(1) of the Treaty. These guidelines do not apply to State aids in the fisheries and aquaculture sector⁽³⁾. Chapter VII contains rules for aids for the forestry sector, including aids for the afforestation of agricultural land.

⁽¹⁾ OJ L 270, 21.10.2003, p. 1. Regulation as last amended by Regulation (EC) No 1405/2006 (OJ L 265, 26.9.2006, p. 1).

⁽²⁾ OJ L 277 21.10.2005, p. 1. Regulation as amended by Regulation (EC) No 1463/2006 (OJ L 277, 9.10.2006, p. 1).

⁽³⁾ State aids in the fisheries and aquaculture sector are examined within the framework of the Guidelines for the examination of State aids to fisheries and aquaculture (OJ C 229, 14.9.2004, p. 5) and Council Regulation (EC) No 2369/2002 of 20 December 2002 amending Regulation (EC) No 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries (OJ L 358, 31.12.2002, p. 49).

- (6) For the purpose of these guidelines, 'agricultural product' means the products listed in Annex I of the Treaty, products falling under CN codes 4502, 4503 and 4504 (cork products) and products intended to imitate or substitute milk and milk products⁽⁴⁾, excluding those products covered by Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the market in fishery and aquaculture products⁽⁵⁾.
- (7) For the purpose of these guidelines, 'processing of an agricultural product' means any operation on an agricultural product resulting in a product which is also an agricultural product, except on-farm activities necessary for preparing an animal or plant product for the first sale. The processing of agricultural products falling within the scope of Annex I of the Treaty into non-Annex I products therefore falls outside the scope of these guidelines.
- (8) For the purpose of these guidelines, 'marketing of an agricultural product' means holding or displaying with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered as marketing if it takes place in separate premises reserved for that purpose. Aid for advertising of agricultural products is covered by the scope of the present guidelines whereas aid for advertising of Non Annex I products are covered by horizontal rules on State aid⁽⁶⁾.
- (9) For the purpose of these guidelines, 'small and medium-sized enterprises (SMEs)' means small and medium-sized enterprises as defined in Annex I to Commission Regulation (EC) No 70/2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises⁽⁷⁾.

III. GENERAL PRINCIPLES

- (10) Article 36 of the Treaty establishing the European Communities provides that the Treaty rules on competition are to apply to production and trade in agricultural products only to the extent determined by the Council. In contrast to other sectors, therefore, the Commission's authority to control and supervise State aids in the agricultural sector does not derive directly from the Treaty,

⁽⁴⁾ For the purpose of these provisions, products to imitate or substitute for milk and/or milk products means products which could be confused with milk and/or milk products but whose composition differs from such products in that they contain fat and/or protein of non-milk origin with or without protein derived from milk ('Products other than milk products' as referred to in Article 3(2) of Council Regulation (EEC) No 1898/87 on the protection of designations used in the marketing of milk and milk products (OJ L 182, 3.7.1987, p. 36)).

⁽⁵⁾ OJ L 17, 21.1.2000, p. 22. Regulation as amended by the 2003 Act of Accession.

⁽⁶⁾ Guidelines on national regional aid for 2007-2013 (OJ C 54, 4.3.2006, p. 13), Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10, 13.1.2001, p. 33), Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to de minimis (OJ L 10, 13.1.2001, p. 30). Regulation as last amended by Regulation (EC) No 1040/2006 (OJ L 187, 8.7.2006, p. 8).

⁽⁷⁾ OJ L 10, 13.1.2001, p. 33. Regulation as last amended by Regulation (EC) No 1857/2006 (OJ L 358, 16.12.2006, p. 3)

but from legislation adopted by the Council under Article 37 of the Treaty and is subject to any restrictions which may have been laid down by the Council. In practice however, all the regulations establishing the common organisations of the market provide for the application of the State aid rules of Articles 87, 88 and 89 of the Treaty to the products concerned. Furthermore, Article 88 of Regulation (EC) No 1698/2005 expressly provides that Articles 87, 88 and 89 of the Treaty are to apply to aid granted by Member States to support rural development. It follows that, subject to any specific limitations or derogations which may have been laid down in the regulations concerned, the provisions of the Treaty are fully applicable to State aid granted in the agricultural sector, with the exception of those aids which are specifically aimed at the limited number of products which are not covered by common organisations of the market (see paragraph 21).

- (11) Although Articles 87, 88 and 89 are fully applicable to the sectors covered by the common organisations of the market, their application nevertheless remains subordinate to the provisions established by the regulations concerned. In other words recourse by a Member State to the provisions of Articles 87, 88 and 89 cannot receive priority over the provisions of the regulation on the organisation of that sector of the market⁽⁸⁾. It follows that under no circumstances can the Commission approve an aid which is incompatible with the provisions governing a common organisation of the market or which would interfere with the proper functioning of the common organisation.

- (12) The Commission will not authorise aid to export-related activities, namely aid directly linked to the quantities exported, and aid contingent upon the use of domestic over imported goods, or for the establishment and operation of a distribution network or to other current expenditure linked to the export activity in other Member States. Aid towards the cost of participating in trade fairs, or of studies or consultancy services needed for the launch of a new or existing product on a new market does not normally constitute export aid.

- (13) In view of the specific rules applicable to food aid given to third countries, the Commission will normally not authorise State aid towards the purchase of agricultural

⁽⁸⁾ Judgement of the European Court of Justice in Case 177/78 Pigs and Bacon Commission v. McCarren [1979] ECR 2161.

products within the Community to be granted as food aid in third countries.

- (14) These guidelines apply subject to any specific derogations which may be set out in the Treaties or in Community legislation.

- (15) In order to be considered compatible with the common market, any aid measure must contain some incentive element or require some counterpart on the part of the beneficiary. Unless exceptions are expressly provided for in Community legislation or in these guidelines, unilateral State aid measures which are simply intended to improve the financial situation of producers but which in no way contribute to the development of the sector, and in particular aids which are granted solely on the basis of price, quantity, unit of production or unit of the means of production are considered to constitute operating aids which are incompatible with the common market. Furthermore, by their very nature, such aids are also likely to interfere with the mechanisms of the common organisations of the market.

- (16) For the same reason, aid which is granted retrospectively in respect of activities which have already been undertaken by the beneficiary cannot be considered to contain the necessary incentive element, and must be considered to constitute operating aid which is simply intended to relieve the beneficiary of a financial burden. In order to maximise the incentive effect of aid, and to facilitate the demonstration thereof in case of a notification, eligibility rules set up by Member States shall foresee the following steps preceding the granting of aid:

Aid under an aid scheme shall only be granted in respect of activities undertaken or services received after the aid scheme has been set up and declared compatible with the Treaty by the Commission.

If the aid scheme creates an automatic right to receive the aid, requiring no further administrative action at administrative level, the aid itself may only be granted for activities undertaken or services received after the aid scheme has been set up and declared compatible with the Treaty by the Commission.

If the aid scheme requires an application to be submitted to the competent authority concerned, the aid itself may only be granted for activities undertaken or services received after the following conditions have been fulfilled:

- (a) the aid scheme must have been set up and declared compatible with the Treaty by the Commission;
- (b) an application for aid must have been properly submitted to the competent authority concerned;

- (c) the application must have been accepted by the competent authority concerned in a manner which obliges that authority to grant the aid, clearly indicating the amount of aid to be granted or how this amount will be calculated; such acceptance by the competent authority may only be made if the budget available for the aid or aid scheme is not exhausted

Individual aid outside any aid scheme shall only be granted in respect of activities undertaken or services received after the criteria in points (b) and (c) above have been satisfied.

These requirements shall not apply in the case of aid schemes which are compensatory in nature.

- (17) Because of the similarities between agricultural processing and marketing companies and non-agricultural companies, e.g. in the food processing sector, State aid rules applying to agricultural processing and marketing companies should be harmonised with those applying to non-agricultural companies. This policy should be applied to State aid granted for whatever purpose, for example aid towards the costs of investment, environmental protection or technical support. In this context, the Commission has already included agricultural processing and marketing in :

- (a) the draft Regulation on *de minimis* aid which is to replace Commission Regulation (EC) No 69/2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid ⁽⁹⁾;

- (b) Regulation (EC) No 70/2001 as modified by Regulation (EC) No 1857/2006;

- (c) Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the treaty to national regional investment aid ⁽¹⁰⁾.

- (18) As a consequence of such harmonisation with the rules for non-agricultural companies, large enterprises may no longer be eligible for certain types of support, notably as far as technical support such as consultancy is concerned. Support to large companies in this respect will, in the future, be limited to *de minimis* support.

- (19) Unless specifically provided for in these guidelines by reference to the agriculture sector as opposed to either primary production (farmers) or processing and marketing, aid in favour of agricultural processing and marketing shall only be declared compatible with Article 87(2) or (3) of the Treaty if such aid would also be declared compatible if granted in favour of non-agricultural enterprises outside specific sectors such as transport or fishery.

⁽⁹⁾ OJ L 10, 13.1.2001, p. 30.

⁽¹⁰⁾ OJ L 302, 1.11.2006, p. 29.

(20) Because the very specific conditions of agricultural primary production must be taken into account during the assessment of aid which is intended to favour the less favoured regions within the meaning of Article 36 of Regulation (EC) No 1698/2005, the Commission's guidelines on national regional aid for 2007 to 2013 ⁽¹¹⁾ do not apply to primary production. They shall however apply to the processing and marketing of agricultural products to the extent set out in these guidelines.

(21) As noted above, certain types of agricultural products falling within the scope of Annex I of the Treaty are not yet subject to a common organisation of the market, in particular potatoes other than starch potatoes, horsemeat, coffee and vinegars derived from alcohol and cork. In the absence of a common organisation of the market, the provisions of Article 3 of Council Regulation (EC) No 1184/2006 of 24 July 2006 applying certain rules of competition to production of, and trade in, agricultural products ⁽¹²⁾ are applicable to State aids which are specifically targeted at these products. Article 3 provides that only the provisions of Article 88(1) and the first sentence of Article 88(3) apply to these aids. Therefore, the Member States are required to inform the Commission in sufficient time to enable it to submit its comments on any plans to grant or alter aid. For its part, the Commission cannot oppose the granting of such aids by means of a final negative decision. In assessing such aids the Commission will take into account the absence of common organisations of the market at the Community level and the fact that Regulation (EC) No 1782/2003 has established the principle that Community support should normally be granted in the form of decoupled aid that is not linked to specific products or ongoing production. It must also be noted that certain market organisations do not provide for any domestic Community support. Provided that the national aid schemes follow that principle, the Commission will not formulate comments, even if the measures concerned consist of operating aids which would normally be prohibited. When formulating its comments, the Commission will also take into account the risk of support being granted for a product not subject to a common market organisation benefiting the production of a product subject to such an organisation. This is notably the case in the potato sector. If a Member State does not follow the Commission's comments and recommendations, the Commission reserves the right to revert to Article 226 of the Treaty.

(22) Article 6 of the Treaty provides that 'environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development.' The activities referred to in Article 3 cover both agricultural and competition policy. Particular attention therefore needs to be given to environmental issues in future State aid

notifications, even in cases where the aid schemes are not specifically concerned with environmental issues. For example, in the case of an aid scheme for investments which are intended to increase production, and which involve an increased use of scarce resources or an increase in pollution, it will be necessary to show that the scheme will not result in an infringement of Community environmental protection legislation, or otherwise cause environmental damage. All State aid notifications should in future contain an assessment of the expected environmental impact of the activity aided. In many cases, this will involve no more than a confirmation that there is no expected environmental impact. The Commission reserves the right to require additional information, undertakings and conditions it deems necessary for ensuring adequate environmental protection.

(23) The Commission will assess any aid measures which are not covered by these guidelines on a case by case basis, taking into account the principles set out in Articles 87, 88 and 89 of the Treaty and the Community's common agricultural and rural development policies. Member States proposing support for the agriculture sector not covered by these guidelines will have to provide an economic assessment of the positive impact of the measure for the development of the agriculture sector, and of the risks of distortions of competition posed by the measure in question. The Commission will only approve such measures if the positive contribution to the development of the sector clearly outweighs the risks of distortions of competition.

(24) Unless otherwise indicated, all aid rates in these guidelines are expressed in terms of the total amount of support expressed as a percentage of the volume of eligible expenses (gross subsidy equivalents).

IV. RURAL DEVELOPMENT MEASURES

(25) Regulation (EC) No 1698/2005 sets out a series of support measures for rural development. This chapter of the guidelines sets out the rules for State aid in favour of such measures and some other measures closely linked to rural development.

(26) In order to ensure coherence between rural development measures proposed for co-financing in the framework of the rural development programmes put in place by Member States and rural development measures financed through State aids, every notification concerning aids for investments (Chapters IV A and B), environmental and animal welfare aid (Chapter IV C), aid to compensate for handicaps in certain areas (Chapter IV D), aid for meeting standards (Chapter IV E) and aid for the setting up of young farmers (Chapter IV F) must be accompanied by documentation demonstrating how the State aid measure fits into and is coherent with the relevant Rural Development programmes. State aid that is not coherent with the relevant

⁽¹¹⁾ OJ C 54, 4.3.2006, p. 13.

⁽¹²⁾ OJ L 214, 4.8.2006, p. 7.

Rural Development programme and notably State aid leading to increases in capacity for which no normal market outlets can be found will not be authorised.

IV.A. Aids for Investment in Agricultural Holdings

(27) This sub-chapter applies to investment linked to the primary production of products falling within the scope of Annex I of the Treaty. It does not apply to investment made on a farm in favour of processing and marketing of such products.

IV.A.1. Analysis

(28) In order to determine its future policy, the Commission has in particular taken into account the following considerations:

- (a) In order to restructure and develop physical potential and promote innovation, Article 26(1) of Regulation (EC) No 1698/2005 foresees support for tangible and/or intangible investments which improve the overall performance of the agricultural holding;
- (b) In line with Article 26(1) of Regulation (EC) No 1698/2005, where investments are made in order to comply with Community standards, support may be granted only to those which are made in order to comply with newly introduced Community standards. In that case, a period of grace, not exceeding 36 months from the date on which the standard becomes mandatory for the agricultural holding, may be provided to meet that standard. In the case of young farmers receiving support for setting up, support may be granted for investments to comply with existing Community standards, when identified in the business plan referred to in Article 22 (1)(c) of Regulation (EC) No 1698/2005. The period of grace within which the standard needs to be met may not exceed 36 months from the date of setting up;
- (c) Article 88(2) of Regulation (EC) No 1698/2005 prohibits State aid for the modernisation of agricultural holdings which exceeds the percentages set out in the Annex to the Regulation, which are:
 - (i) 60 % of the amount of eligible investment by young farmers in the areas referred to in Article 36(a) (i), (ii) and (iii) of Regulation (EC) No 1698/2005,
 - (ii) 50 % of the amount of eligible investment by other farmers in the areas referred to in Article 36(a) (i), (ii) and (iii) of Regulation (EC) No 1698/2005,
 - (iii) 50 % of the amount of eligible investment by young farmers in other areas,
 - (iv) 40 % of the amount of eligible investment by other farmers in other areas,
- (v) 75 % of the amount of eligible investment in the outermost regions and the smaller Aegean Islands within the meaning of Council Regulation (EEC) No 2019/93 of 19 July 1993 introducing specific measures for the smaller Aegean islands concerning certain agricultural products ⁽¹³⁾,
- (vi) 75 % of the amount of eligible investment in the Member States which acceded to the Community on 1 May 2004 and 1 January 2007, for the implementation of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources ⁽¹⁴⁾ within a maximum period of four years from the date of Accession pursuant to Articles 3(2) and 5(1) of that Directive;
- (d) The prohibition of Article 88(2) of Regulation (EC) No 1698/2005 does not apply to aid relating to investments undertaken predominantly in the public interest and related to the conservation of traditional landscapes shaped by agricultural and forestry activities or to the relocation of farm buildings, the protection and improvement of the environment, improvement of the hygiene conditions of livestock undertakings and animal welfare and occupational safety at the workplace;
- (e) Where the need to relocate results from an expropriation which, in accordance with the legislation of the Member State concerned gives rise to a right to compensation, the payment of such compensation will not normally be considered as State aid within the meaning of Article 87(1) of the Treaty;
- (f) Member States which delay the implementation of compulsory Community standards beyond the date foreseen in Community legislation may through such delays provide an advantage to farmers in comparison to farmers in Member States which comply with such new standards in line with the implementation dates foreseen in Community legislation. This risk of distortions of competition should not be increased by the granting of high amounts of State aid to farmers who bear the cost of new standards later than foreseen in Community legislation. However, when setting up the appropriate aid intensity for investment linked to compliance with newly introduced standards, account should also be taken of the fact that such standards often only entail costs for the farmer without increasing the earning potential. The highest aid intensity for investments related to newly introduced standards should therefore be reserved for those made within the time table foreseen in Community legislation. Investments made later on should only benefit from a lower aid intensity. Such intensity shall reflect the delay incurred and should be reduced to zero at some point in time;

⁽¹³⁾ OJ L 184, 27.7.1993, p. 1. Regulation as last amended by Regulation (EC) No 1782/2003 (OJ L 270, 21.10.2003, p. 1).

⁽¹⁴⁾ OJ L 375, 31.12.1991, p. 1. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

(g) As far as implementation of Directive 91/676/EEC is concerned, account should be taken of the specific problems and needs of the Member States which acceded to the Community on 1 May 2004 and 1 January 2007.

(h) State aid for the purchase of second-hand equipment should be accepted in favour of small and medium-sized enterprises, where the lower cost of such equipment may be a useful first step towards modernisation notably for farms that start from a very low technical standard and which have little capital. Large companies should only receive investment aid for the purchase of new equipment.

investment should have been made in line with the deadlines foreseen by Community legislation;

(b) the maximum aid intensities of 50 % and 40 % referred to in point (a) shall be reduced to 25 % and respectively 20 % for expenditure incurred in year four beyond the date by which the investment should have been made in line with the deadlines foreseen by Community legislation, and to 12,5 % and 10 % in year five. No aid shall be authorised for expenditure incurred beyond year five.

IV.A.2. Policy on investment aid in agricultural holdings

(29) Aid for investment in agricultural holdings shall be declared compatible with Article 87(3)(c) of the Treaty if it fulfils all the conditions of Article 4 of Regulation (EC) No 1857/2006. Without prejudice of Article 4(7)(c) of Regulation (EC) No 1857/2006, aid may also be granted up to the same rate and at the same conditions as those established in the said Article 4 to specific agricultural products and in respect of drainage works or irrigation equipment and irrigation works which do not lead to a reduction of previous water use of 25 %. The maximum amount of aid fixed in Article 4(9) of Regulation No 1857/2006 does not apply.

(30) Aid for the conservation of traditional landscapes and buildings shall be declared compatible with Article 87(3)(c) or (d) of the Treaty if it fulfils all the conditions of [Article 5 of the BER replacing R 1/2004]. However, the limit of EUR 10 000 fixed in [Article 5 (2) of the BER replacing R 1/2004] could be exceeded in duly justified cases.

(31) Aid for the relocation of farm buildings in the public interest shall be declared compatible with Article 87(3)(c) of the Treaty if it fulfils all the conditions of [Article 6 of the BER replacing R 1/2004].

(32) Aid for investments resulting in extra costs relating to the protection and improvement of the environment, the improvement of hygiene conditions of livestock enterprises or the welfare of farm animals shall be declared compatible with Article 87(3)(c) of the Treaty if it fulfils all the conditions of [Article 4(2)(e) of the BER replacing R 1/2004]. For investment expenditure incurred after the dates for compliance with newly introduced standards established by [Article 2(10) of the BER replacing R 1/2004], the maximum aid intensity shall be:

(a) 50 % of eligible investments in less favoured areas or in areas referred to in Article 36(a)(i), (ii) and (iii) of Regulation (EC) No 1698/2005, and 40 % of eligible investments in other areas, for expenditure incurred within three years after the date by which the

(33) Aid of 75 % for extra costs of investments in the Member States which acceded to the Community on 1 May 2004 and 1 January 2007 for the implementation of Directive 91/676/EEC shall be declared compatible with Article 87(3)(c) of the Treaty until 31 December 2008 and 31 December 2010 respectively. This aid intensity must be limited to the extra eligible costs necessary and does not apply in the case of investments which result in an increase in production capacity. The Commission will take particular care of verifying the compatibility of the aid measures proposed with the action plans established in conformity with Directive 91/676/EEC.

(34) Aid of 50 % in less favoured areas or in areas referred to in Article 36(a)(i), (ii) and (iii) of Regulation (EC) No 1698/2005, and 40 % of eligible investments in other areas in respect of extra costs of investments for the implementation of Directive 91/676/EEC shall be declared compatible with Article 87(3)(c) of the Treaty in so far they are supported under Regulation (EC) No 1698/2005. This aid intensity must be limited to the extra eligible costs necessary and does not apply in the case of investments which result in an increase in production capacity. The Commission will take particular care to verify the compatibility of the aid measures proposed with the action plans established in conformity with Directive 91/676/EEC. Aid measures for the implementation of Directive 91/676/EEC declared compatible with the Treaty by the Commission before the entry into force of these guidelines may continue up to 31 December 2008, at the aid rates authorised by the Commission.

(35) No aid shall be authorised for investment to comply with existing Community or national standards. However, investment aid granted to young farmers for investments to comply with existing Community or national standards shall be declared compatible with Article 87(3)(c) of the Treaty when identified in the business plan referred to in Article 22(1)(c) of Regulation (EC) No 1698/2005. Such aid shall be authorised at a rate of up to 60 % of the amount of eligible investment by young farmers in the less favoured areas or areas referred to in Article 36(a)(i), (ii) and (iii) of Regulation (EC) No 1698/2005, and up to 50 % of eligible

investments by young farmers in other areas. Aid must be limited to extra costs relating to the implementation of the standard incurred no later than 36 months from the date of setting up.

- (36) Notifications of investment aid to agricultural holdings must be accompanied by documentation showing that support is targeted at clearly defined objectives reflecting identified structural and territorial needs and structural disadvantages.
- (37) Where a common market organisation, including direct support schemes, financed by the European Agricultural Guarantee Fund (EAGF) places restrictions on production or limitations on Community support at the level of individual farmers, holdings or processing plants, no investment shall be supported by State aids which would increase production beyond those restrictions or limitations.
- (38) The Commission will also apply the rules set out in this section by analogy to investments in primary agricultural production which are not made by farmers, for example where equipment is purchased for shared use by a group of producers.
- (39) The Commission will not declare aid for the purchase of second-hand equipment compatible with the Treaty if such aid is granted in favour of large companies.

IV.B. Aids for investments in connection with the processing and marketing of agricultural products

- (40) This sub-chapter applies to investment aid in connection with the processing and marketing of agricultural products.

IV.B.1. Analysis

- (41) In order to determine its future policy, the Commission has in particular taken into account the following considerations:
 - (a) insofar as Regulation (EC) No 1698/2005 specifies aid rates for investment support granted to small and medium-sized enterprises active in agricultural processing and marketing, such aid rates should be maintained;
 - (b) Regulation (EC) No 1698/2005 excludes investments by certain large processing and marketing enterprises from Community support. However, because of the similarities between large agricultural processing and marketing companies and non-agricultural companies, e.g. in the food processing sector, it seems justified to accept State aid to such agricultural processing and marketing companies up to the maximum aid rates authorised by the Commission for non-agricultural companies of the same size;
 - (c) Article 28(3) of Regulation (EC) No 1698/2005 has introduced special maximum aid rates for investment

aid granted to enterprises not covered by Article 2(1) of Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises ⁽¹⁵⁾ with less than 750 employees and/or with a turnover of less than EUR 200 million. Such enterprises are considered as large enterprises as far as State aid rules applicable to non-agricultural activities are concerned. Clear guidance for the application of State aid rules to this group of 'intermediate' enterprises seems necessary in order to avoid uncertainty in relation to the application of the right aid rate. Notably, it should be established that all the other conditions of Recommendation 2003/361/EC apply to the definition of such 'intermediate' enterprises, notably as to the independence criterion and the calculation of turnover. Also, special maximum aid rates should be reserved to intermediate companies with less than 750 employees and/or a turnover of less than EUR 200 million;

- (d) aids intended to promote the diversification of primary producers (farmers) into other activities connected with the processing and marketing of agricultural products falling within the scope of Annex I of the Treaty should be treated in the same way as aid granted to agricultural processing and marketing firms that are independent of primary producers. For example, the same rules should apply to investment aid for a slaughterhouse, no matter whether it is built on or outside of a farm;
- (e) although they may fall within the scope of Regulation (EC) No 1698/2005, aids granted to promote the diversification of primary producers (farmers) into activities which are not connected to the production, processing and marketing of agricultural products falling within the scope of Annex I of the Treaty, such as agro-tourism, the development of craft industries or aquaculture, fall outside of the scope of these guidelines. These aids will therefore continue to be assessed in accordance with the usual principles applied by the Commission for the assessment of aids outside of the agricultural sector, in particular the *de minimis* rule, the rules governing aid for small and medium-sized companies, the Commission's guidelines on national regional aid for 2007-2013, the multisectoral framework on regional aid for large investment projects ⁽¹⁶⁾ and, in appropriate cases, the guidelines for the examination of State aid to fisheries and aquaculture ⁽¹⁷⁾;
- (f) State aid for the purchase of second-hand equipment should be accepted in favour of small and medium-sized enterprises, where the lower cost of such equipment may be a useful first step towards modernisation notably for companies that start from a very low technical standard and which have little

⁽¹⁵⁾ OJ L 124, 20.5.2003, p. 36.

⁽¹⁶⁾ OJ C 70, 19.3.2002, p. 8.

⁽¹⁷⁾ OJ C 229, 14.9.2004, p. 5.

capital. Large companies should only receive investment aid for the purchase of new equipment.

IV.B.2. *Policy on aid to companies active in the processing and marketing of agricultural products*

(42) Aid for investment granted to companies active in the processing and marketing of agricultural products shall be declared compatible with Articles 87(3)(a) or (c) of the Treaty if it fulfils all the conditions of one of the following provisions:

(a) Article 4 of Regulation (EC) No 70/2001 ;

(b) Commission Regulation (EC) No 1628/2006;

(c) the Commission guidelines on national regional aid for 2007–2013. In that case, the maximum aid intensity resulting from the application of these guidelines may be increased to:

(i) 50 % of eligible investments in regions under Article 87(3)(a) of the Treaty and 40 % of eligible investments in other regions eligible for regional aid, as determined in the regional aid map approved for the Member States concerned for the period 2007–2013, if the beneficiary is a small or medium-sized enterprise;

(ii) 25 % of eligible investments in regions eligible under Article 87(3)(a) of the Treaty and 20 % of eligible investments in other regions eligible for regional aid, as determined in the regional aid map approved for the Member States concerned for the period 2007–2013, if the beneficiary has less than 750 employees and/or less than EUR 200 million turnover, on condition that such beneficiary fulfils all the other conditions of Recommendation 2003/361/EC.

(d) In regions not eligible for regional aid, for companies that are not small and medium-sized enterprises but which have less than 750 employees and/or less than EUR 200 million turnover, on condition that such beneficiary fulfils all other conditions of Recommendation 2003/361/EC, aid up to 20 % of eligible investments as listed in the guidelines on national regional aid for 2007–2013, and fulfilling the relevant conditions of those guidelines.

(43) Unless specified elsewhere in these guidelines, for example for aid linked to environmental protection, the Commission will thus only authorise aid for investment for companies active in the processing and marketing of agricultural products with 750 employees and more and a turnover of EUR 200 million and more, if it fulfils all the conditions of the guidelines on national regional aid 2007–2013, up to the maximum amount determined in the regional aid map approved for the Member States concerned for the period

2007–2013, in the regions eligible for regional aid. Investment aid not fulfilling these conditions will normally be declared incompatible with the Treaty. No aid may be granted which concerns the manufacture and marketing of products which imitate or substitute milk and milk products.

(44) The Commission will declare aid for the purchase of second-hand equipment compatible with the Treaty only if such aid is granted in favour of small and medium-sized enterprises.

(45) Aid for investments with eligible expenses in excess of EUR 25 million, or where the actual amount of aid will exceed EUR 12 million must be specifically notified to the Commission in accordance with Article 88(3) of the Treaty.

(46) Notifications of investment aid in connection with the processing and marketing of agricultural products must be accompanied by documentation showing that support is targeted on clearly defined objectives reflecting identified structural and territorial needs and structural disadvantages.

(47) Where a common market organisation, including direct support schemes, financed by the European Agricultural Guarantee Fund (EAGF) places restrictions on production or limitations on Community support at the level of individual farmers, holdings or processing plants, no investment shall be supported under State aids which would increase production beyond those restrictions or limitations.

IV.C. **Environmental and animal welfare aid**

(48) Unless expressly specified, this sub-chapter only applies to aid granted to primary producers (farmers).

IV.C.1. *General Principles*

(49) In order to determine its future policy, the Commission has in particular taken into account the following considerations:

(a) in accordance with Article 174 of the Treaty, Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventative action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay;

(b) all environmental aid schemes in the agricultural sector should be compatible with the general objectives of Community environmental policy. In particular, aid schemes which fail to give sufficient priority to the elimination of pollution at source or to the correct application of the polluter pays principle cannot be

considered compatible with the common interest, and therefore cannot be authorised by the Commission;

(c) since the adoption of the Community guidelines for State aid in the agriculture sector in 1999⁽¹⁸⁾, Community State aid policy in favour of environmental protection has been changed substantially, for example as far as operating aid or aid in favour of renewable energy is concerned. The rules set out in the 1999 guidelines for State aid in the agriculture sector are now in part stricter than those applied to other sectors. In order to avoid discrimination and in order to allow Member States to implement environmental policy across all sectors, the Commission has on various occasions applied the rules developed for other sectors also to the agriculture sector. For these reasons, apart from various measures that remain specific to the agriculture sector such as agri-environmental support, the Community guidelines on State aid for environmental protection⁽¹⁹⁾ shall in the future also apply to the agriculture sector;

(d) Articles 3 and 4 of Regulation (EC) No 1782/2003 establish an obligation for farmers to respect certain statutory management requirements. Article 5 imposes an obligation to keep all agricultural land in good agricultural and environmental condition. No State aid under this chapter should be granted to farmers not meeting these conditions, nor should State aid be granted for simply respecting these conditions, unless this is specifically foreseen in Regulation (EC) No 1698/2005 notably as far as Natura 2000 payments are concerned;

(e) aid for investment in the field of primary production will be evaluated in accordance with the general rules set out in chapter IV.A above.

IV.C.2. Aid for Agri-environmental or animal welfare commitments

IV.C.2.a. Analysis

(50) In order to determine its future policy, the Commission has in particular taken into account the following considerations:

(a) Regulation (EC) No 1698/2005 and in particular Articles 39 and 40 thereof set out a framework for Community support for agricultural production methods designed to protect the environment and to maintain the countryside, and for animal welfare payments. Additional conditions and specifications are set out in implementing rules adopted by the Commission. In accordance with Article 88(4) of Regulation (EC) No 1698/2005, State aid to support farmers who give agri-environmental or animal welfare commitments which fail to satisfy the conditions laid down in Articles 39 and 40 thereof are prohibited;

(b) in accordance with Article 88(4) of Regulation (EC) No 1698/2005, additional State aid exceeding the maximum amounts set in the Annex thereto, as regards Articles 39(4) and 40(3) of that Regulation, may be granted if duly justified. Moreover, in exceptional cases, duly justified derogations may be permitted in respect of the minimum duration of those commitments as laid down in Articles 39(3) and 40(2) of that Regulation. For the sake of clarity, it appears useful to set out conditions for the application of these specific State aid provisions. Such higher support should normally only be accepted for commitments which entail a real change of current agricultural practice, leading to a demonstrable positive effect on the environment. Care should be taken that high absolute amounts of support granted per hectare or animal do not lead to or accentuate imbalances in the overall support level between Member States.

IV.C.2.b. Policy on aid for agri-environmental and animal welfare commitments

(51) Aid for agri-environmental or animal welfare commitments shall be declared compatible with Article 87(3)(c) of the Treaty if it fulfils all the requirements as set out in Articles 39 or 40 of Regulation (EC) No 1698/2005, and of the relevant implementing rules adopted by the Commission.

(52) When notifying State aid in favour of agri-environmental or animal welfare commitments, Member States must undertake to adapt such schemes to any relevant modification of Regulation (EC) No 1698/2005 or its implementing rules adopted by the Commission.

(53) A Member State wishing to grant additional aid exceeding the maximum amounts fixed in accordance with Articles 39 (4) or 40(3) of Regulation (EC) No 1698/2005 shall provide supporting evidence that the measure meets all the conditions laid down in that Regulation and the relevant implementing rules. It shall also provide a justification for the additional aid payments including a detailed breakdown of the cost components involved on the basis of income foregone and additional costs resulting from the commitment given.

(54) Aid exceeding the amounts fixed in the Annex to Regulation (EC) No 1698/2005 shall in principle only be declared compatible with Article 87(3)(c) of the Treaty if it is granted for demonstrated additional costs and/or income foregone, in exceptional cases taking into account of specific circumstances to be duly justified, in favour of commitments which entail a real change of current agricultural practice and lead to a demonstrable and significant positive effect on the environment. Unless exceptional benefits for environmental protection can be demonstrated, such higher aid shall thus not be authorised in favour of farmers simply proposing not to change

⁽¹⁸⁾ OJ C 232, 12.8.2000, p. 19.

⁽¹⁹⁾ OJ C 37, 3.2.2001, p. 3.

current agricultural practice on the land involved (for example, for not changing extensive grazing into more intensive forms of production).

- (55) If a Member State wants to compensate for transaction costs caused by entering into agri-environmental or animal welfare commitments, it must provide convincing proof of such costs, for example by presenting cost comparisons with farms not entering into such commitments. The Commission will therefore not normally authorise State aid for transaction costs for the continuation of agri-environmental or animal welfare commitments already entered into in the past, unless a Member State demonstrates that such costs continue to occur or that new transaction costs are being borne.
- (56) Where transaction costs are calculated on the basis of average costs and/or average farms, Member States should demonstrate that in particular large farms are not over-compensated. For the purpose of calculating compensation, Member States shall take into account whether the transaction costs in question are incurred per farm or per hectare.
- (57) Aid for the costs of non-productive investments linked to the achievements of commitments undertaken under agri-environmental commitments may be granted up to 100 % of eligible expenses. For this purpose, non productive investments should not lead to a net increase in farm value or profitability.
- (58) Where, exceptionally, a Member State proposes to grant State aid in respect of commitments of a shorter duration than that prescribed in accordance with Regulation (EC) No 1698/2005, it should provide a detailed justification, including a demonstration that the full environmental effects of the measure can be realised in the shorter time proposed. The amount of aid proposed should reflect the shorter duration of the undertakings given.

IV.C.3. *Natura 2 000 payments and payments linked to directive 2000/60/ec*

IV.C.3.a. Analysis

- (59) For the establishment of future policy, the following considerations have in particular been taken into account:
- (a) Article 38 of Regulation (EC) No 1698/2005 establishes Community support for farmers to compensate for costs incurred and income foregone as a result of disadvantages in the areas concerned related to the implementation of Council Directive 79/409/EEC of

2 April 1979 on the conservation of wild birds ⁽²⁰⁾, Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ⁽²¹⁾ and Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy ⁽²²⁾;

- (b) contrary to Article 16 of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations ⁽²³⁾, Article 38 of Regulation (EC) No 1698/2005 limits the possibility of compensation to the effect of the three directives referred to in point (a). As a consequence, State aid for income foregone or extra costs resulting from the implementation of other Community standards should no longer be authorised under this heading;
- (c) with a view to the single farm payment established by Regulation (EC) No 1782/2003 and the obligation to keep all agricultural land in good agricultural and environmental condition set out in Article 5 of that Regulation, no State aid should be granted for the costs resulting from simply respecting these conditions.

IV.C.3.b. Policy

- (60) The Commission will declare State aid compatible with Article 87(3)(c) of the Treaty if it fulfils all the conditions set out in Article 38 of Regulation (EC) No 1698/2005 and the relevant implementing rules adopted by the Commission. Aid will only be permitted for obligations going beyond cross compliance obligations and the conditions set out in Article 5 of Regulation (EC) No 1782/2003. Any aid which is granted in breach of the polluter pays principle should be exceptional, temporary and degressive.

IV.C.4. *Other aid in favour of environmental protection*

- (61) Investment aid to farmers in relation to environmental protection is dealt with under chapter IV.A above.
- (62) The Commission will examine any other aid in favour of environmental protection on the basis of the Community guidelines on State aid for environmental protection, which are thus declared applicable to the agriculture sector. Should those guidelines be modified or replaced, such new provisions shall be applied unless specified otherwise in such rules.

⁽²⁰⁾ OJ L 103, 25.4.1979, p. 1.

⁽²¹⁾ OJ L 206, 22.7.1992, p. 7.

⁽²²⁾ OJ L 327, 22.12.2000, p. 1. Directive as amended by Decision No 2455/2001/EC of the European Parliament and of the Council (OJ L 331, 15.12.2001, p. 1).

⁽²³⁾ OJ L 160, 26.6.1999, p. 80. Regulation as last amended by Regulation (EC) No 1698/2005 (OJ L 271, 21.10.2005, p. 1).

(63) Aid for environmental protection in favour of companies active in the processing and marketing of agricultural products shall be declared compatible with Article 87(3)(c) of the Treaty if it fulfils all the conditions of the Community guidelines on State aid for environmental protection. In case of investment aid in favour of environmental protection, a possible higher maximum aid rate resulting from the application of the rules for investment aid set out above in chapter IV.B may be applied.

IV.D. Aid to Compensate for Handicaps in certain areas

(64) This sub-chapter only applies to support granted to primary production (farmers).

IV.D.1. Analysis

(65) Article 37 of Regulation (EC) No 1698/2005 provides for natural handicap payments in mountain areas of a maximum of EUR 250 per hectare of UAA and payments in other areas with handicaps of a maximum of EUR 150 per hectare of UAA. Payments higher than the maximum amounts may be granted in duly justified cases provided that the average amount of all these payments granted at the level of the Member State concerned does not exceed this maximum amount. Article 88(3) of Regulation (EC) No 1698/2005 prohibits the payment of State aid to farmers to compensate for natural handicaps in mountain areas and in other areas with handicaps if it does not satisfy the conditions laid down in Article 37. However, additional aid exceeding the amounts fixed according to Article 37(3) may be granted in duly justified cases.

(66) According to the third subparagraph of Article 94 of Regulation (EC) No 1698/2005, Articles 37 and 88(3) shall apply from 1 January 2010, subject to an act of Council adopted in accordance with the procedure laid down in Article 37 of the Treaty. Until then, in accordance with Article 93(1) of Regulation (EC) No 1698/2005, the relevant provisions of Regulation (EC) No 1257/1999 are maintained, notably Articles 14(2), 15 and 51(3) of that Regulation. Council Regulation (EC) No 1783/2003 of 29 September 2003 amending Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) ⁽²⁴⁾ has increased the maximum average amount per hectare that may be granted on the basis of Article 15 of Regulation (EC) No 1257/1999 from EUR 200 to EUR 250 in cases duly justified by objective circumstances. Contrary to Article 88(3) of Regulation (EC) No 1698/2005, Article 51(3) of Regulation (EC) No 1257/1999 prohibits State aid above the maximum amount set in the Annex to the Regulation, i. e. State aid above an average of EUR 250 per hectare.

(67) A consistent method for calculating the economic impact of recognised handicaps should be established, based on the experience acquired by the Commission. This method shall notably ensure that there is no overcompensation of the economic effect of natural handicaps.

(68) Distortions of competition and serious imbalances in the overall support levels between Member States should be avoided. Therefore, an upper limit of compensation should be established.

(69) These rules may be reviewed following the entry into force of Articles 37 and 88(3) of Regulation (EC) No 1698/2005.

IV.D.2. Policy

(70) Until the entry into force of Articles 37 and 88(3) of Regulation (EC) No 1698/2005, the Commission will declare State aid compatible with Article 87(3)(c) of the Treaty if it fulfils all the conditions of Articles 14(1), the first two indents of Article 14(2) and Article 15 of Regulation (EC) No 1257/1999, and any implementing rules of this Regulation adopted by the Commission, and if the beneficiaries fulfil cross-compliance obligations.

(71) Where State aid measures are combined with support under Regulation (EC) No 1257/1999, the total support granted to the farmer must not exceed the amounts determined in accordance with Article 15 thereof.

(72) From the entry into force of Articles 37 and 88(3) of Regulation (EC) No 1698/2005, the Commission will declare State aid compatible with Article 87(3)(c) of the Treaty if it fulfils all the conditions of these Articles, and any implementing rules adopted by the Council or the Commission.

(73) In all cases, for aid granted under both Regulation (EC) No 1257/1999 and under Regulation (EC) No 1698/2005, State aid shall only be declared compatible with Article 87(3)(c) of the Treaty under the following conditions:

(a) The Member State must demonstrate the handicaps in question and provide proof that the amount of compensation to be paid avoids any overcompensation of the effect of these handicaps;

(b) The level of compensatory payments shall be proportionate to the economic impact of the handicaps. The level of payments shall therefore be differentiated according to the relative impact of handicaps in different areas with handicaps. That means that where the average impact of handicaps per hectare of comparable farms differs by e.g. 20 %, compensatory payments should be differentiated accordingly;

⁽²⁴⁾ OJ L 270, 21.10.2003, p. 70

- (c) Only the economic impact of permanent handicaps that lie outside of human control may be taken into account for calculating the amount of compensatory payments. Structural disadvantages open to improvement through modernisation of farms or factors such as taxes, subsidies or the implementation of the reform of the common agricultural policy may not be taken into account;
 - (d) The Commission will verify the absence of over-compensation and the proportionality of payments by using statistical tools that are harmonised at Community level. Where such tools are not available or sufficient, other data shall be used where the Commission can ascertain that they are sufficiently representative for the purposes of the verification;
 - (e) Compensatory payments shall reflect the average economic impact of the handicaps per hectare;
 - (f) The amount of compensation that can be granted shall normally be established by comparing the average income per hectare of farms in areas with handicaps with the income of same-size farms producing the same products in areas without handicaps situated in the same Member State. The income to be taken into account in this respect shall be direct income from farming and notably exclude taxes paid or subsidies received. In the case of a whole Member State being considered as consisting of areas with handicaps, the comparison shall be made with similar areas in other Member States in which the production conditions, in particular as regards climate and geography, can be meaningfully compared to those in that first Member State.
- (74) The Commission, in coherence with rural development rules, reserves the right to require degressive payments for farms above a certain size. To that effect, notifications should specify the size of the farm that will benefit from these payments.
- (b) Article 88(5) of Regulation (EC) No 1698/2005 prohibits State aid to support farmers who adapt to demanding standards based on Community legislation in the fields of the environmental protection, public health, animal and plant health, animal welfare and occupational safety if it does not satisfy the conditions laid down in Article 31. However, additional aid exceeding the maximum amounts fixed in accordance with that Article may be granted to help farmers to comply with national legislation which exceeds Community standards;
 - (c) in the absence of Community legislation, Article 88(6) of Regulation (EC) No 1698/2005 prohibits State aid to support farmers who adapt to demanding standards based on national legislation in the fields of the environmental protection, public health, animal and plant health, animal welfare and occupational safety if it does not satisfy the conditions laid down in Article 31. However, additional aid exceeding the maximum amounts set in the Annex, as regards Article 31(2), may be granted if justified under Article 31;
 - (d) in order to provide for sufficient clarity, the notion of what can be considered a 'significant impact on typical farm operating costs' and 'a significant number of farms' should be specified;
 - (e) Article 31 of Regulation (EC) No 1698/2005 limits the overall compensation a farmer may receive over a period of five years for costs incurred and income foregone due to the application of one or more of the standards listed to EUR 10 000. Significant additional State aid granted above this amount may lead to distortions of competition notably in the case of important differences between Member States or regions in the actual level of support. Also, large farms should be better able to support the impact on operating costs of new compulsory standards. Therefore, an absolute maximum level of support should be established;
 - (f) as far as new standards not based on Community standards are concerned, support should be limited to costs caused by standards which risk creating a real competitive handicap for the farmers concerned.

IV.E. Aid for meeting standards

- (75) This sub-chapter only applies to support granted to primary production (farmers).

IV.E.1. Analysis

- (76) In order to determine its future policy, the Commission has in particular taken into account the following considerations:
- (a) Article 31 of Regulation (EC) No 1698/2005 provides for support to farmers towards parts of the costs incurred and income foregone as a result of the application standards in the fields of environmental protection, public health, animal and plant health, animal welfare and occupational safety;

IV.E.2. Policy

- (77) The Commission will declare State aid compatible with Article 87(3)(c) of the Treaty if it fulfils all the conditions of Articles 31 and 88(5) or (6) of Regulation (EC) No 1698/2005, and any implementing rules adopted by the Commission
- (78) Support going above the maximum limit set in the Annex to Regulation (EC) No 1698/2005 shall not cover more

than 80 % of costs incurred and income foregone by farmers. Altogether, and taking into account any Community support that may be granted, support shall not exceed EUR 12 000 per holding. This amount shall not be exceeded over any period of five years in case of compensation granted for meeting more than one standard.

(79) Support may only be granted in relation to standards which, if calculated for an average farm of the sector and Member State concerned by the standard, can be shown to be the direct cause of :

(a) an increase in operating costs for the product or products concerned by the standard of at least 5 %; or

(b) an income loss equal to at least 10 % of net profits from the product or products concerned by the standard.

(80) Support may only be granted in relation to standards which lead to such an increase in operating costs or loss of income for at least 25 % of all farms of the (sub)sector in the Member State concerned by the standard.

(81) In relation to national standards, the Member State shall demonstrate that the introduction of the relevant standard at national level would risk causing an important competitive handicap to the producers concerned. The demonstration of such handicap shall be made on the basis of average net profit margins for average farms of the (sub) sector concerned by the standard.

IV.F. Aid for the setting up of young farmers

(82) This sub-chapter only applies to support granted to primary production (farmers).

IV.F.1. Analysis

(83) Support for the setting-up of young farmers tends to encourage the development of the sector as a whole and prevent the depopulation of rural areas. Article 22 of Regulation (EC) No 1698/2005 therefore provides for a Community scheme to support the setting-up of young farmers.

IV.F.2. Policy

(84) The Commission will declare State aid to support the setting-up of young farmers compatible with Article 87(3) (c) of the Treaty if it fulfils the conditions of Article 22 of Regulation (EC) No 1698/2005 and any implementing rule of this Regulation adopted by the Commission.

IV.G. Aid for Early Retirement or for the cessation of farming activities

(85) This chapter only applies to support granted to primary production (farmers).

IV.G.1. Analysis

(86) In order to establish its future policy, the Commission has in particular taken account of the following considerations:

— Article 23 of Regulation (EC) No 1698/2005 provides for support for early retirement. Provided they are subject to conditions requiring a permanent and definitive cessation of commercial farming activities, such aid schemes have only a limited effect on competition, whilst contributing to the long-term development of the sector as a whole.

IV.G.2. Policy

(87) The Commission will declare State aid for early retirement compatible with Article 87(3)(c) of the Treaty if it fulfils the conditions of Article 23 of Regulation (EC) No 1698/2005. The Commission will authorise payments going above the maximum amounts set out in that Regulation provided the Member State demonstrates that such payment is not passed on to active farmers.

(88) Provided they are subject to conditions requiring a permanent and definitive cessation of commercial farming activities, the Commission will authorise State aid for the withdrawal of farmers from any agricultural activity.

IV.H. Aid for Producer Groups

IV.H.1. Analysis

(89) In order to establish its future policy, the Commission has in particular taken account of the following considerations. Because of the disparate nature of agricultural production, the Commission has traditionally taken a favourable view of the payment of 'start-up' aids intended to provide an incentive for the constitution of producers groups to promote the bringing together of farmers with a view to concentrating their supply and adapting their production to market requirements. In order to focus support on small producer groups, and in order to avoid large amounts of support being granted, such aid should, however, be limited to small and medium-sized enterprises, within a maximum amount.

IV.H.2. Policy

(90) The Commission will declare start-up aid for producer groups compatible with Article 87(3)(c) of the Treaty if it

fulfils all the conditions of [Article 9 of draft exemption regulation].

- (91) Aids granted to other agricultural associations, which undertake tasks at the level of agricultural production, such as mutual support and farm relief and farm management services, in the members' holdings without being involved in the joint adaptation of supply to the market are not covered by this section. However, the Commission will apply the principles set out in this section to aids which are granted to cover the start-up costs of associations of producers which are responsible for the supervision of the use of denominations of origin or quality marks.
- (92) Aids which are granted to producer groups or associations to cover expenses which are not linked to start-up costs, such as investments or promotion activities, will be assessed in accordance with the rules governing such aids.
- (93) Aid schemes authorised under this section will be subject to a condition requiring them to be adjusted to take account of any change in the regulations governing the common organisations of the market.
- (94) As an alternative to providing aid to producer groups or associations thereof, aid up to the same overall amount may be granted directly to producers to offset their contributions to the cost of running the groups during the first five years following the formation of the group. The Commission will not authorise State aid towards the costs covered by this sub-chapter in favour of large companies.

IV.I. Aid for land reparation

IV.I.1. Analysis

- (95) In order to establish its future policy, the Commission has in particular taken account of the following considerations:
- (a) support for land reparation tends to encourage the development of the sector as a whole and improve the infrastructure. Article 30 of Regulation (EC) No 1698/2005 therefore provides for a Community scheme to support land reparation.
- (b) the Community guidelines for State aid in the agriculture sector 2000–2006 have established rules governing the granting of aid for land reparation; the purpose of these aids was to support the exchange of plots of agricultural land and to facilitate the establishment of economically viable holding;
- (c) experience has shown that aid for land reparation can be maintained, given its contribution to the development of the agriculture sector as well as its limited effects on competition.

IV.I.2. Policy

- (96) The Commission will declare aid for land reparation compatible with Article 87(3)(c) of the Treaty if it fulfils all the conditions of Article 13 of [the new exemption Regulation].

IV.J. Aid to encourage the production and marketing of quality agricultural products

IV.J.1. Analysis

- (97) In order to establish its future policy, the Commission has in particular taken account of the following considerations:
- (a) aid measures intended to provide an incentive to improve the quality of agricultural products tend to add to the value of agricultural production, and help the sector as a whole to adjust to consumer demand, which places increasing emphasis on quality. The Commission has generally taken a favourable position in respect of such aids. However, experience has shown that such aid measures may present a risk of a distortion of the conditions of competition, and may affect trade between Member States in a manner contrary to the common interest. This is particularly the case where large amounts of aid are granted, or where the payment of aid continues after the aid has ceased to have any incentive effect, and therefore takes on the nature of operating aid;
- (b) Article 32 of Regulation (EC) No 1698/2005 has introduced a specific support measure for the participation of farmers in food quality schemes. State aid rules should be brought in line with this support measure;
- (c) large companies should be able to finance the costs of such measures themselves; therefore, support should be limited to small and medium-sized enterprises; in this context, the Annex to Regulation (EC) No 1698/2005 establishes a maximum amount per holding;
- (d) because of the similarities between companies active in the processing and marketing of agricultural products, support to such companies should be authorised in line with the rules for support granted to other manufacturing enterprises.

IV.J.2. Policy

- (98) The Commission will declare State aid to encourage the production of quality agricultural products granted to primary producers (farmers) compatible with Article 87(3)(c) of the Treaty if it fulfils all the conditions of [Article 14 of future exemption Regulation].
- (99) The Commission will declare State aid to encourage the production of quality agricultural products granted to

companies active in the processing and marketing of agricultural products compatible with Article 87(3)(c) of the Treaty if it fulfils all the conditions of Article 5 of Regulation (EC) No 70/2001.

- (100) The Commission will not authorise State aid towards the costs covered by this sub-chapter in favour of large companies.
- (101) Aid for investments which are necessary to upgrade production facilities, including investments necessary to manage the documentation system and perform process and product controls, may only be granted in accordance with the rules set out in chapters IV.A and IV.B above, as appropriate.

IV.K. Provision of technical support in the agricultural sector

IV.K.1. Analysis

- (102) In order to establish its future policy, the Commission has in particular taken account of the following considerations:

- (a) the Commission takes a favourable view of aid schemes which are intended to provide technical support in the agricultural sector. Such soft aids improve the efficiency and professionalism of agriculture in the Community, and thus contribute to its long-term viability while producing only very limited effects on competition. Since support in favour of the costs of farmers from the use of the service of machinery rings for the exchange of machines and farm labour is a re-occurring expense and part of the normal operating costs of a farmer, such support should in the future be limited to *de minimis* support.
- (b) large companies should be able to finance the costs of such measures themselves. Therefore, support should be limited to small and medium-sized enterprises;
- (c) because of the similarities between companies active in the processing and marketing of agricultural products, support to such companies should be authorised in line with the rules for support granted to other manufacturing enterprises.

IV.K.2. Policy

- (103) The Commission will declare State aid for the provision of technical support granted to primary producers (farmers) compatible with Article 87(3)(c) of the Treaty if it fulfils all the conditions of [Article 15 of future exemption Regulation].
- (104) The provision of technical support to primary producers (farmers) can be undertaken by producer groups or other organisations, regardless of their size.

- (105) The Commission will declare State aid for the provision of technical support granted to companies active in the processing and marketing of agricultural products compatible with Article 87(3)(c) of the Treaty if it fulfils all the conditions of Article 5 of Regulation (EC) No 70/2001.

- (106) The Commission will not authorise State aid towards the costs covered by points 104 and 105 in favour of large companies.

- (107) The Commission will examine on a case by case basis State aid in favour of other activities for the vulgarisation of new techniques, such as reasonable small scale pilot projects or demonstration projects. The Member State shall provide a clear description of the project including an explanation of the novel character of the project and of the public interest in granting support for it (for example because it has not been tested before) and demonstrate compliance with the following conditions:

- (a) the number of participating companies and the duration of the pilot scheme shall be limited to what is necessary for proper testing;
- (b) the combined amount of aid for such projects granted to a company shall not exceed EUR 100 000 over three fiscal years;
- (c) the results of the pilot scheme shall be made publicly available, at least on the internet, at an address indicated in the aid scheme;
- (d) any other condition the Commission may deem necessary to avoid the scheme having a distorting effect on the market or amounting to operating aid.

IV.L Aids in the livestock sector

IV.L.1. Analysis

- (108) In order to establish its future policy, the Commission has in particular taken account of the following considerations:

- (a) the Community guidelines for State aid in the agriculture sector 2000–2006 have established rules governing the granting of aids in the livestock sector; the purpose of these aids was to support the maintenance and improvement of the genetic quality of Community livestock;
- (b) experience has shown that these aids should be maintained only where they really contribute to the maintenance and improvement of the genetic quality of livestock; aids aimed at covering part of the cost of

keeping individual male breeding animals cannot be considered as meeting this objective, as they only relieve farmers of costs they should normally bear in their activity;

(c) aids aimed at covering a part of the costs linked to the introduction at farm level of innovative animal breeding techniques or practices may be maintained for a certain period of time, although they also relieve farmers from costs they should normally bear in their activity, given the innovation element they focus on; artificial insemination should not be eligible for aid, as it is not considered as an innovative practice;

(d) animal reproduction is not a proper primary production activity; therefore investments aids for animal reproduction centres should be governed by the rules applicable to aids to companies active in the processing and marketing of agricultural products;

(e) large companies should be able to finance the costs of measures under this sub-chapter themselves. Therefore, support should be limited to small and medium-sized enterprises;

(i) additional support for premium or aid schemes under a common organisation of the market, save in exceptional cases justified by objective criteria;

(ii) support for research projects, measures to support research projects or measures eligible for Community financing under Council decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field ⁽²⁶⁾;

(iii) support for measures within the scope of Regulation (EC) No 1698/2005;

(c) since 2000, the Commission has only gained limited experience with State aid measures notified for the outermost regions. For this reason, it is difficult to draw up a generic description of the measures that could be specifically authorised for these regions;

IV.L.2. Policy

(109) The Commission will declare State aid in the livestock sector compatible with Article 87(3)(c) of the Treaty if it fulfils all conditions of Article 16(1)(a), (b) and (c) and Article 16(3) of [the new exemption Regulation]. The Commission will not authorise State aid towards the costs covered by this chapter in favour of large companies.

(d) Article 16 of Regulation (EC) No 247/2006 provides that the Commission may authorise operating aid in the sectors producing, processing and marketing agricultural products falling within the scope of Annex I of the Treaty, to which Articles 87, 88 and 89 of the Treaty apply, with a view to mitigating the specific constraints on farming in the outermost regions as a result of their remoteness, insularity and distant location;

IV.M. Aids for the outermost regions and the aegean islands

IV.M.1. Analysis

(110) In order to establish its future policy, the Commission has in particular taken account of the following considerations:

(a) Regulation (EC) No 1698/2005 provides for specific derogations and aid rates for investment support granted to both farmers and processing and marketing companies in the outermost regions and the smaller Aegean islands within the meaning of Regulation (EC) No 2019/93. These aid rates have already been taken into account in the chapter relating to investment aid;

(b) Article 11 of Council Regulation (EC) No 247/2006 of 30 January 2006 laying down specific measures for agriculture in the outermost regions of the Union ⁽²⁵⁾ provides that measures taken under support programmes in the outermost regions must comply with Community law and be consistent with other Community policies and with the measures taken under those policies. In particular, no measure under Regulation (EC) No 247/2006 may be financed as:

(e) Article 21 of Regulation (EC) No 247/2006 authorises Spain to grant State aid for the production of tobacco in the Canary Islands.

IV.M.2. Policy

(111) The Commission will examine proposals to grant State aid designed to meet the needs of these regions on a case by case basis, on the basis of the specific legal provisions applying to these regions, and having regard to the compatibility of the measures concerned with the Rural Development Programmes for the regions concerned, and their effects on competition both in the regions concerned and in other parts of the Community.

⁽²⁵⁾ OJ L 42, 14.2.2006, p. 1.

⁽²⁶⁾ OJ L 224, 18.8.1990, p. 19. Decision as last amended by Decision 2006/782/EC (OJ L 328, 24.11.2006, p. 57).

V. RISK AND CRISIS MANAGEMENT

V.A. General

- (112) Good risk and crisis management is a key tool for a sustainable and competitive agriculture sector in the Community. Debate has been stimulated recently by the Communication from the Commission on risk and crisis management in agriculture ⁽²⁷⁾. The discussion at Council level during 2005 concluded ⁽²⁸⁾ unanimously that the use of State aid for risk and crisis management measures must be subject to the appropriate Community competition rules. The Council agreed that eligible risk management tools must therefore comply with the provisions laid down in the Community guidelines on State aid in the agriculture sector. There was broad consensus amongst Member States that although public financing may be essential, especially for the establishment and smooth start-up of new tools, joint responsibility and therefore a financial contribution from agricultural producers is also essential.
- (113) For certain types of risk and crisis in the agriculture sector, the granting of State aid can be an appropriate means of support. However, it must always be borne in mind that there is no obligation on a Member State to actually grant State aid. As a consequence, for a similar risk or crisis, producers in one Member State or region may receive support while those in other Member States or regions do not. Such differences in support may lead to distortions of competition. Therefore, just as for other types of State aid, the authorisation of State aid for risk and crisis management must take into consideration the need to avoid undue distortions of competition. Requiring a minimum contribution from producers to losses or the cost of such measures or some other adequate counterpart should be foreseen to mitigate the risk of distortions of competition and to provide an incentive for minimising risk.
- (114) It is primary production (farming) that is exposed to the particular risks and crises confronting the agriculture sector. Companies active in the processing and marketing of agricultural products normally have much better possibilities to hedge risks. Therefore, certain types of risk and crisis support should be limited to primary production.
- (115) State aid should be limited to helping farmers facing various difficulties despite having undertaken reasonable efforts to minimise such risks. State aid should not have as its effect to entice farmers into taking unnecessary risk. Farmers should themselves bear the consequences of imprudent choices of production methods or products.
- (116) Based on these considerations, the Commission has reviewed the existing series of risk and crisis management measures that may be financed through State aid. The conclusion of this review is that the existing combination of tools is adequate, but should be refined in the light of experience. In the light of the large-scale evaluation and re-examination of Community animal disease compensation policy that is still going on, it will however be necessary to review sub-chapter V.B.4 as soon as this evaluation has been concluded.

⁽²⁷⁾ COM(2005) 74.

⁽²⁸⁾ Council document 11120/05 of 15 September 2005.

- (117) The introduction in 2005 of a *de minimis* facility ⁽²⁹⁾ at the level of primary production offers an additional tool to Member States to grant a minimum of support quickly and without any need to seek Commission authorisation. The inclusion of agricultural processing and marketing companies in the *de minimis* Regulation covering non-agricultural companies, which opens up the possibility of support up to [EUR 200 000] per company and per period of three fiscal years provides an additional facility to support such companies. However, it must be clear that *de minimis* support cannot solve bigger economic problems resulting from a crisis. Any more substantial support must be granted within a State aid framework that ensures Commission control and avoids distortions of competition.

- (118) It should be clear that these State aid rules alone cannot as such provide for or replace optimal crisis management. State aid can only facilitate it in certain circumstances. A crisis may happen overnight, requiring rapid reaction. Effective crisis management requires Member States to think early about which State aid measures shall be made available. It is the responsibility of Member States to examine the various State aid support possibilities and to set up aid schemes in time, so that they can be immediately put to use in the event of acute problems. Otherwise, the need to establish a compensation system, notify it and seek Commission authorisation may take precious time before help can be offered to those most in need.

V.B. Aids to Compensate for Damage to Agricultural production or the Means of Agricultural Production

V.B.1. General

- (119) In order to avoid a risk of the distortion of the conditions of competition, the Commission considers it important to ensure that aid to compensate enterprises for damage caused to agricultural production is paid as soon as possible after the occurrence of the adverse event concerned. Where aid is paid only several years after the occurrence of the event in question, there is a real danger that the payment of such aid will produce the same economic effects as operating aid. This is particularly the

⁽²⁹⁾ Commission Regulation (EC) No 1860/2004 of 6 October 2004 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the agriculture and fisheries sectors (OJ L 325, 28.10.2004, p. 4).

case where aid is paid retrospectively in respect of claims which were not properly documented at the time. Therefore, in the absence of a specific justification, resulting for example from the nature and extent of the event, or the delayed or continuing nature of the damage, the Commission will not approve proposals for aid which are submitted more than three years after the occurrence of the event, nor for aid to be paid out more than four years following the event.

V.B.2. Aid to make good the damage caused by natural disasters or exceptional occurrences

(120) This sub-chapter applies to the whole of the agriculture sector.

(121) Because they constitute exceptions to the general principle of the incompatibility of State aid with the common market laid down by Article 87(1) of the Treaty, the Commission has consistently held that the notions of 'natural disaster' and 'exceptional occurrence' contained in Article 87(2)(b) must be interpreted restrictively. This has been confirmed by the Court of Justice of the European Communities⁽³⁰⁾. Hitherto the Commission has accepted that earthquakes, avalanches, landslides and floods may constitute natural disasters. In order to facilitate rapid crisis management, the Commission will in the future authorise aid schemes to compensate for the damages of natural disasters in the form of earthquakes, avalanches, landslides, floods and other natural disasters provided that a sufficiently precise description can be established.

(122) Exceptional occurrences which have hitherto been accepted by the Commission include war, internal disturbances or strikes, and with certain reservations and depending on their extent, major nuclear or industrial accidents and fires which result in widespread loss. On the other hand the Commission did not accept that a fire at a single processing plant which was covered by normal commercial insurance could be considered as an exceptional occurrence. As a general rule, the Commission does not accept that outbreaks of animal or plant diseases can be considered to constitute natural disasters or exceptional occurrences. However, in one case the Commission did recognise the very widespread outbreak of a completely new animal disease as an exceptional occurrence. Because of the inherent difficulties in foreseeing such events, the Commission will continue to evaluate proposals to grant aid in accordance with Article 87(2)(b) of the Treaty on a case by case basis, having regard to its previous practice in this field.

(123) Once the existence of a natural disaster or an exceptional occurrence has been demonstrated, the Commission will permit aid of up to 100 % to compensate for material damage. Compensation should normally be calculated at the level of the individual beneficiary. In order to avoid over-compensation, any payments due, for example under

insurance policies, should be deducted from the amount of aid. The Commission will also accept aid to compensate for loss of income resulting from the destruction of the means of agricultural production, provided that there is no over-compensation. In all cases, the case law of the Court of Justice requires the Member State to demonstrate a direct link between the damage caused by the exceptional occurrence and the State aid and as precise an assessment as possible to be made of the damage suffered by the producers concerned.

V.B.3. Aid to compensate farmers for losses caused by adverse weather conditions

(124) This sub-chapter applies only to support granted to primary production (farmers).

V.B.3.1. Analysis

(125) In order to establish its future policy, the Commission has in particular taken account of the following considerations:

(a) the Commission has consistently held that adverse weather conditions such as frost, hail, ice, rain or drought cannot of themselves be regarded as natural disasters within the meaning of Article 87(2)(b). However, because of the damage that such events may cause to agricultural production or the means of agricultural production, such events may be assimilated to natural disasters once the level of damage reaches a certain threshold of normal production. Compensation for such assimilated events contributes to the development of the farm sector and should be authorised on the basis of Article 87(3)(c) of the Treaty.

(b) contrary to the Commission's practice in the past, a common minimum threshold of damages of 30 % of normal production for all areas would seem more appropriate. Instead of requiring a lower level of damage in less favoured areas, the economic weakness of farmers operating in such regions would seem better taken into account by foreseeing a higher maximum level of compensation.

(c) because of the inherent variability of agricultural production, the maintenance of a minimum threshold also appears necessary to ensure that weather conditions may not be used as a pretext for the payment of operating aid. In order to ensure such a minimum level damage is attained, and contrary to its past practice, the minimum threshold of damage to perennial crops such as fruit trees should also be attained in year one, and not over several years.

(d) once the minimum threshold of damage has been reached, the Commission has in the past accepted that compensation is also paid for the first 30 % of losses.

⁽³⁰⁾ See judgment of 11 November 2004 in Case C-73/03 Spain v Commission, paragraph 37; Judgement of 23 February 2006 in Case C-346/03 and C-529/03 Giuseppe Atzeni and others, paragraph 79.

This system has created the paradox result that a farmer in normal areas with a loss of 29 % received no compensation whatsoever, whilst a farmer with a loss of 30 % may have received compensation for 30 %. Such a system may not sufficiently encourage farmers to make all efforts to limit damages. To the contrary, there is an economic incentive to reach the minimum threshold of damage triggering a right to compensation. Such incentives should be reduced by introducing a rule that some damage must always be borne by the farmer.

- (e) in order to further improve risk management, farmers should be encouraged to take out insurance wherever possible. Therefore, from a certain moment in the future onwards, bad weather compensation should be reduced in respect of farmers who have not taken out insurance for the product concerned. Only if a Member State can convincingly show that, despite all reasonable efforts, affordable insurance for a given type of event or product is not available, should the Commission waive this requirement;
- (f) water scarcity may increasingly become a determining feature of agricultural production in certain parts of the Community. Farmers and Member States must actively contribute to good water management, in order to mitigate the effect of drought. Therefore, no compensation for drought should be authorised in Member States that have not fully implemented Article 9 of Directive 2000/60/EC in respect of agriculture, and do not ensure full recovery of the costs of water services provided to agriculture;
- (g) as in the past, bad weather compensation should be limited to the level of primary production (farmers). For companies active in the processing and marketing of farm products the risk of bad weather must be considered a normal business risk. If such companies face economic difficulties because of bad weather events, they may be supported via rescue and restructuring aid;
- (h) contrary to its practice, and in order to facilitate quick crisis management, the Commission should authorise aid schemes not requiring the presentation of loss data beforehand; Member States should however be obliged to provide adequate documentation of the adverse climatic event in question in the form of annual reports.

V.B.3.2. Policy

- (126) The Commission will declare aid for losses due to adverse climatic events compatible with Article 87(3)(c) of the Treaty if it fulfils all the conditions of [Article 11 future exemption Regulation].

- (127) In order to enable the Commission to assess such aid schemes, notifications of aid measures to compensate for damage caused by adverse weather conditions should include appropriate supporting meteorological information. Such information may also be provided ex post in the form of annual reports in line with the requirements of the last sentence of [Article 20(3) future exemption Regulation].

- (128) The Commission will accept alternative methods of calculation of normal production, including regional reference values, provided it is satisfied that these are representative and not based on abnormally high yields. If the adverse weather conditions have affected a wide area in the same way, aid payments may be based on average losses provided that these are representative and do not result in significant overcompensation of any beneficiary.

- (129) Aid under this sub-chapter may only be paid to farmers or, alternatively, to a producers' organisation of which the farmer is a member, and the amount of aid should not exceed the actual loss incurred by the farmer.

- (130) For losses suffered from 1 January 2010, the Commission will derogate from the condition of [Article 11(8) of the future exemption regulation] only if a Member State can convincingly show that, despite all reasonable efforts, affordable insurance covering the statistically most frequent climatic risks in the Member State or region concerned was not available at the time the damage occurred.

V.B.4. Aid for combating animal and plant diseases

- (131) This sub-chapter only applies to support granted to primary producers (farmers). In the light of the large-scale evaluation and re-examination of Community animal disease compensation policy that is still going on, it will however be necessary to review the relevant sub-chapter as soon as this evaluation has been concluded.

V.B.4.1. Analysis

- (132) In order to establish its future policy, the Commission has in particular taken account of the following considerations:

- (a) where a farmer loses livestock as a result of animal disease, or where his crops are affected by plant disease, this does not normally constitute a natural disaster or an exceptional occurrence within the meaning of the Treaty. In such cases aids to provide compensation for the losses incurred, and aids to prevent future losses may only be permitted by the Commission on the basis of Article 87(3)(c) of the Treaty, which provides that aids to facilitate the

development of certain activities may be considered compatible with the common market provided that it does not affect trading conditions to an extent contrary to the common interest;

(b) in accordance with the above-mentioned principles, the Commission considers that the payment of aid to farmers to compensate for losses resulting from animal or plant diseases may only be accepted as part of an appropriate programme at Community, national or regional level for the prevention, control or eradication of the disease concerned. Aids which simply compensate farmers for losses incurred without taking any steps to remedy the problem at source must be considered as pure operating aids which are incompatible with the common market. Therefore the Commission will require that Community or national provisions exist, whether laid down by law, regulation or administrative action, to the effect that the competent national authorities should deal with the disease in question, either by organising measures to eradicate it, in particular through binding measures giving rise to compensation, or initially by setting up an alert system combined, where appropriate with aid to encourage individuals to take part in preventative measures on a voluntary basis ⁽³¹⁾. Accordingly, only diseases which are a matter of concern for the public authorities, and not measures for which farmers must reasonably take responsibility for themselves may be the subject of aid measures;

(c) the objectives of the aid measures should be either:

(i) Preventative, in that they involve screening measures or analyses, the extermination of pests which may transmit the disease, preventative vaccinations of animals or treatment of crops, and preventative slaughtering of livestock or destruction of crops, or

(ii) Compensatory, in that the affected livestock is slaughtered or crops are destroyed on the orders or recommendation of the public authorities or die as a result of vaccinations or other measures recommended or ordered by the competent authorities, or

(iii) Combined, in that the compensatory aid scheme for the losses resulting from the disease is subject to the condition that the recipient undertakes to take suitable future preventative measures as laid down by the public authorities.

(d) in order to improve risk management, account should be taken of the fact whether the behaviour of the

farmer (e.g. the choice of production method) has contributed to an increased risk of disease.

(e) as in the past, compensation for animal and plant diseases should be limited to the level of primary production (farmers). For companies active in the processing and marketing of agricultural products the impact of such diseases on their business must be considered a normal business risk. If such companies face economic difficulties because of the effects of animal or plant diseases, they may be supported via rescue and restructuring aid. The inclusion of agricultural processing and marketing companies in the *de minimis* Regulation covering non-agricultural companies, opening the possibility of support up to EUR 200 000 per company and three fiscal years provides an additional facility to support such companies;

(f) as regards aid for TSE (transmissible spongiform encephalopathies) tests, the following considerations have been taken into account:

(i) the tests serve the purpose of avoiding the spread of TSE, a disease that is of particular concern from the point of view of the protection of human health;

(ii) there is a risk of distortion of competition arising from different levels of State aid granted, at least as far as slaughter cattle is concerned. However, most Member States do currently grant some State aid. Prices for TSE tests continue to vary between Member States. In order to reduce the risk of distortions of competition which could be caused by aid granted towards TSE tests for cattle slaughtered for human consumption, and in order to encourage research towards low-price tests, aid should be limited to EUR 40, which is roughly the best price currently available in the Community;

(iii) there is concern that making farmers pay for the cost of testing fallen stock could make some of them try to avoid controls by illegally disposing of carcasses, reducing the reliability of statistical data, and create health risks;

(iv) as regards low-value animals such as sheep and goats, TSE tests may cost more than the value of the animal. Making owners pay for tests could entail the risk that such animals are marketed without testing, again reducing the availability of data;

⁽³¹⁾ In cases where animal or plant diseases have been shown to result from adverse weather conditions, the Commission will evaluate the aid measure in accordance with the provisions of sub-chapter V.B.3 above and these requirements will not apply.

- (v) for both fallen stock and low-value animals, the risk of distortions of competition from the granting of aid seems to be lower than in the case of slaughter cattle;
- (g) As regards aid for fallen stock, the following considerations have been taken into account:
- (i) fallen stock is a regular feature of keeping live animals, and therefore part of normal production costs;
 - (ii) the 'polluter pays' principle⁽³²⁾ establishes a primary responsibility of producers to take proper care of removal of fallen stock, and to finance the costs of it;
 - (iii) granting aid for the elimination of waste may go against the principle applied in agriculture that aid should only be granted for behaviour, which goes beyond good agricultural practice. Community legislation, which is part of good agricultural practice, requires proper disposal of carcasses;
 - (iv) the costs of removing fallen stock can be high, in particular where carcasses of heavy animals such as cattle or horses have to be removed from remote locations;
 - (v) it is difficult to control what farmers do with carcasses. There is a risk that carcasses are disposed of illegally, creating serious health risks;
 - (vi) where carcasses have to be tested for TSE, their uncontrolled disposal in order to avoid test costs could have the additional inconvenience that these animals are not tested, although it could be that precisely these animals should be tested, in order to assure solid statistical data on TSE;
 - (vii) the risks of distortions of competition from State aid granted for the removal of fallen stock is considered relatively low;
 - (viii) State aid should only be accepted for fallen stock occurring at the level of farmers, and not at any other level, e. g. slaughterhouses, where control of proper removal is easier;
 - (ix) where animals are culled for disease reasons on the basis of a public order, compensation for the farmer should continue to be examined and authorised on the basis of the general rules for animal disease compensation as set out in sub-chapter V.B.4. In relation to TSE, Article 13(4) of Regulation (EC) No 999/2001 of the European
- Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies⁽³³⁾ specifies that 'owners shall be compensated without delay for the loss of the animals which have been killed or products of animal origin destroyed in accordance with Article 12(2) and paragraph 1(a) and (c) of this Article.';
- (h) as to aid for slaughterhouse waste, the following considerations have been taken into account:
- (i) slaughterhouse waste is any waste occurring at the level of slaughterhouses, cutting plants or butchers, including in particular animal by-products covered by categories 1, 2 and 3 of Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption⁽³⁴⁾;
 - (ii) the removal and destruction of slaughterhouse waste is a major cost factor for slaughterhouses and cutting plants (and their clients, if they are charged for it);
 - (iii) the 'polluter pays' principle establishes a primary responsibility of producers of waste to take proper care of its removal, and to finance the costs of it;
 - (iv) the granting of State aid for this can create serious distortions of competition;
 - (v) control normally appears to ensure that slaughterhouse waste is dealt with properly;
 - (vi) there is broad agreement amongst most Member States that the costs of the removal of slaughterhouse waste should be borne by operators responsible for them;
 - (vii) it would therefore seem appropriate to clearly exclude State aid for the cost of the disposal of slaughterhouse waste, or other operating costs of slaughterhouses. State aid for investments undertaken in relation to the disposal of slaughterhouse waste will be examined under the relevant rules applying to investment aid.

⁽³²⁾ Article 174(2) EC. As far as State aid is concerned, see in particular section 5 of the 'Community guidelines for State aid in the agriculture sector', and the 'Community guidelines on State aid for environmental protection' (OJ C 37, 3.2.2001, p. 3).

⁽³³⁾ OJ L 147, 31.5.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 1041/2006 (OJ L 187, 8.7.2006, p. 10).

⁽³⁴⁾ OJ L 273, 10.10.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 208/2006 (OJ L 36, 8.2.2006, p. 25).

V.B.4.2. Policy

(133) The Commission will declare State aid for combating animal and plant diseases compatible with Article 87(3)(c) of the Treaty if it fulfils all the conditions of [Article 10 of future exemption Regulation].

(134) The Commission will declare State aid concerning TSE tests and fallen stock compatible with Article 87(3)(c) of the Treaty if it fulfils all the conditions of [Article 16 of future exemption Regulation].

(135) In relation to fallen stock and slaughterhouse waste, the Commission will not authorise the following State aid:

- (a) aid for fallen stock given to operators active in the processing and marketing;
- (b) aid towards the costs of the disposal of slaughterhouse waste produced after the entry into force of these guidelines.

(136) Where aid is provided under Community and/or national and/or regional aid schemes, the Commission will require evidence that there is no possibility of overcompensation through the cumulation of the different schemes. Where Community aid has been approved, the date and references of the relevant Commission decision should be provided.

(137) The Commission will authorise such State aid in favour of farmers only.

V.B.5. *Aid towards the payment of insurance premia*

(138) This sub-chapter only applies to primary producers (farmers).

V.B.5.1. Analysis

(139) In order to establish its future policy, the Commission has in particular taken account of the following considerations:

- (a) in many instances, insurance is a most helpful tool for good risk and crisis management. Therefore, and in view of the often reduced financing possibilities of farmers, the Commission has a positive attitude towards State aid for insurance in favour of primary production (farmers);
- (b) large companies, and companies active in the processing and marketing of agricultural products should be able to finance the cost of insurance on their own. No State aid for insurance premiums should be authorised for such companies;
- (c) experience has shown that the obligation to combine insurance for animal or plant diseases with insurance against catastrophes and assimilated events is not

necessary. Member States should also be allowed to offer public support for animal and plant disease alone. However, the differentiation in terms of maximum aid intensity on the basis of the risk(s) covered should be maintained.

V.B.5.2. Policy

(140) The Commission will declare aid towards the payment of insurance premiums compatible with Article 87(3)(c) of the Treaty if it fulfils all conditions of [Article 12 future exemption Regulation].

(141) The Commission will examine other aid measures in connection with insurance against natural disasters and exceptional occurrences on a case by case basis, in particular reinsurance schemes and other aid measures to support producers in particularly high risk zones.

(142) The Commission will not authorise State aid towards the payment of insurance premiums in favour of large companies, and companies active in the processing and marketing of agricultural products.

V.C. **Aid for Closing Production, Processing and Marketing Capacity**

V.C.1. Analysis

(143) The Commission takes a favourable view of aid schemes for the closing of capacity in the agriculture sector provided that they are coherent with any Community arrangements to reduce production capacity, and certain conditions are met, namely:

- (a) the aid must be in the general interest of the sector concerned,
- (b) there must be a counterpart on the part of the beneficiary,
- (c) the possibility of the aid being for rescue and restructuring must be excluded,
- (d) there must be no over-compensation of loss of capital value and of future income.

V.C.2. Policy

(144) The Commission will declare aid for the closing of capacity compatible with Article 87(3)(c) of the Treaty if it fulfils the following conditions:

- (a) aid must be demonstrated to be in the interest of the sector as a whole. Where excess capacity does not exist and it is clear that capacity respecting all applicable standards and which would otherwise not close is

being reduced for animal or human health, sanitary or environmental reasons such as reduction of overall stocking densities, this will be sufficient to show that this condition is met;

- (b) in other cases, aid should only be granted for closing production capacity in sectors where clear excess capacity exists, either at regional or national level. In such cases, it would appear reasonable to expect that market forces will eventually result in the necessary structural adjustments. Aid for capacity reduction can therefore only be accepted if it is part of a programme for the restructuring of the sector which has defined objectives and a specific timetable. The Commission will not accept aid schemes of unlimited duration, since experience suggests that these may result in postponing the necessary changes;
- (c) in order to ensure rapid impact on the market, the duration of schemes aimed at reducing overcapacity should normally be limited to a period of not more than six months for collecting applications for participation, and a further 12 months for actually closing down;
- (d) the Commission reserves the right to attach conditions to the authorisation of the aid;
- (e) no aid may be paid which would interfere with the mechanisms of the common organisations of the market. Aid schemes applying to sectors which are subject to production limits or quota will be evaluated on a case by case basis;
- (f) there must be a sufficient counterpart from the beneficiary of the aid. This counterpart will normally consist of a definitive and irrevocable decision to scrap or irrevocably close the production capacity concerned. This will involve either the complete closure of capacity by the undertaking concerned or — in the case of a company operating more than one production site — the closure of a specific production site. Legally binding commitments must be obtained from the beneficiary that the closure is definitive and irreversible, and that the beneficiary will not start the same activity elsewhere. These commitments must also bind any future purchaser of the facility concerned;
- (g) only farmers who have actually been producing, and only production capacities that have actually been in constant use over the past five years before closing, shall be admitted to capacity closure schemes. In cases where the production capacity has already closed definitively, or where such closure appears inevitable,

there is no counterpart on the part of the beneficiary, and aid may not be paid;

- (h) in order to avoid erosion and other negative effects on the environment, open farmland or orchards taken out of production must in principle be afforested in such a way as to ensure that negative effects on the environment are avoided. Alternatively, open farmland or orchards may be re-used after 15 years following effective capacity closure. Until then, such farmland or orchards have to be maintained in good agricultural and environmental condition, in accordance with Article 5 of Regulation (EC) No 1782/2003, and with the relevant implementing rules. The closure of installations covered by Council Directive 96/61/EEC of 24 September 1996 concerning integrated pollution prevention and control⁽³⁵⁾ shall be made in accordance with Article 3 of that Directive which requires that the necessary measures are taken to avoid any pollution risk and that the site of operation is returned to a satisfactory state;
- (i) in order to ensure that the public support made available achieves a maximum impact on existing production capacities, the Member State shall ensure that only enterprises fulfilling compulsory minimum standards are eligible and that enterprises which do not fulfil these standards and which would be obliged to stop production anyway are excluded;
- (j) it must be possible to exclude the possibility that aid is paid for the rescue and restructuring of companies in difficulty. Therefore where the beneficiary of the aid is in financial difficulty, the aid will be assessed in accordance with the Community guidelines on rescue and restructuring of firms in difficulty;
- (k) the scheme should be accessible to all economic operators in the sector concerned under the same conditions. In order to achieve maximum impact, the Member State should use a transparent system of calls for interest which publicly invites all potentially interested producers to participate. At the same time, the organisation of the scheme should be managed in such a way that it neither requires nor facilitates anti-competitive agreements or concerted practices between the enterprises concerned;
- (l) the amount of aid should be strictly limited to compensation for the loss of value of assets — measured as the current selling value of the assets — plus an incentive payment which may not exceed 20 % of the value of the assets. Compensation may also be granted for the costs of destruction of the production capacity, and for the cost of afforesting. Aid may also

⁽³⁵⁾ OJ L 257, 10.10.1996, p. 26. Directive as last amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council (OJ L 33, 4.2.2006, p. 1).

be paid to offset the obligatory social costs resulting from the implementation of the scheme;

support would still appear to outweigh the risk of distortions resulting from such an approach.

(m) since the objective of these aid measures is the restructuring of the sector concerned, to the ultimate benefit of those economic operators who remain active in that sector, and in order to reduce any potential risk of a distortion of the conditions of competition, and the dangers of overcompensation, the Commission considers that at least half the costs of these aids should be met by a contribution from the sector. This means that the sector must provide a cash contribution of at least 50 % of the actual public expenditure incurred for the execution of the scheme. This requirement does not apply where capacity is closed for health or environmental reasons;

(n) if a Member State introduces a scheme for closing capacity, it shall undertake not to grant any aid for creating new production capacities in the sector concerned for the five years following the termination of the capacity closure program.

V.D. Aid for Rescue and restructuring firms in difficulty

(145) Aids for rescuing and restructuring firms in difficulty in the agriculture sector will be assessed in accordance with the applicable Community guidelines on State aid for rescuing and restructuring firms in difficulty ⁽³⁶⁾.

VI. OTHER TYPES OF AID

VI.A. Aids for Employment

VI.A.1. Analysis

(146) Since 2002, aid for the creation of employment in the agriculture sector is covered by Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment ⁽³⁷⁾. The rules set out in that Regulation establish a coherent framework for such support. Aid for employment limited to the agriculture sector but fulfilling all other conditions of the Regulation is not exempted. Because of the specificities of the agriculture sector, and notably of primary production, Member States may have an interest in introducing specific aid schemes for employment in the agriculture sector. As long as such aid is open to the whole of the agriculture sector, without limiting support to certain products, the benefits of such

VI.A.2. Policy

(147) The Commission will declare State aid for employment in the agriculture sector compatible with Article 87(3)(c) of the Treaty if it fulfils all the conditions of Articles 1 and 2 as well as Articles 4 to 9 of Regulation (EC) No 2204/2002. Aid limited to the agriculture sector shall be authorised under the same conditions.

VI.B. Aid for Research and Development

(148) Aid for research and development in the agriculture sector will be examined in accordance with the criteria set out in the applicable Community framework for State aid for research and development ⁽³⁸⁾, including the possibility for additional support for research in favour of the agriculture sector.

VI.C. Horizontal aid instruments applicable to the Agriculture sector

(149) For the sake of completeness, it should be pointed out that in addition to the aid instruments and rules described above, notably the following rules concerning the definition of aid and the compatibility of aid with the Treaty are also applicable to the agriculture sector:

(a) Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid ⁽³⁹⁾,

(b) Commission communication on State aid and risk capital ⁽⁴⁰⁾,

(c) Commission notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees ⁽⁴¹⁾,

(d) Community framework for State aid in the form of public service compensation ⁽⁴²⁾,

(e) Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest ⁽⁴³⁾,

⁽³⁸⁾ OJ C 45, 17.2.1996, p. 5, as subsequently amended as regards its application in the agricultural sector, OJ C 48, 13.2.1998, p. 2; to be replaced by a new framework from 1.1.2007 onwards.

⁽³⁹⁾ OJ L 10, 13.1.2001, p. 20. Regulation as last amended by Regulation (EC) No 1040/2006 (OJ L 187, 8.7.2006, p. 8).

⁽⁴⁰⁾ OJ C 235, 21.8.2001, p. 3.

⁽⁴¹⁾ OJ C 71, 11.3.2000, p. 14.

⁽⁴²⁾ OJ C 297, 29.11.2005, p. 4.

⁽⁴³⁾ OJ L 312, 29.11.2005, p. 67.

⁽³⁶⁾ OJ C 244, 1.10.2004, p. 2.

⁽³⁷⁾ OJ L 337, 13.12.2002, p. 3. Regulation as amended by Regulation (EC) No 1040/2006 (OJ L 187, 8.7.2006, p. 8).

- (f) Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings ⁽⁴⁴⁾,
- (g) Commission communication on State aid elements in sales of land and buildings by public authorities ⁽⁴⁵⁾,
- (h) Commission communication on the application of the State aid rules to measures relating to direct business taxation ⁽⁴⁶⁾,
- (i) application of Articles 92 and 93 [now 87 and 88] of the Treaty to public authorities' holdings ⁽⁴⁷⁾.

(150) If any of these aid instruments are reviewed, the Commission intends to maintain its policy of including agriculture, unless convincing reasons appear to provide for a specific treatment of the agriculture sector.

(151) As far as the application of Article 86(2) of the Treaty in the agriculture sector is concerned, it should be pointed out that the Commission has held that companies producing and marketing products falling within the scope of Annex I of the Treaty and covered by a common market organisation cannot be regarded as undertakings entrusted with the operation of services of general economic interest within the meaning of Article 86(2) of the Treaty ⁽⁴⁸⁾.

VI.D. Aid for Advertising of Agricultural Products

VI.D.1. Analysis

(152) In order to establish its future policy, the Commission has in particular taken account of the following considerations:

- (a) 'advertising' in the sense of this sub-chapter means any operation which is designed to induce economic operators or consumers to buy the relevant product. It includes all material which is distributed directly to consumers for the same purpose, including advertising activities aimed at consumers at the point of sale;
- (b) on the other hand, promotion operations, defined as the dissemination to the general public of scientific knowledge, the organisation of trade fairs or exhibitions, and participation in these and similar public relations exercises, including surveys and market research, are not considered as advertising; wherever expenses are listed as eligible for public support elsewhere in these guidelines, and notably in sub-chapter IV K, the provisions of the relevant sub-chapter

shall apply; in this context, the activities concerning the organisation of and the participation in forums to share knowledge between businesses, competitors, exhibitions and fairs and the vulgarisation of scientific knowledge and factual information on quality systems are not considered advertising but technical support;

- (c) the provision of general information about the benefits of a food product (for example, fruit) not aimed at encouraging consumers to buy the product is not considered as advertising because it does not benefit producers directly;

- (d) normally, producers and traders would be expected to bear the costs of advertising themselves, as part of their normal economic activities; therefore, if aid granted for the advertising of agricultural products is not to be regarded as operating aid but compatible with the common market under Article 87(3)(c) of the Treaty, it should not interfere with trade to an extent contrary to the common interest and should facilitate the development of certain economic activities or of certain economic areas;

- (e) in the medium and long term, consumers appreciate products of a consistently high quality; the advertising of quality control schemes which aim to achieve consistently high quality standards is likely to promote consumer confidence in Community agricultural production, improve farm incomes and thus promote the development of the sector as a whole; moreover, quality products clearly have specific characteristics which are not shared by other similar products; advertising of these characteristics will not mislead the consumer and is also likely to contribute to the development of the sector; for those reasons, instead of being spread on the basis of a set of positive criteria as in the past, support should be focused on advertising campaigns in favour of quality products defined as products fulfilling the criteria established pursuant to Article 32 of Regulation (EC) No 1698/2005;

⁽⁴⁴⁾ OJ L 195, 29.7.1980, p. 35. Directive as last amended by Directive 2005/81/EC (OJ L 312, 29.1.2005, p. 47).

⁽⁴⁵⁾ OJ C 209, 10.7.1997, p. 3.

⁽⁴⁶⁾ OJ C 384, 10.12.1998, p. 3.

⁽⁴⁷⁾ Bulletin EC 9-1984.

⁽⁴⁸⁾ Commission Decision 2000/628/EC of 11 April 2000 on the aid granted by Italy to Centrale Latte di Roma (OJ L 265, 19.10.2000, p. 26, paragraphs 113-115).

- (f) as far as reference to the origin of products is concerned, the Commission has, for several years, authorised certain types of support for advertising of agricultural products; however, experience has shown that advertising campaigns are very often aimed at reinforcing the preferences of domestic consumers in

favour of products from the same Member State, which makes aids related to them incompatible with the Treaty;

(g) nevertheless, where an agricultural or other product or a foodstuff possesses particular characteristics which are due to its geographical origin, it is possible for the producers of the product or foodstuff to apply, through the competent authorities of the Member State concerned, for registration at Community level of a protected designation of origin (PDO) or a protected geographical indication (PGI) in accordance with the provisions of Council Regulation No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs⁽⁴⁹⁾; the granting of registration means that the Community has recognised the existence of very close links between the specific qualities of the product concerned and its geographical origin; in such cases, the common interest does not oppose the granting of aid for advertising which includes a reference to the origin of the product concerned, provided that the references to origin correspond exactly to those references which have been registered by the Community; similar considerations apply to other designations of origin which are protected under Community legislation, for example wines produced in specified regions in accordance with Articles 54–58 of Council Regulation (EC) No 1493/1999 of 17 May on the common organisation of the market in wine⁽⁵⁰⁾;

(h) in the past, the Commission has accepted public support for setting up quality labels; such aid could then be justified in the start-up phase of a label; experience has shown that aids linked to advertising for products with quality labels and reference to the origin may be maintained both on the home market and on the market of other Member States, provided the reference to the origin is subsidiary in the message, as this subsidiary value of the reference to the origin should prevent infringements of Article 28 of the Treaty;

(i) State aid for advertising relating directly to the products of one or more particular companies presents an immediate risk of competition distortion and provides no lasting benefits for the development of the sector as a whole; therefore, it should be prohibited.

(j) in order to be eligible for State aid, advertising campaigns must comply with the general rules applying to all advertising activities conducted within the Community. Therefore, any publicly funded

campaign for the advertising of foodstuffs will have to comply with the provisions of Article 2 of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to labelling, presentation and advertising of foodstuffs⁽⁵¹⁾, as well as with the specific labelling rules which have been laid down for various products (such as wine, dairy products, eggs and poultry;

(k) as a direct beneficiary, the sector concerned should cover at least 50 % of the cost of advertising campaigns;

(l) however, if the advertising is generic in its character and in the benefit of the whole agricultural sector the rate of aid could be up to 100 %.

(m) in view of the effects which large-scale advertising may have on competition within the Community, it appears necessary to introduce a requirement for the prior notification to the Commission of advertising activities, including those which are covered by an existing aid scheme;

(n) State aid for advertising in third countries does normally not create risks for the functioning of the internal market. However, it can still have an impact on competitiveness of companies, notably if such advertising is used to the detriment of companies from other Member States;

(o) the Commission has so far gained little experience with State aid for advertising in third countries. Therefore, it is difficult to draw up detailed criteria for evaluating such State aid. However, the regulatory framework for advertising support in third countries, Council Regulation (EC) No 2702/1999 of 14 December 1999 on measures to provide information on, and to promote, agricultural products in third countries⁽⁵²⁾, would appear an appropriate reference to evaluate State aid for advertising in third countries.

VI.D.2. Policy

(153) State aid for advertising campaigns within the Community will be declared compatible with the Treaty if the following conditions are fulfilled:

(a) the advertising campaign is earmarked for quality products, defined as products fulfilling the criteria to be established pursuant to Article 32 of Regulation (EC) No 1698/2005, for Community-recognised denominations (protected designations of origin (PDO), protected geographical indications (PGI) or

⁽⁴⁹⁾ OJ L 93, 31.3.2006, p. 12.

⁽⁵⁰⁾ OJ L 179, 14.7.1999, p. 1. Regulation as last amended by Regulation (EC) No 2165/2005 (OJ L 345, 28.12.2005, p. 1).

⁽⁵¹⁾ OJ L 109, 6.5.2000, p. 29. Directive as last amended by Directive 2003/89/EC (OJ L 308, 25.11.2003, p. 15).

⁽⁵²⁾ OJ L 327, 21.12.1999, p. 7. Regulation as amended by Regulation (EC) No 2060/2004 (OJ L 357, 2.12.2004, p. 3).

other designations of origin which are protected under Community legislation) or for national or regional quality labels;

(b) the advertising campaign is not earmarked for products of one or more particular company or companies;

(c) the advertising campaign complies with Article 2 of Directive 2000/13/EC, as well as, where relevant, with the specific labelling rules which have been laid down (see point 152(j)).

(154) Where the advertising campaign is earmarked for Community-recognised denominations, reference may be made to the origin of the products provided that the reference corresponds exactly to those references which have been registered by the Community.

(155) In the case of national or regional quality labels, the origin of the products may be mentioned as a subsidiary message. To assess whether the origin is indeed a subsidiary message, the Commission will take into account the overall importance of the text and/or symbol, including pictures and general presentation, referring to origin and the importance of the text and/or symbol referring to the unique selling point of the advertisement, i.e. the part of the advertising message which does not focus on origin.

(156) The rate of direct aid shall not exceed 50 %. If the sector contributes to at least 50 % of the costs, whichever the form of the contribution, the aid rate may go up 100 %.

(157) In addition, State aid for advertising up to 100 % will be declared compatible if it is generic in character and in the benefit of all producers of the type of product concerned. No mention may be made of product origin in such advertising. The advertising can be carried out by producer groups or other organisations, regardless of their size.

(158) Advertising activities with an annual budget in excess of EUR 5 million shall be notified individually.

(159) The Commission will examine and authorise State aid in favour of advertising in third countries compatible with Article 87(3)(c) of the Treaty if it is in line with the principles of Regulation (EC) No 2702/1999. The Commission will however not declare compatible State aid for advertising which:

(a) is granted towards specific enterprises;

(b) risks endangering sales of or denigrates products from other Member States.

VI.E. Aid in the form of Subsidised Short-term loans

VI.E.1. Analysis

(160) In order to establish its future policy, the Commission has in particular taken account of the following considerations:

(a) in the past, the Commission has authorised State aid for short term credits ⁽⁵³⁾. Such costs are in fact simple operating costs that should be borne by the sector — just as they are borne by all other sectors;

(b) also, this support measure has contributed to the complexity of State aid rules and does not reflect the general demand for a more simplified system;

(c) the introduction of a *de minimis* facility in the agriculture sector establishes a simple and decentralised system allowing Member States who so wish to continue with such support in favour of small farmers;

(d) the Commission should therefore no longer authorise State aid for short term credits .

VI.E.2. Policy

(161) The Commission will not declare State aid for short term loans compatible with the Treaty.

VI.F. Aids linked to tax exemptions under directive 2003/96/EC

VI.F.1 Analysis

(162) The possibility to grant reduced tax rates and exemptions to agricultural taxation exist in Community excise legislation since 1993. No clear policy as to the compatibility of these measures with State aid rules was laid down so far. The current Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity ⁽⁵⁴⁾ allows Member States to apply tax exemptions, tax reductions, tax differentiation and tax refunds. Its Article 26(2) explicitly points to the fact that 'measures such as tax exemptions, tax reductions, tax differentiation and refunds within the meaning of this Directive might constitute State aid and in those cases have to be notified to the Commission pursuant to Article 88(3) of the Treaty'.

⁽⁵³⁾ See Commission on State aids: subsidised short-term loans in agriculture (crédits de gestion), OJ C 44, 16.2.1996, p. 2.

⁽⁵⁴⁾ OJ L 283, 31.10.2003, p. 51. Directive as last amended by Directive 2004/75/EC (OJ L 157, 30.4.2004, p. 100).

(163) The measures in question may indeed constitute State aid for the following reasons: they may be considered as publicly financed, as, by applying them, the State deprives itself of financial resources; if applied in a specific sector of the economy, they provide an advantage to certain companies or certain types of products; they may distort or threaten to distort competition in a sensitive sector such as agriculture, where trade flows are very intensive.

(164) A set of rules must be designed in order to evaluate the compatibility of such measures with Article 87(3)(c) of the Treaty.

(165) Article 8 of Directive 2003/96/EC states that lower minimum levels of taxation set out in Table B of Annex I thereto shall apply to products used as motor fuel for the purposes of agricultural and horticultural works as well as for forestry.

(166) Article 15(3) of Directive 2003/96/EC states that Member States may apply a level of taxation down to zero to energy products and electricity used for agricultural and horticultural works, as well as for forestry, but also that on the basis of a proposal from the Commission, the Council shall before 1 January 2008 examine if the possibility of applying a level of taxation down to zero shall be repealed.

(167) The Commission takes these provisions into consideration when drawing up its rules for State aid compatibility for primary production in the agricultural sector, whilst ensuring that no tax differentiation is applied within the sector. When a tax measure provided for in Articles 8 and 15(3) of Directive 2003/96/EC is applied equally to the whole agricultural sector, the Commission considers that this measure may contribute to the development of the sector. The Commission until now has only received notifications for tax reductions in connection with motor fuels used in primary agricultural production. In view of the fact that these reductions are based on quantities of motor fuel actually used in primary production (which should be substantiated by invoices presented by farmers) and in the light of the small scale structure of farms in the European Union (more than 60 % of farms have less than 5 hectares of utilized agricultural area) the Commission considers that this measure will not unduly distort competition. By way of analogy, tax exemptions for energy and electricity used in primary agricultural production should also be rather small-scale and should thus not adversely affect trading conditions to an extent contrary to the common interest.

(168) It is possible that unlawful State aids in the form of tax exemptions, reductions, differentiation and refunds have been granted since the entry into force of Directive 2003/96/EC in connection with primary agricultural production. If they fulfil the relevant provisions of the Directive and no

tax differentiation has been applied within agriculture, they should be declared compatible with Article 87(3)(c) of the Treaty.

VI.F.2 Policy

(169) The application of lower minimum level of taxation as set out in Table B of Annex I to Directive 2003/96/EC to products used as motor fuel for the purposes of primary agricultural production will be declared compatible with Article 87(3)(c) of the Treaty, provided no differentiation is made within agriculture.

(170) The application of a level of taxation down to zero to energy products and electricity used for primary agricultural production, will be declared compatible with Article 87(3)(c) of the Treaty until 31 December 2007 or any other date decided by the Council, provided no differentiation is applied within agriculture. In case Directive 2003/96/EC is modified, the present provision will be reviewed accordingly.

(171) If the possibility of applying a level of taxation down to zero to energy products and electricity used for agricultural works, is repealed by the Council, State aid linked to a tax reduction under Directive 2003/96/EC will be declared compatible with Article 87(3)(c) of the Treaty if the reduction in question fulfils all the relevant provisions of the directive and no tax differentiation is applied within agriculture.

(172) Unlawful State aid granted since the entry into force of Directive 2003/96/EC will be declared compatible with Article 87(3)(c) of the Treaty if it fulfils all the relevant provisions set out in this chapter and no tax differentiation has been applied within agriculture.

VII. AIDS FOR THE FOREST SECTOR

VII.A. Introduction

(173) No specific Community rules exist governing State aid for the forest sector (forestry and forest-based industries) ⁽⁵⁵⁾. Nevertheless, in addition to State aid granted under Community rules common to all sectors, notably the Community framework for Research and Development ⁽⁵⁶⁾ and the Community guidelines on State aid for rescuing and restructuring firms in difficulty ⁽⁵⁷⁾, certain Community instruments governing State aid granted for trade and industrial production apply also to the forest sector, notably the Commission guidelines on national regional aid for 2007–2013 and the Community Guidelines on State Aid for Environmental Protection ⁽⁵⁸⁾. The forest sector can also benefit from aid granted under the *de minimis* Regulation applicable to industrial activities and

⁽⁵⁵⁾ For the purpose of these Guidelines, the term forestry follows the definition by Eurostat (production of standing timber as well as extraction and gathering of wild growing forest materials including products which undergo little processing, such as wood for fuel of industrial use).

⁽⁵⁶⁾ OJ C 45, 17.2.1996, p. 5.

⁽⁵⁷⁾ See footnote 36.

⁽⁵⁸⁾ See footnote 19.

Regulation (EC) No 70/2001, which do not apply to agricultural production. Moreover, in addition to the rules and instruments mentioned it is established Commission practice to authorise State aid for conservation, improvement, development and maintenance of forests on account of the ecological, protective and recreational functions of forest. In order to make this practice transparent and to determine its scope in relation to the other rules for State aid for the forest sector, it is appropriate to set out the policy the Commission will apply to State aid for the forest sector. When formulating this policy it is also necessary to take into account the aid available for measures targeting the sustainable use of forestry land under the Regulation (EC) No 1698/2005 in order to assure consistency of State aid and co-financed support for forestry.

VII.B. Analysis

(174) In order to determine its future policy, the Commission has in particular taken into account the following considerations:

- (a) State aid may be granted for the forest sector under the Community rules common either to all sectors or to trade and industry. The provisions of this Chapter are without prejudice to the possibility of applying those rules but should be limited to authorising additional State support for forestry promoting the ecological, protective and recreational functions of forests as well as ensuring consistency with State aid for agricultural production and rural development measures;
- (b) the rules in this Chapter should apply only to living trees and their natural environment in forests and other wooded land, including measures to maintain and enhance the ecological and protective functions of forests and measures to promote the recreational use and social and cultural dimensions of forests. They should not apply to State aid to forest based industries or for transportation of timber or for processing of wood or other forestry resources into products or for energy generation, as aid to such activities can be granted under other Community rules;
- (c) the Commission has traditionally accepted State aid up to 100 % of eligible costs for measures promoting the maintenance of the forest environment including plantation, felling and pruning of trees or removing fallen trees, phytosanitary measures and soil improvement. Such aid should continue to be accepted in the future where the Member State can show that the

measures contribute to increasing long-term forest cover and maintaining or restoring biodiversity and a healthy forest ecosystem and the protective function of forests. Such aid should also be accepted for restoring forests damaged by storms, fire, floods or similar events. In line with that policy, no aid should be accepted for commercially viable felling or restocking after felling or establishing and maintaining any plantation with no demonstrated environmental or recreational benefit;

- (d) the above policy should also continue to apply to measures favouring the recreational use of the forests including the promotion of the benefits of multi-functional use of forests, such as visitors' infrastructure, forestry roads and information materials concerning forests in general. The condition for approving such aid should be that the eligible forest areas and infrastructures are accessible for recreational purposes to all users without payment and that the information materials contain only generic information on forests to the exclusion of all advertising or promotion of products or producers;
- (e) in the past the Commission has approved aid for training of forest owners and forestry workers on the basis of the agriculture Guidelines. Since forest owners are, in many cases, agricultural producers, the training and counselling services they receive are likely to concern both the agricultural and forestry part of their enterprise and the rules applicable to aid for training and consultancy in agriculture should also apply to forestry. This principle should also apply to aid to forestry associations, as the Commission has in the past authorised such aid on the basis of the agriculture Guidelines, and to aid for pilot and demonstration projects in forestry as well as for the purchase of forestry land;
- (f) in order to make the State aid rules concerning forestry consistent with rural development policies, aid for forestry measures satisfying the conditions of Articles 43–49 of Regulation (EC) No 1698/2005 should be authorised under this Chapter.

VII.C. Policy concerning forestry

- (175) In order to contribute to the maintenance and improvement of forests and to promote their ecological, protective and recreational function the Commission will declare State aid up to 100 % compatible with Article 87(3)(c) of

the Treaty for the following eligible costs where the Member State can demonstrate that these measures are directly contributing to maintaining or restoring ecological, protective and recreational functions of forests, biodiversity and a healthy forest ecosystem:

(a) planting, pruning, thinning and felling of trees and other vegetation in existing forests, removing fallen trees, as well as restoring forests damaged by air pollution, animals, storms, fire, floods or similar events, and the planning costs of such measures, where the primary objective of such measures is to contribute to maintaining or to restoring forest ecosystem and biodiversity or the traditional landscape. However, no aid may be granted for felling the primary purpose of which is the commercially viable extraction of timber or for restocking where the felled trees are replaced by equivalent ones. Aid may be granted for afforestation measures, including planning costs, to increase forest cover, to promote biodiversity, to create wooded areas for recreational purposes, to combat erosion and desertification or to promote a comparable protective function of the forest. Aid to increase forest cover may be granted only for demonstrated environmental reasons, such as low existing forest cover or the creation of contiguous wooded areas; it may not be granted for afforestation with species cultivated in the short term. Wooded areas created for recreational purposes must be open to the public free of charge for recreational use. Access may be restricted if this is necessary to protect sensitive areas.

(b) maintaining and improving the soil quality in forests and ensuring balanced and healthy tree growth. Measures may include soil improvement by fertilisation and other treatments to maintain its natural balance, reducing excessive vegetation density and ensuring sufficient water retention and proper drainage. Aid may cover the planning costs of such measures. The measures must not reduce biodiversity, cause nutrient leaching or adversely affect natural water ecosystems or water protection zones.

(c) preventing, eradicating and treating pests, pest damage and tree diseases and preventing and treating damage done by animals as well as targeted measures, including building and maintaining roads and other infrastructure, to prevent forest fires. The eligible costs may include preventative and treatment measures, including soil preparation for replanting, and the products, appliances and materials necessary for such measures.

Biological and mechanical prevention and treatment methods should be preferred when granting the aid unless it can be shown that such methods are not sufficient to fight the disease or pest in question. Aid may be granted to compensate for the loss of stock and for restocking costs up to the market value of the stock destroyed on the order of the authorities to fight the disease or pest in question or the stock destroyed by animals. When calculating the market value of the increment loss, the potential increment of the stock destroyed until the normal felling age may be taken into consideration.

(d) restoration and maintenance of natural pathways, landscape elements and features and the natural habitat for animals, including planning costs.

(e) constructing, improving and maintaining forest roads, visitors' infrastructures including facilities for persons with special needs, signposts, observation platforms and similar constructions, including planning costs, where the forests and infrastructure are open to the public at no cost for recreational purposes. Access to forests and infrastructures may be restricted if this is necessary to protect sensitive areas or to ensure the proper and safe use of the infrastructures.

(f) the costs of information materials and activities such as seminars, public relations events and information in the printed and electronic media, which disseminate general information concerning forests. The supported actions and materials may not contain references to named products or producers or promote domestic products.

(g) the costs of purchase of forestry land used or to be used as nature protection areas. The forestry land in question must be entirely and permanently secured for nature protection purposes by the means of a statutory or contractual obligation.

(176) The Commission will declare State aid for afforestation of agricultural or non-agricultural land, establishment of agroforestry systems on agricultural land, Natura 2000 payments, forest-environment payments, restoration of forestry potential and introduction of prevention actions as well as non-productive investments compatible with Article 87(3)(c) of the Treaty if the aid meets the conditions laid down in Articles 43–49 of Regulation (EC) No 1698/2005 and does not exceed the maximum intensity stipulated therein.

(177) The Commission will authorise State aid for the additional costs and income foregone due to the use of environmentally friendly forestry technology going beyond the relevant mandatory requirements if the forest owners enters into a voluntary commitment concerning the use of such technology and the commitment satisfies the conditions of Article 47 of Regulation (EC) No 1698/2005. Aid exceeding the amounts fixed in the Annex to Regulation (EC) No 1698/2005 shall in principle only be declared compatible with Article 87(3)(c) of the Treaty if granted for demonstrated additional costs and/or income foregone, in exceptional cases taking into account specific circumstances to be duly justified, in favour of commitments which lead to a demonstrable and significant positive effect on the environment.

(178) The Commission will declare State aid for the purchase of forestry land compatible with Article 87(3)(c) of the Treaty if the aid intensity does not exceed that laid down in [Article 4 of the Block Exemption Regulation] for the purchase of agricultural land.

(179) The Commission will declare State aid for training of forest owners and forestry workers and for consultancy services provided by third parties, including the establishment of business plans, forestry management plans and feasibility studies, as well as participation in competitions, exhibitions and fairs compatible with Article 87(3)(c) of the Treaty if the aid fulfils the conditions set out in [Article 15 of future Exemption Regulation].

(180) The Commission will authorise State aid for the setting up of forestry associations if the aid fulfils the conditions set out in [Article 9 of future Exemption Regulation].

(181) The Commission will authorise State aid in favour of activities for the vulgarisation of new techniques, such as reasonable small scale pilot projects or demonstration projects if the aid fulfils the conditions set out in point 107 of these Guidelines.

(182) The provisions of this Chapter are without prejudice to the possibility of applying other State aid rules applicable to all sectors or trade and industry to the forest sector.

VIII. PROCEDURAL MATTERS

VIII.A. Notification

(183) Subject to the points below, all new aid schemes and all new individual aids must be notified to the Commission before they are put into effect in accordance with Article 88 (3) of the Treaty and Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 88 of the Treaty ⁽⁵⁹⁾. This does not apply to aid covered by one of the exemption Regulations adopted by the Commission on the basis of Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid ⁽⁶⁰⁾.

(184) In accordance with Article 89 of Regulation (EC) No 1698/2005, a separate notification under Article 88(3) of the Treaty is not required in respect of State aid intended to provide additional financing for rural development measures for which Community support is granted provided that this aid has been notified to and approved by the Commission in accordance with the provisions of the Regulation as part of the programming referred to in that Regulation.

(185) In order to benefit from this exception, the measures concerned must themselves respect all conditions of substance for State aid, and notably the eligible costs and aid intensities set out in these guidelines. The amount of additional State aid allocated to each of them must be clearly identified in the rural development plan in accordance with the provisions of the Rural Development Implementing Regulation. Commission approval of the plan will cover only measures which have been identified in this way. State aids granted for other measures, whether or not included in the plan, or measures which are subject to different conditions from those set out in the plan must be the subject of a separate notification to the Commission in accordance with Article 88(3).

(186) Furthermore, Commission approval of the plan will only cover the amount of aid set out by the Member State.

(187) The same rules apply by analogy to amendments to rural development plans.

⁽⁵⁹⁾ OJ L 83, 27.3.1999, p. 1. Regulation as amended by the 2003 Act of Accession.

⁽⁶⁰⁾ OJ L 142, 14.5.1998, p. 1.

VIII.B. Duration of schemes

(188) Under the Community Guidelines for State aid in the agriculture sector applied during the period 2000–2006, the Commission has accepted notifications of State aid schemes of unlimited duration. This can create a lack of transparency, notably where an aid measure is not used for several years. It also makes the regular review of all existing schemes more difficult for the Commission.

(189) Therefore, the Commission will, in the future, only authorise schemes of limited duration. Schemes covering State aid for measures that can also benefit from co-financing under Regulation (EC) No 1698/2005 should be limited to the duration of the programming period 2007–2013. Other aid schemes should not apply for more than seven years.

VIII.C. Annual reports

(190) Article 21 of Regulation (EC) No 659/1999 requires Member States to submit annual reports to the Commission on all existing aid schemes with regard to which no specific reporting obligations have been imposed in a conditional decision. Details are set out in 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. ⁽⁶¹⁾

(191) The Commission reserves the right to seek additional information on existing aid schemes on a case by case basis, where this is necessary to enable it to fulfil its responsibilities under Article 88(1) of the Treaty.

(192) Where annual reports are not provided in accordance with these guidelines, the Commission may proceed in accordance with Article 18 of Regulation (EC) No 659/1999.

(193) Having regard to the annual reports provided by the Member States, the Commission will take appropriate steps to ensure an increase in the transparency of information regarding State aid in the agricultural sector.

VIII.D. Application to new aids

(194) The Commission will apply these guidelines to new State aids with effect from 1 January 2007. Notifications pending on 31 December 2006 will be assessed according to the Community State aid guidelines that were applicable in the agricultural sector on the date of notification of the aid. Except for measures referred to in point 195, the

Commission will no longer apply the following texts from 1 January 2007 :

(a) Community guidelines for State aid in the agriculture sector;

(b) Community guidelines for State aid for advertising of products listed in Annex I to the EC Treaty and of certain non-Annex I products ⁽⁶²⁾;

(c) Community guidelines for State aid concerning TSE tests, fallen stock and slaughterhouse waste ⁽⁶³⁾. Replacement of that text is warranted for reasons of better regulation because the substantive rules therein have been included into these guidelines. For unlawful aid granted before the entry into force of these guidelines, the Commission will however continue to apply the provisions on unlawful aid as set out in points 43 and following of those guidelines;

(d) Commission on State aids: subsidised short-term loans in agriculture (crédits de gestion) ⁽⁶⁴⁾.

VIII.E. Existing State aid measures in accordance with 2003 act of accession

(195) For the assessment of the aid schemes and individual aids that are regarded as existing aid in accordance with Point 4, Chapter 4 of Annex IV to the 2003 Act of Accession ⁽⁶⁵⁾, the Community guidelines for State aid in the agriculture sector applicable on 31 December 2006 will remain applicable until 31 December 2007 without prejudice of point 196, provided that such aid complies with those guidelines by 30 April 2007 at the latest.

VIII.F. Proposals for appropriate measures

(196) In accordance with Article 88(1) of the Treaty the Commission proposes that Member States amend their existing aid schemes to conform with these guidelines by 31 December 2007 at the latest, except for existing aid schemes for investments in connection with processing and marketing of agricultural products, that have to be eliminated by 31 December 2008 at the latest, and for investments concerning land purchase in agricultural holdings, that have to be amended to conform with these guidelines by 31 December 2009.

⁽⁶²⁾ OJ C 252, 12.9.2001, p. 5.

⁽⁶³⁾ OJ C 324, 24.12.2002, p. 2.

⁽⁶⁴⁾ See footnote 53.

⁽⁶⁵⁾ OJ L 236, 23.9.2003, p. 797.

⁽⁶¹⁾ OJ L 140, 30.4.2004, p. 1. Regulation as amended by Regulation (EC) No 1627/2006 (OJ L 302, 1.11.2006, p. 10).

(197) The Member States are invited to confirm that they accept these proposals for appropriate measures in writing by 28 February 2007 at the latest.

(198) In the event that a Member State fails to confirm its acceptance in writing before that date, the Commission will apply Article 19(2) of Regulation (EC) No 659/1999 and, if necessary, initiate the proceedings referred to in that provision.

VIII.G. **Expiry**

(199) These guidelines shall apply until 31 December 2013. The Commission may amend them before that date on the basis of important competition policy considerations, or agricultural or human and animal health policy considerations, or in order to take account of other Community policies or international commitments
