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⁽¹⁾ Text with EEA relevance

I

(Resolutions, recommendations and opinions)

RESOLUTIONS

COUNCIL

COUNCIL RESOLUTION

of 30 November 2009

on the exchange of DNA analysis results

(2009/C 296/01)

THE COUNCIL OF THE EUROPEAN UNION,

RECALLING the objectives of the Treaty on European Union;

BEARING IN MIND the protection of personal data as regulated by the Framework Decision 2008/977/JHA on the protection of personal data processed within the framework of police and judicial cooperation in criminal matters ⁽¹⁾ and Council of Europe Convention No 108 for the protection of individuals with regard to automatic processing of personal data, signed in Strasbourg on 28 January 1981, Recommendation No R (87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987 regulating the use of personal data in the police sector and, as appropriate, Recommendation No R (92) 1 of 10 February 1992 of the Committee of Ministers of the Council of Europe on the use of DNA analysis within the framework of the criminal justice system;

TAKING INTO ACCOUNT the work of the DNA Working Group of the European Network of Forensic Science Institutes (ENFSI) on the harmonisation of the DNA markers and DNA technology;

CONSIDERING the existence of technical aspects associated with DNA investigation that must be taken into account in the development of cooperation activities;

BEARING IN MIND that the current European standard set of DNA markers consists of seven DNA markers;

CONSIDERING that the exchange of DNA data between Member States is rapidly progressing and that the national DNA databases are increasing in size and number, and recalling that the statistical value of DNA data corresponds to the

random match probability and depends entirely on the number of DNA markers that have been reliably analysed, it is deemed necessary to expand the existing European Standard Set of loci (ESS) adopted in 2001;

RECALLING that Article 7(1) of the Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime ⁽²⁾ obliges Member States to use existing standards for DNA data exchange, such as the European Standard Set (ESS) or the Interpol Standard Set of Loci (ISSOL) from the date of implementation in accordance with its Article 23.

RECALLING the properties of DNA profiles as set out in paragraph 1.1 of Chapter 1 of the Annex to Council Decision 2008/616/JHA;

CONVINCED that an effective information exchange is facilitated by increasing the number of markers;

ENCOURAGING Member States to implement as soon as practically possible the new ESS and no later than 24 months after the date of adoption of this Resolution,

HAS ADOPTED THIS RESOLUTION WHICH REPLACES COUNCIL RESOLUTION 2001/C 187/01 OF 25 JUNE 2001 ON THE EXCHANGE OF DNA ANALYSIS RESULTS:

I. DEFINITIONS

1. 'DNA marker' means the locus in a molecule which typically contains different information as regards different individuals;

⁽¹⁾ OJ L 350, 30.12.2008, p. 60.

⁽²⁾ OJ L 210, 6.8.2008, p. 12.

2. 'DNA analysis result' means a letter or numerical code which is built up on the basis of analysing one or several loci in DNA and used for reporting. For example, DNA analysis result D3S1358 14-15, D21S11 28-30 means that the subject is type 14-15 as regards DNA marker D3S1358 and type 28-30 as regards DNA marker D21S11;
3. 'European Standard Set (ESS)' means the set of DNA markers listed in Annex 1;
4. 'ESS marker' means a DNA marker which is part of the European Standard Set (ESS); and
5. 'ESS analysis result' means a DNA analysis result built up using the above mentioned DNA markers which are part of the ESS.

II. FORENSIC DNA TECHNOLOGY

1. In forensic DNA analysis, Member States are invited to use at least the DNA markers listed in Annex 1 which form the ESS, in order to facilitate an exchange of DNA analysis results. Where information from additional loci is available, Member States are urged to provide this when exchanging DNA data.
2. Member States are invited to build up ESS analysis results in accordance with scientifically tested and approved DNA technology based on studies carried out within the framework of the DNA Working Group of the European Network of Forensic Science Institutes (ENFSI). Member States should be able to specify upon request the quality requirements and proficiency tests in use.

III. EXCHANGE OF DNA ANALYSIS RESULTS

1. When exchanging DNA analysis results, Member States are urged to limit the DNA analysis results to chromosome zones containing no genetic expression, i.e. not known to provide information about specific hereditary characteristics.
2. The DNA markers in Annex 1 are not known to contain information about specific hereditary characteristics. Should science develop in such a way that it can be determined that any of the DNA markers recommended in this Resolution provide information on specific hereditary characteristics, Member States are advised to no longer use that marker when exchanging DNA analysis results. Member States are also advised to be prepared to delete any DNA analysis results, which they may have received, if those DNA analysis results should prove to contain information on specific hereditary characteristics.

ANNEX

The European Standard Set (ESS) comprises the following DNA markers:

D3S1358

VWA

D8S1179

D21S11

D18S51

HUMTH01

FGA

D1S1656

D2S441

D10S1248

D12S391

D22S1045

RECOMMENDATIONS

COUNCIL

COUNCIL RECOMMENDATION

of 30 November 2009

on smoke-free environments

(2009/C 296/02)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the second subparagraph of Article 152(4) thereof,

Having regard to the proposal from the Commission,

After consulting the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Whereas:

exposure at their workplace in the European Union in 2002. A further 72 000 adult deaths, including those of 16 400 non-smokers, were linked to ETS exposure at home.

(5) Exposure to second-hand tobacco smoke is particularly dangerous to children and adolescents and could increase the likelihood of their taking up smoking.

(6) ETS has been classified as a known human carcinogen by the World Health Organization (WHO) International Agency for Research on Cancer and as an occupational carcinogen by Finland and Germany.

(1) Article 152 of the Treaty stipulates that Community action, which shall complement national policies, shall be directed towards improving public health, preventing human illness and diseases, and obviating sources of danger to human health.

(7) All people have the right to a high level of health protection and should be protected from exposure to tobacco smoke.

(2) According to Article 137 of the Treaty, the Community shall support and complement the activities of the Member States, *inter alia*, in the field of improvement in particular of the working environment to protect workers' health and safety.

(8) Voluntary policies at national level have proved ineffective in reducing exposure to tobacco smoke. Member States' binding legislation, properly enforced and monitored is an effective means of adequately protecting people from the health risks of second-hand tobacco smoke.

(3) Exposure to environmental tobacco smoke (ETS) — also referred to as second-hand tobacco smoke — is a widespread source of mortality, morbidity and disability in the European Union.

(9) Legislation on smoke-free environments is most effective when it is backed up by measures such as awareness-raising campaigns, support for cessation of tobacco use, strong health warnings on tobacco product packaging and other regulation on tobacco products.

(4) According to conservative estimates, 7 300 adults including 2 800 non-smokers died as a result of ETS

(10) Civil society has an important role in building support for and ensuring compliance with legislation on smoke-free environments.

⁽¹⁾ Resolution delivered following non-mandatory consultation (not yet published in the Official Journal).

⁽²⁾ Opinion of 5 November 2009 (not yet published in the Official Journal).

- (11) Smoke-free policies should have adequate instruments to implement the multi-sectorial approach to tobacco control.
- (12) There is a need for strengthened cooperation between Member States to facilitate the exchange of information and best practice and develop a standardised EU monitoring system.
- (13) The resolution of the Council and the Ministers for Health of the Member States, meeting within the Council of 18 July 1989 on banning smoking in places open to the public⁽³⁾ invited the Member States to take measures banning smoking in certain enclosed premises open to the public, and to extend the ban on smoking to all forms of public transport.
- (14) Council Recommendation 2003/54/EC of 2 December 2002 on the prevention of smoking and on initiatives to improve tobacco control⁽⁴⁾ recommended that Member States implement legislation and/or other effective measures that provide protection from exposure to ETS in indoor workplaces, enclosed public places, and public transport.
- (15) Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work⁽⁵⁾, while not explicitly referring to tobacco smoke, covers all risks to the health and safety of workers⁽⁶⁾.
- (16) In its Environment and Health Action Plan (2004-2010)⁽⁷⁾, the Commission has undertaken to 'develop work on improving indoor air quality', in particular by 'encouraging the restriction of smoking in all workplaces by exploring both legal mechanisms and health promotion initiatives at both European and Member State level'.
- (17) The consultation initiated by the Commission's Green Paper 'Towards a Europe free from tobacco smoke: policy options at EU level'⁽⁸⁾ (the 'Green Paper') has revealed strong support both for comprehensive smoke-free policies in all enclosed workplaces and public places and for further EU action to promote smoke-free environments throughout the Member States.
- (18) The Employment, Social Policy, Health and Consumer Affairs Council held an exchange of views on policy options at EU level on tobacco smoke-free environments on 30 and 31 May 2007. It welcomed the Green Paper and stressed the need for Community guidance to further promote tobacco-smoke free environments at EU level, as well as Community support for and coordination of national measures.
- (19) The European Parliament's resolution of 24 October 2007 on the Green Paper called on the Member States to introduce comprehensive smoke-free laws within two years and invited the Commission to table a relevant legislative proposal by 2011 in the event of unsatisfactory progress. It also called on the Commission to propose an amendment to the current legislative framework in order to classify ETS as a carcinogen and oblige employers to ensure that the workplace is smoke-free.
- (20) Article 8 of the WHO Framework Convention on Tobacco Control (FCTC), signed in June 2003 by all WHO members, and so far ratified by 167 Parties, including the Community and 26 of its Member States, creates a legal obligation for its Parties to adopt and implement in areas of existing national jurisdiction as determined by national law and to actively promote, at other jurisdictional levels, the adoption and implementation of effective measures to protect people from exposure to second-hand tobacco smoke in all indoor workplaces, public transport and indoor public places and, as appropriate, other public places.
- (21) The Second Conference of the Parties to FCTC in July 2007 adopted guidelines on protection from exposure to tobacco smoke⁽⁹⁾ to assist Parties in meeting their obligations under Article 8 of the Convention. Each Party should strive to implement the guidelines within five years of the Convention's entry into force for that Party.
- (22) Article 14 of the WHO Framework Convention creates a legal obligation for its Parties to develop and disseminate appropriate, comprehensive and integrated guidelines based on scientific evidence and best practices and to take effective measures to promote the cessation of tobacco use and adequate treatment for tobacco dependence. The Third Conference of the Parties to the WHO Framework Convention decided to establish a working group for the elaboration of guidelines for implementation of that Article.

⁽³⁾ OJ C 189, 26.7.1989, p. 1.

⁽⁴⁾ OJ L 22, 25.1.2003, p. 31.

⁽⁵⁾ OJ L 183, 29.6.1989, p. 1.

⁽⁶⁾ Cf. Case C-49/00 *Commission v. Italy*, [2001] ECR I-8575, paragraphs 12-13.

⁽⁷⁾ COM(2004) 416 final.

⁽⁸⁾ COM(2007) 27 final.

⁽⁹⁾ FCTC/COP2(7) Guidelines on protection from exposure to tobacco smoke, as elaborated by the working group convened in accordance with decision FCTC/COP1(15) of the Conference of the Parties to the WHO Framework Convention on Tobacco Control.

- (23) The European Strategy on Tobacco Control adopted by the WHO Regional Committee for Europe in September 2002 recommended that Member States ensure the citizens' right to a smoke-free environment by, inter alia, making public places, workplaces and public transport smoke-free, banning smoking outdoors in all educational institutions for minors, in all places of healthcare delivery and at public events, as well as classifying ETS as a carcinogen.
- (24) This Recommendation is without prejudice to the Community legislation laying down minimum requirements for the safety and health protection of workers adopted under Article 137 of the Treaty, to Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products⁽¹⁰⁾ and to Commission Decision 2003/641/EC of 5 September 2003 on the use of colour photographs or other illustrations as health warnings on tobacco packages⁽¹¹⁾,
- (b) introducing combined warnings, as defined by Article 2(4) of Commission Decision 2003/641/EC of 5 September 2003 on the use of colour photographs or other illustrations as health warnings on tobacco packages⁽¹²⁾, and information on services supporting the cessation of tobacco use on the packages of smoking tobacco products in order to better inform consumers about the health risks of tobacco use and exposure to tobacco smoke, encourage cessation of tobacco use and deter initiation;
4. develop, implement, periodically update and review comprehensive multi-sectoral tobacco control strategies, plans or programmes which address, inter alia, the issue of protection from tobacco smoke in all places accessible to the general public or places of collective use, regardless of ownership or right to access;
5. provide adequate instruments to implement national strategies, tobacco control policies and programmes in order to ensure effective protection from exposure to tobacco smoke;

HEREBY RECOMMENDS THAT THE MEMBER STATES:

1. provide effective protection from exposure to tobacco smoke in indoor workplaces, indoor public places, public transport and, as appropriate, other public places as stipulated by Article 8 of the WHO Framework Convention on Tobacco Control (FCTC) and based on the annexed guidelines on protection from exposure to tobacco smoke adopted by the Second Conference of the Parties to FCTC, within five years of the FCTC's entry into force for that Member State, or at the latest within three years following the adoption of this Recommendation;
2. develop and/or strengthen strategies and measures to reduce exposure to second-hand tobacco smoke of children and adolescents;
3. complement smoke-free policies with supporting measures, which may include:
 - (a) taking effective measures to promote cessation of tobacco use and adequate treatment for tobacco dependence, taking into account national circumstances and priorities as outlined in Article 14 of the FCTC; and
6. communicate to the Commission, if possible within six months after the adoption of this Recommendation, national focal points for tobacco control with a view to exchanging information and best practices as well as policy coordination with other Member States;
7. cooperate closely among themselves and with the Commission on a coherent framework of definitions, benchmarks and indicators for the implementation of this Recommendation;
8. monitor and evaluate the effectiveness of policy measures using the above-mentioned indicators;
9. inform the Commission of legislative and other action taken in response to this Recommendation and of the results of monitoring and evaluation,

HEREBY INVITES THE COMMISSION TO:

1. report on the implementation, functioning and impacts of the proposed measures, on the basis of the information provided by Member States;

⁽¹⁰⁾ OJ L 194, 18.7.2001, p. 26.

⁽¹¹⁾ OJ L 226, 10.9.2003, p. 24.

⁽¹²⁾ See footnote 11.

2. in the context of a possible revision of Directive 2001/37/EC, consider all product-related measures aimed at reducing the attractiveness and addictiveness of tobacco products;
3. analyse the legal issues and the evidence base for the impact of plain packaging, including on the functioning of the internal market.

Done at Brussels, 30 November 2009.

For the Council

The President

S. O. LITTORIN

ANNEX

Guidelines on protection from exposure to tobacco smoke, as adopted by the Second Conference of the Parties to the WHO Framework Convention on Tobacco Control**PURPOSE, OBJECTIVES AND KEY CONSIDERATIONS****Purpose of the guidelines**

1. Consistent with other provisions of the WHO Framework Convention on Tobacco Control and the intentions of the Conference of the Parties, these guidelines are intended to assist Parties in meeting their obligations under Article 8 of the Convention. They draw on the best available evidence and the experience of Parties that have successfully implemented effective measures to reduce exposure to tobacco smoke.
2. The guidelines contain agreed upon statements of principles and definitions of relevant terms, as well as agreed upon recommendations for the steps required to satisfy the obligations of the Convention. In addition, the guidelines identify the measures necessary to achieve effective protection from the hazards of second-hand tobacco smoke. Parties are encouraged to use these guidelines not only to fulfil their legal duties under the Convention, but also to follow best practices in protecting public health.

Objectives of the guidelines

3. These guidelines have two related objectives. The first is to assist Parties in meeting their obligations under Article 8 of the WHO Framework Convention, in a manner consistent with the scientific evidence regarding exposure to second-hand tobacco smoke and the best practice worldwide in the implementation of smoke-free measures, in order to establish a high standard of accountability for treaty compliance and to assist the Parties in promoting the highest attainable standard of health. The second objective is to identify the key elements of legislation necessary to effectively protect people from exposure to tobacco smoke, as required by Article 8.

Underlying considerations

4. The development of these guidelines has been influenced by the following fundamental considerations:
 - (a) The duty to protect from tobacco smoke, embodied in the text of Article 8, is grounded in fundamental human rights and freedoms. Given the dangers of breathing second-hand tobacco smoke, the duty to protect from tobacco smoke is implicit in, inter alia, the right to life and the right to the highest attainable standard of health, as recognised in many international legal instruments (including the Constitution of the World Health Organisation, the Convention on the Rights of the Child, the Convention on the Elimination of all Forms of Discrimination against Women and the Covenant on Economic, Social and Cultural Rights), as formally incorporated into the preamble of the WHO Framework Convention and as recognised in the constitutions of many nations.
 - (b) The duty to protect individuals from tobacco smoke corresponds to an obligation by governments to enact legislation to protect individuals against threats to their fundamental rights and freedoms. This obligation extends to all persons, and not merely to certain populations.
 - (c) Several authoritative scientific bodies have determined that second-hand tobacco smoke is a carcinogen. Some Parties to the WHO Framework Convention (for example, Finland and Germany) have classified second-hand tobacco smoke as a carcinogen and included the prevention of exposure to it at work in their health and safety legislation. In addition to the requirements of Article 8, therefore, Parties may be obligated to address the hazard of exposure to tobacco smoke in accordance with their existing workplace laws or other laws governing exposure to harmful substances, including carcinogens.

STATEMENT OF PRINCIPLES AND RELEVANT DEFINITIONS UNDERLYING PROTECTION FROM EXPOSURE TO TOBACCO SMOKE**Principles**

5. As noted in Article 4 of the WHO Framework Convention, strong political commitment is necessary to take measures to protect all persons from exposure to tobacco smoke. The following agreed upon principles should guide the implementation of Article 8 of the Convention.

Principle 1

6. Effective measures to provide protection from exposure to tobacco smoke, as envisioned by Article 8 of the WHO Framework Convention, require the total elimination of smoking and tobacco smoke in a particular space or environment in order to create a 100 % smoke-free environment. There is no safe level of exposure to tobacco smoke, and notions such as a threshold value for toxicity from second-hand smoke should be rejected, as they are contradicted by scientific evidence. Approaches other than 100 % smoke-free environments, including ventilation, air filtration and the use of designated smoking areas (whether with separate ventilation systems or not), have repeatedly been shown to be ineffective and there is conclusive evidence, scientific and otherwise, that engineering approaches do not protect against exposure to tobacco smoke.

Principle 2

7. All people should be protected from exposure to tobacco smoke. All indoor workplaces and indoor public places should be smoke free.

Principle 3

8. Legislation is necessary to protect people from exposure to tobacco smoke. Voluntary smoke-free policies have repeatedly been shown to be ineffective and do not provide adequate protection. In order to be effective, legislation should be simple, clear and enforceable.

Principle 4

9. Good planning and adequate resources are essential for successful implementation and enforcement of smoke-free legislation.

Principle 5

10. Civil society has a central role in building support for and ensuring compliance with smoke-free measures, and should be included as an active partner in the process of developing, implementing and enforcing legislation.

Principle 6

11. The implementation of smoke-free legislation, its enforcement and its impact should all be monitored and evaluated. This should include monitoring and responding to tobacco industry activities that undermine the implementation and enforcement of the legislation, as specified in Article 20.4 of the WHO Framework Convention.

Principle 7

12. The protection of people from exposure to tobacco smoke should be strengthened and expanded, if necessary; such action may include new or amended legislation, improved enforcement and other measures to reflect new scientific evidence and case study experiences.

Definitions

13. In developing legislation, it is important to use care in defining key terms. Several recommendations as to appropriate definitions, based on experiences in many countries, are set out here. The definitions in this section supplement those already included in the WHO Framework Convention.

'Second-hand tobacco smoke' or 'environmental tobacco smoke'

14. Several alternative terms are commonly used to describe the type of smoke addressed by Article 8 of the WHO Framework Convention. These include 'second-hand smoke', 'environmental tobacco smoke', and 'other people's smoke'. Terms such as 'passive smoking' and 'involuntary exposure to tobacco smoke' should be avoided, as experience in France and elsewhere suggests that the tobacco industry may use these terms to support a position that 'voluntary' exposure is acceptable. 'Second-hand tobacco smoke', sometimes abbreviated as 'SHS', and 'environmental tobacco smoke', sometimes abbreviated 'ETS', are the preferable terms; these guidelines use 'second-hand tobacco smoke'.
15. Second-hand tobacco smoke can be defined as 'the smoke emitted from the burning end of a cigarette or from other tobacco products usually in combination with the smoke exhaled by the smoker'.

16. 'Smoke-free air' is air that is 100 % smoke free. This definition includes, but is not limited to, air in which tobacco smoke cannot be seen, smelled, sensed or measured ⁽¹⁾.

'Smoking'

17. This term should be defined to include being in possession or control of a lit tobacco product regardless of whether the smoke is being actively inhaled or exhaled.

'Public places'

18. While the precise definition of 'public places' will vary between jurisdictions, it is important that legislation define this term as broadly as possible. The definition used should cover all places accessible to the general public or places for collective use, regardless of ownership or right to access.

'Indoor' or 'enclosed'

19. Article 8 requires protection from tobacco smoke in 'indoor' workplaces and public places. Because there are potential pitfalls in defining 'indoor' areas, the experiences of various countries in defining this term should be specifically examined. The definition should be as inclusive and as clear as possible, and care should be taken in the definition to avoid creating lists that may be interpreted as excluding potentially relevant 'indoor' areas. It is recommended that 'indoor' (or enclosed) areas be defined to include any space covered by a roof or enclosed by one or more walls or sides, regardless of the type of material used for the roof, wall or sides, and regardless of whether the structure is permanent or temporary.

'Workplace'

20. A 'workplace' should be defined broadly as 'any place used by people during their employment or work'. This should include not only work done for compensation, but also voluntary work, if it is of the type for which compensation is normally paid. In addition, 'workplaces' include not only those places at which work is performed, but also all attached or associated places commonly used by the workers in the course of their employment, including, for example, corridors, lifts, stairwells, lobbies, joint facilities, cafeterias, toilets, lounges, lunchrooms and also outbuildings such as sheds and huts. Vehicles used in the course of work are workplaces and should be specifically identified as such.
21. Careful consideration should be given to workplaces that are also individuals' homes or dwelling places, for example, prisons, mental health institutions or nursing homes. These places also constitute workplaces for others, who should be protected from exposure to tobacco smoke.

'Public transport'

22. Public transport should be defined to include any vehicle used for the carriage of members of the public, usually for reward or commercial gain. This would include taxis.

THE SCOPE OF EFFECTIVE LEGISLATION

23. Article 8 requires the adoption of effective measures to protect people from exposure to tobacco smoke in (1) indoor workplaces, (2) indoor public places, (3) public transport, and (4) 'as appropriate' in 'other public places'.
24. This creates an obligation to provide universal protection by ensuring that all indoor public places, all indoor workplaces, all public transport and possibly other (outdoor or quasi-outdoor) public places are free from exposure to second-hand tobacco smoke. No exemptions are justified on the basis of health or law arguments. If exemptions must be considered on the basis of other arguments, these should be minimal. In addition, if a Party is unable to achieve universal coverage immediately, Article 8 creates a continuing obligation to move as quickly as possible to remove any exemptions and make the protection universal. Each Party should strive to provide universal protection within five years of the WHO Framework Convention's entry into force for that Party.
25. No safe levels of exposure to second-hand smoke exist, and, as previously acknowledged by the Conference of the Parties in decision FCTC/COP1(15), engineering approaches, such as ventilation, air exchange and the use of designated smoking areas, do not protect against exposure to tobacco smoke.

⁽¹⁾ It is possible that constituent elements of tobacco smoke may exist in air in amounts too small to be measured. Attention should be given to the possibility that the tobacco industry or the hospitality sector may attempt to exploit the limitations of this definition.

26. Protection should be provided in all indoor or enclosed workplaces, including motor vehicles used as places of work (for example, taxis, ambulances or delivery vehicles).
27. The language of the treaty requires protective measures not only in all 'indoor' public places, but also in those 'other' (that is, outdoor or quasi-outdoor) public places where 'appropriate'. In identifying those outdoor and quasi-outdoor public places where legislation is appropriate, Parties should consider the evidence as to the possible health hazards in various settings and should act to adopt the most effective protection against exposure wherever the evidence shows that a hazard exists.

INFORM, CONSULT AND INVOLVE THE PUBLIC TO ENSURE SUPPORT AND SMOOTH IMPLEMENTATION

28. Raising awareness among the public and opinion leaders about the risks of second-hand tobacco smoke exposure through ongoing information campaigns is an important role for government agencies, in partnership with civil society, to ensure that the public understands and supports legislative action. Key stakeholders include businesses, restaurant and hospitality associations, employer groups, trade unions, the media, health professionals, organisations representing children and young people, institutions of learning or faith, the research community and the general public. Awareness-raising efforts should include consultation with affected businesses and other organisations and institutions in the course of developing the legislation.
29. Key messages should focus on the harm caused by second-hand tobacco smoke exposure, the fact that elimination of smoke indoors is the only science-based solution to ensure complete protection from exposure, the right of all workers to be equally protected by law and the fact that there is no trade-off between health and economics, because experience in an increasing number of jurisdictions shows that smoke-free environments benefit both. Public education campaigns should also target settings for which legislation may not be feasible or appropriate, such as private homes.
30. Broad consultation with stakeholders is also essential to educate and mobilise the community and to facilitate support for legislation after its enactment. Once legislation is adopted, there should be an education campaign leading up to implementation of the law, the provision of information for business owners and building managers outlining the law and their responsibilities and the production of resources, such as signage. These measures will increase the likelihood of smooth implementation and high levels of voluntary compliance. Messages to empower non-smokers and to thank smokers for complying with the law will promote public involvement in enforcement and smooth implementation.

ENFORCEMENT

Duty of compliance

31. Effective legislation should impose legal responsibilities for compliance on both affected business establishments and individual smokers, and should provide penalties for violations, which should apply to businesses and, possibly, smokers. Enforcement should ordinarily focus on business establishments. The legislation should place the responsibility for compliance on the owner, manager or other person in charge of the premises, and should clearly identify the actions he or she is required to take. These duties should include:
- (a) a duty to post clear signs at entrances and other appropriate locations indicating that smoking is not permitted. The format and content of these signs should be determined by health authorities or other agencies of the government and may identify a telephone number or other mechanisms for the public to report violations and the name of the person within the premises to whom complaints should be directed;
 - (b) a duty to remove any ashtrays from the premises;
 - (c) a duty to supervise the observance of rules;
 - (d) a duty to take reasonable specified steps to discourage individuals from smoking on the premises. These steps could include asking the person not to smoke, discontinuing service, asking the person to leave the premises and contacting a law enforcement agency or other authority.

Penalties

32. The legislation should specify fines or other monetary penalties for violations. While the size of these penalties will necessarily reflect the specific practices and customs of each country, several principles should guide the decision. Most importantly, penalties should be sufficiently large to deter violations or else they may be ignored by violators or treated as mere costs of doing business. Larger penalties are required to deter business violators than to deter violations by individual smokers, who usually have fewer resources. Penalties should increase for repeated violations and should be consistent with a country's treatment of other, equally serious offences.
33. In addition to monetary penalties, the legislation may also allow for administrative sanctions, such as the suspension of business licences, consistent with the country's practice and legal system. These 'sanctions of last resort' are rarely used, but are very important for enforcing the law against any businesses that choose to defy the law repeatedly.
34. Criminal penalties for violations may be considered for inclusion, if appropriate within a country's legal and cultural context.

Enforcement infrastructure

35. Legislation should identify the authority or authorities responsible for enforcement, and should include a system both for monitoring compliance and for prosecuting violators.
36. Monitoring should include a process for inspection of businesses for compliance. It is seldom necessary to create a new inspection system for enforcement of smoke-free legislation. Instead, compliance can ordinarily be monitored using one or more of the mechanisms already in place for inspecting business premises and workplaces. A variety of options usually exists for this purpose. In many countries, compliance inspections may be integrated into business licensing inspections, health and sanitation inspections, inspections for workplace health and safety, fire safety inspections or similar programmes. It may be valuable to use several such sources of information gathering simultaneously.
37. Where possible, the use of inspectors or enforcement agents at the local level is recommended; this is likely to increase the enforcement resources available and the level of compliance. This approach requires the establishment of a national coordinating mechanism to ensure a consistent approach nationwide.
38. Regardless of the mechanism used, monitoring should be based on an overall enforcement plan, and should include a process for effective training of inspectors. Effective monitoring may combine regular inspections with unscheduled, surprise inspections, as well as visits made in response to complaints. Such visits may well be educative in the early period after the law takes effect, as most breaches are likely to be inadvertent. The legislation should authorise inspectors to enter premises subject to the law and to collect samples and gather evidence, if these powers are not already established by existing law. Similarly, the legislation should prohibit businesses from obstructing the inspectors in their work.
39. The cost of effective monitoring is not excessive. It is not necessary to hire large numbers of inspectors, because inspections can be accomplished using existing programmes and personnel, and because experience shows that smoke-free legislation quickly becomes self-enforcing (that is, predominantly enforced by the public). Only a few prosecutions may be necessary if the legislation is implemented carefully and active efforts are made to educate businesses and the public.
40. Although these programmes are not expensive, resources are needed to educate businesses, train inspectors, co-ordinate the inspection process and compensate personnel for inspections of businesses outside of normal working hours. A funding mechanism should be identified for this purpose. Effective monitoring programmes have used a variety of funding sources, including dedicated tax revenues, business licensing fees and dedicated revenues from fines paid by violators.

Enforcement strategies

41. Strategic approaches to enforcement can maximise compliance, simplify the implementation of legislation and reduce the level of enforcement resources needed.

42. In particular, enforcement activities in the period immediately following the law's entrance into force are critical to the law's success and to the success of future monitoring and enforcement. Many jurisdictions recommend an initial period of soft enforcement, during which violators are cautioned but not penalised. This approach should be combined with an active campaign to educate business owners about their responsibilities under the law, and businesses should understand that the initial grace period or phase-in period will be followed by more rigorous enforcement.
43. When active enforcement begins, many jurisdictions recommend the use of high-profile prosecutions to enhance deterrence. By identifying prominent violators who have actively defied the law or who are well known in the community, by taking firm and swift action and by seeking maximum public awareness of these activities, authorities are able to demonstrate their resolve and the seriousness of the law. This increases voluntary compliance and reduces the resources needed for future monitoring and enforcement.
44. While smoke-free laws quickly become self-enforcing, it is nevertheless essential that authorities be prepared to respond swiftly and decisively to any isolated instances of outright defiance. Particularly when a law first comes into force, there may be an occasional violator who makes a public display of contempt for the law. Strong responses in these cases set an expectation of compliance that will ease future efforts, while indecisiveness can rapidly lead to widespread violations.

Mobilise and involve the community

45. The effectiveness of a monitoring-and-enforcement programme is enhanced by involving the community in the programme. Engaging the support of the community and encouraging members of the community to monitor compliance and report violations greatly extends the reach of enforcement agencies and reduces the resources needed to achieve compliance. In fact, in many jurisdictions, community complaints are the primary means of ensuring compliance. For this reason, smoke-free legislation should specify that members of the public may initiate complaints and should authorise any person or non-governmental organisation to initiate action to compel compliance with measures regulating exposure to second-hand smoke. The enforcement programme should include a toll-free telephone complaint hotline or a similar system to encourage the public to report violations.

MONITORING AND EVALUATION OF MEASURES

46. Monitoring and evaluation of measures to reduce exposure to tobacco smoke are important for several reasons, for example:
- (a) to increase political and public support for strengthening and extending legislative provisions;
 - (b) to document successes that will inform and assist the efforts of other countries;
 - (c) to identify and publicise the efforts made by the tobacco industry to undermine the implementation measures.
47. The extent and complexity of monitoring and evaluation will vary among jurisdictions, depending on available expertise and resources. However, it is important to evaluate the outcome of the measures implemented, in particular, on the key indicator of exposure to second-hand smoke in workplaces and public places. There may be cost-effective ways to achieve this, for example through the use of data or information collected through routine activities such as workplace inspections.
48. There are eight key process and outcome indicators that should be considered: ⁽¹⁾

Processes

- (a) Knowledge, attitudes and support for smoke-free policies among the general population and possibly specific groups, for example, bar workers;
- (b) enforcement of and compliance with smoke-free policies;

⁽¹⁾ The publication 'WHO policy recommendations: protection from exposure to second-hand tobacco smoke' (Geneva, World Health Organisation, 2007) provides references and links to monitoring studies conducted elsewhere on all of these indicators.

Outcomes

- (a) reduction in exposure of employees to second-hand tobacco smoke in workplaces and public places;
 - (b) reduction in content of second-hand tobacco smoke in the air in workplaces (particularly in restaurants) and public places;
 - (c) reduction in mortality and morbidity from exposure to second-hand tobacco smoke;
 - (d) reduction in exposure to second-hand tobacco smoke in private homes;
 - (e) changes in smoking prevalence and smoking-related behaviours;
 - (f) economic impacts.
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II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COMMISSION

Non-opposition to a notified concentration**(Case COMP/M.5691 — Mubadala/Veolia Eau/Azaliya)****(Text with EEA relevance)**

(2009/C 296/03)

On 1 December 2009, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

- in the merger section of the Competition website of the Commission (<http://ec.europa.eu/competition/mergers/cases/>). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,
 - in electronic form on the EUR-Lex website (<http://eur-lex.europa.eu/en/index.htm>) under document number 32009M5691. EUR-Lex is the on-line access to the European law.
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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COMMISSION

Euro exchange rates ⁽¹⁾

4 December 2009

(2009/C 296/04)

1 euro =

Currency	Exchange rate	Currency	Exchange rate
USD US dollar	1,5068	AUD Australian dollar	1,6259
JPY Japanese yen	133,08	CAD Canadian dollar	1,5778
DKK Danish krone	7,4416	HKD Hong Kong dollar	11,6778
GBP Pound sterling	0,90480	NZD New Zealand dollar	2,0776
SEK Swedish krona	10,3716	SGD Singapore dollar	2,0808
CHF Swiss franc	1,5063	KRW South Korean won	1 737,23
ISK Iceland króna		ZAR South African rand	11,0607
NOK Norwegian krone	8,4900	CNY Chinese yuan renminbi	10,2869
BGN Bulgarian lev	1,9558	HRK Croatian kuna	7,2970
CZK Czech koruna	25,842	IDR Indonesian rupiah	14 186,89
EEK Estonian kroon	15,6466	MYR Malaysian ringgit	5,0937
HUF Hungarian forint	269,14	PHP Philippine peso	69,313
LTL Lithuanian litas	3,4528	RUB Russian rouble	44,1582
LVL Latvian lats	0,7073	THB Thai baht	49,902
PLN Polish zloty	4,0928	BRL Brazilian real	2,5730
RON Romanian leu	4,2205	MXN Mexican peso	18,9382
TRY Turkish lira	2,2333	INR Indian rupee	69,7573

⁽¹⁾ Source: reference exchange rate published by the ECB.

Opinion of the Advisory Committee on restrictive agreements and dominant position given at its meeting of 18 September 2009 regarding a draft decision relating to Case COMP/C.39129 — Power Transformers (1)

Rapporteur: Luxembourg

(2009/C 296/05)

1. The Advisory Committee agrees with the European Commission assessment of the facts as an agreement and/or concerted practice within the meaning of Article 81 of the Treaty and Article 53 of the EEA Agreement.
 2. The Advisory Committee agrees with the European Commission that the agreement and/or concerted practices have as object a restriction of competition.
 3. The Advisory Committee agrees with the European Commission that the agreement and/or concerted practices were implemented by the parties.
 4. The Advisory Committee agrees with the European Commission assessment on the duration of the infringement for each addressee.
 5. The Advisory Committee agrees with the European Commission draft decision as regards the conclusion that the agreement and concerted practices between the addressees were capable of having an appreciable effect upon trade between EU Member States and between contracting parties of the EEA.
 6. The Advisory Committee agrees with the European Commission draft decision as regards the addressees of the decision, specifically with reference to imputation of liability to parent companies of the groups concerned.
 7. The Advisory Committee recommends the publication of its opinion in the *Official Journal of the European Union*.
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Opinion of the Advisory Committee on restrictive agreements and dominant position given at its meeting of 2 October 2009 regarding a draft decision relating to Case COMP/C.39129 — Power Transformers (2)

Rapporteur: Luxembourg

(2009/C 296/06)

1. The Advisory Committee agrees with the European Commission that a fine should be imposed on the addressees of the draft decision.
 2. The Advisory Committee agrees with the European Commission's reasoning on the basic amount of the fines.
 3. The Advisory Committee agrees with the European Commission's assessment of the mitigating and aggravating circumstances (other than the aspect covered by Question 4).
 4. The majority of the Advisory Committee agree with the European Commission that there are exceptional circumstances present in this case that justify granting a reduction of fines for effective cooperation outside the 2002 Leniency notice, as set out in the draft decision.
 5. The majority of the Advisory Committee agree with the European Commission's reasoning for the amount of the reduction of fines for effective cooperation outside the 2002 Leniency notice.
 6. The Advisory Committee agrees with the European Commission on the application of the 2002 Leniency notice.
 7. The Advisory Committee asks the Commission to take into account all other points raised during the discussion.
 8. The Advisory Committee recommends the publication of its opinion in the *Official Journal of the European Union*.
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Final report of the Hearing Officer in Case COMP/C.39129 — Power Transformers

(Pursuant to Articles 15 and 16 of Commission Decision 2001/462/EC, ECSC of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings — OJ L 162, 19.6.2001, p. 21)

(2009/C 296/07)

This competition case concerns a cartel agreement between producers of power transformers.

The draft decision gives rise to the following observations:

Statement of Objections

The Statement of Objections (SO) was adopted on 20 November 2008 and notified to the following seven groups of undertakings: ABB Ltd; AREVA T&D SA; Alstom; Siemens AG; Fuji Electric Holdings Co. Ltd; Hitachi Ltd; and Toshiba Corporation (the Parties).

In the SO the Commission reached the preliminary conclusion that the Parties had infringed Article 81 of the EC Treaty between 1993 and 2003 by adhering to an oral arrangement (the gentlemen's agreement) whereby the Japanese producers agreed not to sell power transformers in Europe and the European producers agreed not to sell in Japan.

Time period to respond to SO

The Parties were originally granted a time period of six weeks to respond to the SO. All Parties made requests to me for extensions, which I partially granted. All parties responded to the SO within the extended time period.

Access to file

The Parties were given access to the Commission's investigation file by way of CD-ROM. Corporate statements by the immunity and leniency applicants were, however, only made accessible at the Commission premises.

Pursuant to the Commission's notice on access to file ⁽¹⁾ additional access was granted to some submissions that the Commission received after the Oral Hearing and on which the Commission intended to rely as incriminating evidence in the final decision.

Oral Hearing

Upon request by the Parties an Oral Hearing was held on 17 February 2009 at which all Parties were represented.

During the Oral Hearing one Party was granted the opportunity to respond to a question in writing. This response was subsequently circulated to all Parties for comments, which lead to the additional access referred to above.

Main procedural issues raised by the Parties

A number of claims with regard to the rights of defence were raised by the Parties which, after careful examination, I consider to be unfounded. The main claims were the following:

- The Commission relies on self-incriminating evidence submitted by an immunity applicant although its application had been rejected.

The 2002 Leniency notice provides that an immunity applicant may withdraw evidence disclosed for the purpose of its immunity application should it not be accepted ⁽²⁾. As the applicant concerned did not avail itself of this possibility the Commission was free to rely on that evidence without violating the rights of defence.

- The Commission relies on evidence it had seized during inspections in a different (but related) case.

⁽¹⁾ OJ C 325, 22.12.2005, p. 7, point 27.

⁽²⁾ OJ C 45, 19.2.2002, p. 3, point 17.

My inquiry showed that the same evidence had subsequently been voluntarily submitted in connection with a leniency application and in response to a request for information in the current case. Accordingly, the fact that this evidence had also been seized by the Commission during inspections in a different case cannot lead to a violation of the rights of defence.

- The European Parties were informed of the exact scope of the investigation at an early stage of the proceedings whereas the Japanese Parties were only informed thereof with the notification of the SO.

In this regard I note that the investigation, in addition to the gentlemen's agreement, had originally also focused on certain intra-EU conduct to which the Japanese Parties were not alleged to have participated. The fact that the European Parties were informed of the reduced scope of the investigation against them does not imply any discrimination and does certainly not amount to a breach of the Japanese Parties' rights of defence.

- Contrary to the principle of equal treatment, some documents in the file had been disclosed to a leniency applicant before the SO was notified but not to other Parties to the proceedings.

In my view, the relevant Commission service is not precluded from discussing certain pieces of information with Parties during the investigation phase in order to better understand and to further the investigation. This is particularly the case in respect of leniency applicants. In any event, the particular information was subsequently made accessible to all Parties during the access to file procedure. Accordingly, this early disclosure could not breach the principle of equal treatment or impair the other Parties' rights of defence.

- One Party claimed that it never received a written acknowledgement of its leniency submission, which was subsequently rejected. The Party also claims that the relevant Commission service failed to clearly state in its letter rejecting leniency the date at which it made a comparison between the information provided and the information already available to the Commission.

Pursuant to the 2002 Leniency notice ⁽¹⁾ a leniency applicant shall receive a written acknowledgement confirming the date at which the application was received. Accordingly, the lack of such confirmation constitutes a procedural irregularity. Moreover, and particularly in the absence of such an acknowledgement, I also consider that it constitutes a procedural irregularity not to clearly state the date of comparison in the leniency rejection letter. Nevertheless, and leaving open whether the date of comparison could have a decisive effect on the applicant's leniency status, I do not consider that either of these procedural irregularities are of such character that they amount to a breach of the rights of defence.

The draft decision

In the draft decision, the Commission essentially retains its objections as set out in the Statement of Objections although the duration of the infringement has been considerably reduced.

In my view the draft decision deals only with objections in respect of which the Parties have been afforded the opportunity of making known their views.

Conclusion

In view of the above observations, I consider that the right to be heard has been respected with regard to all Parties to the proceedings in this case.

Brussels, 5 October 2009.

Michael ALBERS

⁽¹⁾ OJ C 45, 19.2.2002, p. 3, points 14 and 25.

Summary of Commission Decision
of 7 October 2009
relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement
(Case COMP/C.39129 — Power Transformers)
(notified under document C(2009) 7601)
(Only the English and French text are authentic)
(Text with EEA relevance)
(2009/C 296/08)

On 7 October 2009, the Commission adopted a decision relating to a proceeding under Article 81 of the EC Treaty. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003 ⁽¹⁾, the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets. A non-confidential version of the decision will be available on the Directorate-General for Competition website at:

<http://ec.europa.eu/competition/antitrust/cases/>

1. INTRODUCTION

- (1) The Decision is addressed to nine legal entities belonging to seven undertakings for infringing Article 81 of the Treaty and Article 53 of the EEA Agreement. From 9 June 1999 until 15 May 2003 the addressees participated in a single and continuous infringement, covering the entire EEA territory, consisting of an agreement by which they agreed on the sharing of markets by means of the gentlemen's agreement (hereinafter GA) between European and Japanese producers of power transformers to respect each others' home markets and to refrain from selling in these.

2. CASE DESCRIPTION

2.1. Procedure

- (2) The Decision is based on leniency applications by Siemens and Fuji, cooperation by AREVA T&D and Hitachi, evidence collected during inspections as well as replies to several requests for information.
- (3) The Statement of Objections was adopted on 20 November 2008 and the Oral Hearing took place on 17 February 2009. The Advisory Committee on restrictive practices and dominant positions issued a favourable opinion on 18 September and 2 October 2009 and the Commission adopted the Decision on 7 October 2009.

2.2. Summary of the infringement

- (4) The case concerns an infringement of Article 81 of the EC Treaty and Article 53 of the EEA Agreement in the power transformers sector.

- (5) The anti-competitive behaviour relates to power transformers, auto transformers and shunt reactors with a voltage range of 380 kV and above. A power transformer is a major electrical component whose function is to reduce or increase the voltage in an electrical circuit. Power transformers are sold as stand-alone equipment or as part of turnkey power substations. The Decision covers all power transformers, whether sold as stand-alone product or included in turnkey projects, but excludes power transformers sold as part of gas-insulated switchgear-based substations which have already been subject to the Commission Decision of 24 January 2007 in Case COMP/F/38.899 — Gas-insulated switchgear.

- (6) The infringement lasted from at least 9 June 1999 until 15 May 2003. The parties to the infringement concluded an oral agreement covering the entire EEA territory by which they agreed on the sharing of markets by means of a gentlemen's agreement between European and Japanese producers to respect each others' home markets and to refrain from selling in these.

- (7) For this purpose, the parties organised meetings one to two times per year. The meetings took place in Europe and Asia, namely, Malaga, Singapore, Barcelona, Lisbon, Tokyo, Vienna, and Zurich, to reaffirm their respect of the agreement. Each member of the cartel was assigned a secret code. Several contemporaneous documents and statements by Siemens and Fuji confirm these facts.

2.3. Addressees and duration

- (8) ABB Ltd, AREVA T&D SA, Alstom (Société Anonyme), Siemens AG, Siemens Aktiengesellschaft Österreich, Fuji Electric Holdings Co. Ltd, Hitachi Ltd, Hitachi Europe Ltd and Toshiba Corporation are the addressees of the Decision.

⁽¹⁾ OJ L 1, 4.1.2003, p. 1.

- (9) The duration of the infringement for all addressees except Siemens Aktiengesellschaft Österreich is from 9 June 1999 to 15 May 2003. For Siemens Aktiengesellschaft Österreich, the duration is from 29 May 2001 to 15 May 2003.

2.4. Remedies

- (10) The Decision applies the 2006 Guidelines on fines.

2.4.1. Basic amount of the fine

- (11) The basic amount of the fine was determined as a proportion of the value of the sales of power transformers made by each undertaking in the relevant geographic area during the year 2001 (variable amount), multiplied by the number of years of infringement, plus an additional amount, also calculated as a proportion of the value of sales, in order to deter horizontal price-fixing agreements (entry fee).
- (12) Taking into account the nature of the infringement, the combined market share of all undertakings concerned, the geographic scope of the infringement and implementation, both the variable amount and the entry fee were set at 16 %.
- (13) As the infringement lasted for almost four years, the variable amount was multiplied by four.

2.4.2. Adjustments to the basic amount

2.4.2.1. Aggravating circumstances

- (14) Recidivism is an aggravating circumstance for ABB Ltd (one previous cartel decision taken into account) leading to an increase in the fine by 50 %.

2.4.2.2. Mitigating circumstances

- (15) The Decision also concludes that there are exceptional circumstances present in this case which justify granting Hitachi and AREVA T&D each a reduction of 18 % of the fine for their effective cooperation outside the 2002 Leniency Notice. This reduction does not apply to AREVA T&D's former parent company Alstom.

2.4.3. Deterrence

- (16) The Decision pays attention to the need to ensure that fines have a sufficiently deterrent effect; to that end, the fine to be imposed on Siemens and Hitachi is multiplied by 1,2 and the fine for Toshiba is multiplied by 1,1.

2.4.4. Application of the 2002 Leniency Notice: reduction of fines

- (17) As regards the application of the 2002 Leniency Notice, Siemens is granted full immunity from fines and the fine for Fuji is reduced by 40 %. The leniency applications by ABB, AREVA T&D and Hitachi were rejected for not having provided significant added value compared to the information already in the Commission's possession.

3. FINES IMPOSED BY THE DECISION

(a) ABB Ltd:	EUR 33 750 000
(b) Alstom (Société Anonyme):	EUR 16 500 000, of which AREVA T&D SA is jointly and severally liable for EUR 13 530 000
(c) Siemens AG:	EUR 0, of which Siemens Aktiengesellschaft Österreich is jointly and severally liable for EUR 0
(d) Fuji Electric Holdings Co. Ltd:	EUR 1 734 000
(e) Hitachi Ltd:	EUR 2 460 000, of which Hitachi Europe Ltd is jointly and severally liable for EUR 2 460 000
(f) Toshiba Corporation:	EUR 13 200 000

NOTICES FROM MEMBER STATES

Information communicated by Member States regarding State aid granted under Commission Regulation (EC) No 800/2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General Block Exemption Regulation)

(Text with EEA relevance)

(2009/C 296/09)

Reference number of State Aid	X 231/09
Member State	Italy
Member State reference number	Adeguamento al regolamento (CE) n. 800/2008
Name of the Region (NUTS)	Friuli-Venezia Giulia Mixed
Granting authority	Regione Autonoma Friuli Venezia Giulia — Direzione centrale attività produttive Servizio Politiche economiche e marketing territoriale Via Sabbadini 31 33100 Udine UD ITALIA politiche.economiche@regione.fvg.it http://www.regione.fvg.it
Title of the aid measure	Incentivi alle PMI per l'adozione di misure di politica industriale che supportino progetti di sviluppo competitivo — aiuti alla formazione
National legal basis (Reference to the relevant national official publication)	DPR 354 del 22.12.2008 (Regolamento concernente criteri e modalità per la concessione alle piccole e medie imprese di incentivi per l'adozione di misure di politica industriale che supportino progetti di sviluppo competitivo ai sensi del capo I della legge regionale 4 marzo 2005, n. 4), pubblicato sul bollettino ufficiale della Regione n. 53 del 31.12.2008.
Type of measure	Scheme
Amendment of an existing aid measure	Modification XT 64/05
Duration	1.1.2009-31.12.2013
Economic sector(s) concerned	All economic sectors eligible to receive aid
Type of beneficiary	SME
Annual overall amount of the budget planned under the scheme	EUR 1,00 million
For guarantees	—
Aid Instrument (Article 5)	Grant
Reference to the Commission decision	—
If co-financed by Community funds	—

Objectives	Maximum aid intensity in % or maximum aid amount in national currency	SME-bonuses in %
Specific training (Article 38(1))	35 %	20 %
General training (Article 38(2))	70 %	20 %

Web link to the full text of the aid measure:

http://lexview-int.regione.fvg.it/FontiNormative/Regolamenti/D_P_REG_0354-2008.pdf

Reference number of State Aid	X 234/09	
Member State	Italy	
Member State reference number	—	
Name of the Region (NUTS)	Basilicata Article 87(3)(a)	
Granting authority	Regione Basilicata — Dipartimento Formazione Lavoro Cultura e Sport Via V. Verrastro 8 85100 Potenza PZ ITALIA http://www.regione.basilicata.it	
Title of the aid measure	Formazione e Competitività di Impresa	
National legal basis (Reference to the relevant national official publication)	Deliberazione Giunta Regionale n. 2127 del 29.12.2008 — Pubblicata sul Bollettino Ufficiale della regione Basilicata n. 3 del 26.1.2009	
Type of measure	Scheme	
Amendment of an existing aid measure	—	
Duration	26.1.2009-31.12.2013	
Economic sector(s) concerned	All economic sectors eligible to receive aid	
Type of beneficiary	SME large enterprise	
Annual overall amount of the budget planned under the scheme	EUR 1,52 million	
For guarantees	—	
Aid Instrument (Article 5)	Direct grant	
Reference to the Commission decision	—	
If co-financed by Community funds	Pogramma Operativo F.S.E. 2007-2013 — Regione Basilicata — 3,04 milioni di EUR	
Objectives	Maximum aid intensity in % or maximum aid amount in national currency	SME-bonuses in %
Specific training (Article 38(1))	25 %	20 %
General training (Article 38(2))	60 %	20 %

Web link to the full text of the aid measure:

<http://www.regione.basilicata.it/dipformazione/default.cfm?fuseaction=dir&dir=2698&doc=&link=>

Reference number of State Aid	X 236/09	
Member State	Spain	
Member State reference number	—	
Name of the Region (NUTS)	Galicia Article 87(3)(a)	
Granting authority	Xunta de Galicia. Consellería de Traballo San Lázaro, s/n 15781 Santiago de Compostela ESPAÑA http://traballo.xunta.es/?set_language=es&cl=es	
Title of the aid measure	Programa de incentivos a la contratación indefinida de mujeres como medida para lograr un trabajo igualitario	
National legal basis (Reference to the relevant national official publication)	Orden de 30 de diciembre de 2008 por la que se establecen las bases reguladoras del programa de incentivos a la contratación indefinida de mujeres como medida para lograr un mercado de trabajo igualitario cofinanciado por el fondo social europeo y se procede a su convocatoria para el año 2009 (DOG n.º 10 de 15 de enero de 2009)	
Type of measure	Scheme	
Amendment of an existing aid measure	—	
Duration	16.9.2008-15.9.2009	
Economic sector(s) concerned	All economic sectors eligible to receive aid	
Type of beneficiary	SME large enterprise	
Annual overall amount of the budget planned under the scheme	EUR 4,20 million	
For guarantees	—	
Aid Instrument (Article 5)	Direct grant	
Reference to the Commission decision	—	
If co-financed by Community funds	Cofinanciado por el fondo social europeo en un porcentaje del 80 %, a través del programa operativo del fondo social europeo de Galicia 2007-2013, número CCI 2007 ES 051 PO004 aprobado por la decisión europea de 15 de septiembre del 2007 — 1,00 EUR (en millones)	
Objectives	Maximum aid intensity in % or maximum aid amount in national currency	SME-bonuses in %
General training (Article 38(2))	26 %	—

Web link to the full text of the aid measure:

<http://www.xunta.es/Doc/Dog2009.nsf/FichaContenido/1F86?OpenDocument>

Reference number of State Aid	X 237/09	
Member State	Spain	
Member State reference number	—	
Name of the Region (NUTS)	Galicia Article 87(3)(a)	
Granting authority	Xunta de Galicia. Consellería de Traballo San Lázaro, s/n 15781 Santiago de Compostela ESPAÑA http://traballo.xunta.es/?set_language=es&cl=es	
Title of the aid measure	Programa de incentivos a la contratación por cuenta ajena como medida para favorecer la inserción de la juventud	
National legal basis (Reference to the relevant national official publication)	Orden de 30 de diciembre de 2008 por la que se establecen las bases reguladoras del programa de incentivos a la contratación por cuenta ajena como medida para favorecer la inserción de la juventud cofinanciado por el Fondo Social Europeo y se procede a su convocatoria para el año 2009 (DOG n.º 10 de 15 de enero de 2009)	
Type of measure	Scheme	
Amendment of an existing aid measure	—	
Duration	16.9.2008-15.9.2009	
Economic sector(s) concerned	All economic sectors eligible to receive aid	
Type of beneficiary	SME large enterprise	
Annual overall amount of the budget planned under the scheme	EUR 9,80 million	
For guarantees	—	
Aid Instrument (Article 5)	Direct grant	
Reference to the Commission decision	—	
If co-financed by Community funds	Cofinanciado por el Fondo Social Europeo en un porcentaje del 80 %, a través del programa operativo del fondo social europeo de Galicia 2007-2013, número CCI 2007 ES 051 PO004 aprobado por la decisión europea de 15 de septiembre del 2007 — 1,00 EUR (en millones)	
Objectives	Maximum aid intensity in % or maximum aid amount in national currency	SME-bonuses in %
General training (Article 38(2))	44,31 %	44,31 %

Web link to the full text of the aid measure:

<http://www.xunta.es/Doc/Dog2009.nsf/FichaContenido/1F96?OpenDocument>

Reference number of State Aid	X 238/09	
Member State	Spain	
Member State reference number	—	

Name of the Region (NUTS)	Galicia Article 87(3)(a)	
Granting authority	Xunta de Galicia Consellería de Traballo San Lázaro, s/n 15781 Santiago de Compostela ESPAÑA http://traballo.xunta.es/?set_language=es&cl=es	
Title of the aid measure	Programa de incentivos a la contratación indefinida de parados de larga duración, cofinanciado por el fondo social europeo	
National legal basis (Reference to the relevant national official publication)	Orden de 30 de diciembre de 2008 por la que se establecen las bases reguladoras del programa de incentivos a la contratación indefinida de parados de larga duración, cofinanciado por el Fondo Social Europeo y se procede a su convocatoria para el año 2009 (DOG n.º 11 de 16 de enero)	
Type of measure	Scheme	
Amendment of an existing aid measure	—	
Duration	16.9.2008-15.9.2009	
Economic sector(s) concerned	All economic sectors eligible to receive aid	
Type of beneficiary	SME large enterprise	
Annual overall amount of the budget planned under the scheme	EUR 9,25 million	
For guarantees	—	
Aid Instrument (Article 5)	Direct grant	
Reference to the Commission decision	—	
If co-financed by Community funds	Cofinanciado por el Fondo Social Europeo en un porcentaje del 80 %, a través del Programa Operativo del Fondo Social europeo de Galicia 2007-2013, número CCI 2007 ES 051 PO004 aprobado por la decisión europea de 15 de septiembre del 2007 — 1,00 EUR (en millones)	
Objectives	Maximum aid intensity in % or maximum aid amount in national currency	SME-bonuses in %
General training (Article 38(2))	34,46 %	—
Aid for the recruitment of disadvantaged workers in the form of wage subsidies (Article 40)	34,46 %	—

Web link to the full text of the aid measure:

<http://www.xunta.es/Doc/Dog2009.nsf/FichaContenido/2026?OpenDocument>

**NOTICE OF APPLICATION FOR AN OIL AND GAS EXPLORATION LICENCE DESIGNATED THE
'BIANCAVILLA' LICENCE****REPUBLIC OF ITALY — REGION OF SICILY**

REGIONAL MINISTRY OF INDUSTRY — REGIONAL DEPARTMENT OF INDUSTRY AND MINING

REGIONAL OFFICE FOR HYDROCARBONS AND GEOTHERMAL ENERGY (U.R.I.G.)

(2009/C 296/10)

EniMed — Eni Mediterranea Idrocarburi S.p.A., a company having its registered office at Strada Statale 117 bis, — Contrada Ponte Olivo, 93012 Gela (CL), ITALIA — tax code 12300000150) — the sole representative, with a 50 % holding, and Edison S.p.A. — a company having its registered office at Foro Buonaparte 31, 20121 Milan MI, ITALIA with a 50 % holding, made a joint application on 12 June 2009 to the Regional Minister for Industry, the competent authority for granting mining rights in the Region of Sicily, at Via Ugo La Malfa 87/89, 90146 Palermo PA, ITALIA, in accordance with Regional Law of Sicily No 14 of 3 July 2000 transposing and implementing Directive 94/22/EC, for an oil and gas exploration licence, conventionally known as the 'Biancavilla' licence, in an area of 7 400 ha (74 km²) in the provinces of Enna and Catania and Trapani in central eastern Sicily. The area borders to the South with the 'Paternò' licence (Edison 100 %), and in other directions with non-licence areas.

The municipalities in the Province of Enna concerned are: Centuripe and Regalbuto. The municipalities in the Province of Catania concerned are: Adrano, Biancavilla, Santa Maria di Licodia and Regalna.

The perimeter of the area for which the licence is requested is a polygon and is delineated by continuous lines between points A, B, C, D and E as defined below:

The above mentioned points are defined as follows:

- A. Point located on the SE edge of the house situated at elevation 457, 420 metres NE of Contrada Grotte Rosse;
- B. Point located on the NW edge of the house situated at elevation 648 in Contrada Paricchia;
- C. Point located on the SE edge of the house situated at elevation 615 in C. Ingiulla, 400 m NW of Chiusa di Don Ascenzio;

D. Point situated at the fork for Villaggio S. Francesco on the road from S. Maria Licodia to Ragalna Ovest, which coincides with point b of the 'Paternò' licence;

E. Point located at the belltower of S. Maria della Croce church at Regalbuto, which coincides with point a of the 'Paternò' licence;

Geographical coordinates

Point	Latitude N	Longitude E (M. Mario)
A	37°41'37",562	2°22'21",065
B	37°40'45",437	2°23'19",485
C	37°39'07",573	2°25'33",957
D	37°37'51",000	2°28'53",000
E	37°38'57",367	2°11'20",230

Interested parties may submit an application for a licence for this area within 90 days of the date of publication of this notice in the *Official Journal of the European Union*; applications received after that period will be declared inadmissible. The decree granting the exploration licence will be issued within six months of the closing date for the submission of competing applications. As regards Article 5(1) of Directive 94/22/EC, notice is also given that the criteria on the basis of which prospection licences, exploration licences and production licences are granted have already been published in the *Official Journal of the European Communities* C 396 of 19 December 1998, with reference to Legislative Decree of the President of the Republic No 625 of 25 November 1996 (published in the *Official Gazette of the Italian Republic* No 293 of 14 December 1996), which transposes and implements the above mentioned Directive in Italian law, and were specified in Regional Law of Sicily No 14 of 3 July 2000, cited above (published in the *Official Gazette of the Region of Sicily* No 32 of 7 July 2000).

The conditions and requirements regarding the performance or cessation of activities are laid down in the above mentioned Regional Law of Sicily No 14 of 3 July 2000 and in the Standard Specifications issued by Decree No 91 of 30 October 2003 and Decree No 88 of 20 October 2004 of the Regional Minister for Industry, and published in the *Official Gazette of the Region of Sicily* Part I, No 49 of 14 November 2003 and Part I, No 46 of 5 November 2004 respectively.

The application documents have been filed at the Regional Office for Hydrocarbons and Geothermal Energy of the Regional Department of Mining, Via Ugo La Mafla 101, 90146 Palermo PA, ITALIA, where they may be consulted by interested parties.

Palermo, 23 October 2009.

Chief Engineer

Dr. Ing. Salvatore GIORLANDO

V

*(Announcements)*PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION
POLICY

COMMISSION

Prior notification of a concentration**(Case COMP/M.5659 — Daimler AG/IPIC/Brawn GP)****Candidate case for simplified procedure****(Text with EEA relevance)**

(2009/C 296/11)

1. On 26 November 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ⁽¹⁾ by which the undertaking Daimler AG ('Daimler', Germany) and Aabar Investments PJSC ('Aabar', United Arab Emirates), a solely controlled subsidiary of International Petroleum Investment Company ('IPIC', United Arab Emirates) acquire within the meaning of Article 3(1)(b) of the Regulation joint control over Brawn GP ('Brawn', United Kingdom) by way of purchase of shares.

2. The business activities of the undertakings concerned are:

- for Daimler: producer of automobiles and commercial vehicles and financial services,
- for IPIC: investment company concentrating on petroleum refining and related upstream and downstream distribution and service networks,
- for Brawn: Formula One motor racing team.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of Regulation (EC) No 139/2004. However, the final decision on this point is reserved. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 ⁽²⁾ it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301 or 22967244) or by post, under reference number COMP/M.5659 — Daimler AG/IPIC/Brawn GP, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

⁽¹⁾ OJ L 24, 29.1.2004, p. 1.

⁽²⁾ OJ C 56, 5.3.2005, p. 32.

CORRIGENDA**Corrigendum to Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty — Cases where the Commission raises no objections**

(Official Journal of the European Union C 275 of 14 November 2009)

(2009/C 296/12)

In the contents on the cover and the title on page 3:

for: 'Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty — Cases where the Commission raises no objections (Text with EEA relevance)',

read: 'Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty — Cases where the Commission raises no objections'.

Corrigendum to Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty — Cases where the Commission raises no objections

(Official Journal of the European Union C 275 of 14 November 2009)

(2009/C 296/13)

In the contents on the cover and the title on page 7:

for: 'Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty — Cases where the Commission raises no objections (Text with EEA relevance)',

read: 'Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty — Cases where the Commission raises no objections'.

Corrigendum to Commission communication in the framework of the implementation of Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity

(Official Journal of the European Union C 293 of 2 December 2009)

(2009/C 296/14)

On page 2, Standard reference EN 55022:2006 fourth column:

for: '1.10.2009',

read: '1.10.2011'.

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⁽¹⁾ Text with EEA relevance

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