

English edition

Information and Notices

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I

(Information)

COMMISSION

Ecu ⁽¹⁾

3 May 1995

(95/C 112/01)

Currency amount for one unit:

| | | | |
|------------------------------|----------|----------------------|----------|
| Belgian and Luxembourg franc | 38,1342 | Finnish markka | 5,71072 |
| Danish krone | 7,27454 | Swedish krona | 9,79240 |
| German mark | 1,84889 | Pound sterling | 0,833528 |
| Greek drachma | 301,699 | United States dollar | 1,34465 |
| Spanish peseta | 165,392 | Canadian dollar | 1,82832 |
| French franc | 6,59550 | Japanese yen | 111,875 |
| Irish pound | 0,821862 | Swiss franc | 1,52483 |
| Italian lira | 2238,09 | Norwegian krone | 8,33547 |
| Dutch guilder | 2,07022 | Icelandic krona | 84,6187 |
| Austrian schilling | 13,0095 | Australian dollar | 1,83394 |
| Portuguese escudo | 195,848 | New Zealand dollar | 1,98560 |
| | | South African rand | 4,88477 |

The Commission has installed a telex with an automatic answering device which gives the conversion rates in a number of currencies. This service is available every day from 3.30 p.m. until 1 p.m. the following day.

Users of the service should do as follows:

- call telex number Brussels 23789;
- give their own telex code;
- type the code 'cccc' which puts the automatic system into operation resulting in the transmission of the conversion rates of the ecu;
- the transmission should not be interrupted until the end of the message, which is marked by the code 'ffff'.

Note: The Commission also has an automatic telex answering service (No 21791) and an automatic fax answering service (No 296 10 97) providing daily data concerning calculation of the conversion rates applicable for the purposes of the common agricultural policy.

⁽¹⁾ Council Regulation (EEC) No 3180/78 of 18 December 1978 (OJ No L 379, 30. 12. 1978, p. 1), as last amended by Regulation (EEC) No 1971/89 (OJ No L 189, 4. 7. 1989, p. 1).

Council Decision 80/1184/EEC of 18 December 1980 (Convention of Lomé) (OJ No L 349, 23. 12. 1980, p. 34).

Commission Decision No 3334/80/ECSC of 19 December 1980 (OJ No L 349, 23. 12. 1980, p. 27).

Financial Regulation of 16 December 1980 concerning the general budget of the European Communities (OJ No L 345, 20. 12. 1980, p. 23).

Council Regulation (EEC) No 3308/80 of 16 December 1980 (OJ No L 345, 20. 12. 1980, p. 1).

Decision of the Council of Governors of the European Investment Bank of 13 May 1981 (OJ No L 311, 30. 10. 1981, p. 1).

Average prices and representative prices for table wines at the various marketing centres

(95/C 112/02)

(Established on 3 May 1995 for the application of Article 30 (1) of Regulation (EEC) No 822/87)

| Type of wine and the various marketing centres | ECU per % vol/hl | % of GP ^o | Type of wine and the various marketing centres | ECU per % vol/hl | % of GP ^o |
|--|-----------------------------|----------------------|---|------------------|----------------------|
| <i>R I Guide price*</i> | 3,828 | | <i>A I Guide price*</i> | 3,828 | |
| Heraklion | No quotation | | Athens | No quotation | |
| Patras | No quotation | | Heraklion | No quotation | |
| Requena | No quotation | | Patras | No quotation | |
| Reus | No quotation | | Alcázar de San Juan | No quotation | |
| Villafranca del Bierzo | No quotation | | Almendrales | No quotation | |
| Bastia | No quotation | | Medina del Campo | No quotation | |
| Béziers | 3,938 | 103 % | Ribadavia | No quotation | |
| Montpellier | 3,994 | 104 % | Villafranca del Penedés | No quotation | |
| Narbonne | 4,054 | 106 % | Villar del Arzobispo | No quotation | |
| Nîmes | 4,024 | 105 % | Villarrobledo | No quotation | |
| Perpignan | No quotation | | Bordeaux | No quotation | |
| Asti | No quotation | | Nantes | No quotation | |
| Florence | No quotation ⁽¹⁾ | | Bari | 2,729 | 71 % |
| Lecce | No quotation | | Cagliari | No quotation | |
| Pescara | No quotation | | Chieti | No quotation | |
| Reggio Emilia | No quotation | | Ravenna (Lugo, Faenze) | 2,946 | 77 % |
| Treviso | No quotation | | Trapani (Alcamo) | 2,513 | 66 % |
| Verona (for local wines) | 3,033 | 79 % | Treviso | No quotation | |
| Representative price | 3,890 | 102 % | Representative price | 2,726 | 71 % |
| <i>R II Guide price*</i> | 3,828 | | | ECU/hl | |
| Heraklion | No quotation | | <i>A II Guide price*</i> | 82,810 | |
| Patras | No quotation | | Rheinpfalz (Oberhaardt) | 46,163 | 56 % |
| Calatayud | No quotation | | Rheinhessen (Hügelland) | 59,488 | 72 % |
| Falset | No quotation | | The wine-growing region of the Luxembourg Moselle | No quotation | |
| Jumilla | No quotation | | Representative price | 56,897 | 69 % |
| Navalcarnero | No quotation | | | | |
| Requena | No quotation | | <i>A III Guide price*</i> | 94,57 | |
| Toro | No quotation | | Mosel-Rheingau | No quotation | |
| Villena | No quotation | | The wine-growing region of the Luxembourg Moselle | No quotation | |
| Bastia | No quotation | | Representative price | No quotation | |
| Brignoles | No quotation | | | | |
| Bari | 2,513 | 66 % | | | |
| Barletta | 2,469 | 64 % | | | |
| Cagliari | No quotation | | | | |
| Lecce | No quotation | | | | |
| Taranto | No quotation | | | | |
| Representative price | 2,505 | 65 % | | | |
| | ECU/hl | | | | |
| <i>R III Guide price*</i> | 94,570 | | | | |
| Rheinpfalz-Rheinhessen (Hügelland) | No quotation ⁽¹⁾ | | | | |

⁽¹⁾ Quotation not taken into account in accordance with Article 10 of Regulation (EEC) No 2682/77.

* Applicable from 1. 2. 1995.

^o GP = Guide price.

**ADMINISTRATIVE COMMISSION OF THE EUROPEAN COMMUNITIES
ON SOCIAL SECURITY FOR MIGRANT WORKERS**

Rates for conversion of currencies pursuant to Council Regulation (EEC) No 2615/79

(95/C 112/03)

Article 107 (1), (2), (3) and (4) of Regulation (EEC) No 574/72

Reference period: April 1995

Application period: July, August and September 1995

| | Brussels (Bfrs) | Copenhagen (Dkr) | Frankfurt (DM) | Athens (Dr) | Madrid (Pta) | Paris (FF) | Dublin (£ Irl) | Milan/Rome (Lit) |
|-----------|--------------------|---------------------|-------------------|----------------|-----------------|---------------|-------------------|---------------------|
| Bfrs 100 | 100 | 19,1501 | 4,86287 | 792,409 | 437,542 | 17,0715 | 2,16150 | 6 028,04 |
| Dkr 100 | 522,191 | 100 | 25,3934 | 4 137,89 | 2 284,81 | 89,1459 | 11,2871 | 31 477,9 |
| DM 100 | 2 056,40 | 393,802 | 100 | 16 295,1 | 8 997,62 | 351,059 | 44,4490 | 123 961 |
| Dr 100 | 12,6197 | 2,41669 | 0,613681 | 100 | 55,2167 | 2,15438 | 0,272775 | 760,723 |
| Pta 100 | 22,8549 | 4,37674 | 1,11141 | 181,105 | 100 | 3,90169 | 0,494009 | 1 377,70 |
| FF 100 | 585,771 | 112,176 | 28,4853 | 4 641,70 | 2 563,00 | 100 | 12,6614 | 35 310,5 |
| £ Irl 1 | 46,2642 | 8,85964 | 2,24977 | 366,602 | 202,426 | 7,89801 | 1 | 2 788,82 |
| Lit 1 000 | 16,5892 | 3,17684 | 0,806708 | 131,454 | 72,5845 | 2,83202 | 0,358574 | 1 000 |
| Fl 100 | 1 836,49 | 351,689 | 89,3058 | 14 552,5 | 8 035,40 | 313,516 | 39,6956 | 110 704 |
| Esc 100 | 19,4586 | 3,72634 | 0,946245 | 154,192 | 85,1396 | 3,32188 | 0,420597 | 1 172,97 |
| £ 1 | 45,6782 | 8,74742 | 2,22127 | 361,958 | 199,861 | 7,79797 | 0,987333 | 2 753,50 |
| Nkr 100 | 458,024 | 87,7119 | 22,2731 | 3 629,42 | 2 004,05 | 78,1916 | 9,90017 | 27 609,8 |
| Skr 100 | 386,533 | 74,0214 | 18,7966 | 3 062,92 | 1 691,25 | 65,9871 | 8,35491 | 23 300,4 |
| Fmk 100 | 664,561 | 127,264 | 32,3167 | 5 266,04 | 2 907,74 | 113,451 | 14,3645 | 40 060,0 |
| ÖS 100 | 292,234 | 55,9630 | 14,2109 | 2 315,69 | 1 278,65 | 49,8888 | 6,31663 | 17 616,0 |
| Ikr 100 | 45,0466 | 8,62645 | 2,19055 | 356,953 | 197,098 | 7,69013 | 0,973680 | 2 715,42 |

| | Amsterdam (Fl) | Lisbon (Esc) | London (£) | Oslo (Nkr) | Stockholm (Skr) | Helsinki (Fmk) | Vienna (ÖS) | Reykjavik (Ikr) |
|-----------|-------------------|-----------------|---------------|---------------|--------------------|-------------------|----------------|--------------------|
| Bfrs 100 | 5,44518 | 513,912 | 2,18923 | 21,8329 | 25,8710 | 15,0475 | 34,2192 | 221,993 |
| Dkr 100 | 28,4343 | 2 683,60 | 11,4319 | 114,010 | 135,096 | 78,5768 | 178,689 | 1 159,22 |
| DM 100 | 111,975 | 10 568,1 | 45,0193 | 448,972 | 532,011 | 309,437 | 703,683 | 4 565,06 |
| Dr 100 | 0,687168 | 64,8544 | 0,276275 | 2,75526 | 3,26485 | 1,89896 | 4,31837 | 28,0149 |
| Pta 100 | 1,24449 | 117,454 | 0,500347 | 4,98990 | 5,91280 | 3,43910 | 7,82077 | 50,7363 |
| FF 100 | 31,8963 | 3 010,35 | 12,8239 | 127,891 | 151,545 | 88,1440 | 200,446 | 1 300,37 |
| £ Irl 1 | 2,51917 | 237,757 | 1,01283 | 10,1008 | 11,9690 | 6,96162 | 15,8312 | 102,703 |
| Lit 1 000 | 0,903309 | 85,2536 | 0,363174 | 3,62190 | 4,29178 | 2,49626 | 5,67667 | 36,8267 |
| Fl 100 | 100 | 9 437,92 | 40,2048 | 400,959 | 475,117 | 276,346 | 628,430 | 4 076,86 |
| Esc 100 | 1,05956 | 100 | 0,425993 | 4,24838 | 5,03413 | 2,92804 | 6,65857 | 43,1966 |
| £ 1 | 2,48726 | 234,746 | 1 | 9,97289 | 11,8174 | 6,87344 | 15,6307 | 101,402 |
| Nkr 100 | 24,9402 | 2 353,84 | 10,0272 | 100 | 118,495 | 68,9213 | 156,732 | 1 016,78 |
| Skr 100 | 21,0474 | 1 986,44 | 8,46209 | 84,3915 | 100 | 58,1637 | 132,268 | 858,075 |
| Fmk 100 | 36,1866 | 3 415,26 | 14,5488 | 145,093 | 171,929 | 100 | 227,407 | 1 475,28 |
| ÖS 100 | 15,9127 | 1 501,82 | 6,39766 | 63,8032 | 75,6038 | 43,9740 | 100 | 648,737 |
| Ikr 100 | 2,45287 | 231,500 | 0,986172 | 9,83498 | 11,6540 | 6,77839 | 15,4146 | 100 |

1. Regulation (EEC) No 2615/79 determines that the rate of conversion into a national currency of amounts shown in another national currency shall be the rate calculated by the Commission and based on the monthly average, during the reference period defined in paragraph 2, of the exchange rates of those currencies, which are notified to the Commission for the purposes of the European Monetary System.
2. The reference period shall be:
 - the month of January for rates of conversion applicable from 1 April following,
 - the month of April for rates of conversion applicable from 1 July following,
 - the month of July for rates of conversion applicable from 1 October following,
 - the month of October for rates of conversion applicable from 1 January following.

The rates for the conversion of currencies shall be published in the second *Official Journal of the European Communities* ('C' series) of the months of February, May, August and November.

Prior examination of a concentration
(Case No IV/M.553 — RTL/Veronica/Endemol)

(95/C 112/04)

(Text with EEA relevance)

1. On 21 April 1995, the Commission received a request from the Dutch authorities pursuant to Article 22 of Council Regulation (EEC) No 4064/89⁽¹⁾ to examine a proposed concentration by which the undertakings RTL 4 SA (the main shareholders of which are Compagnie Luxembourgeoise de Télédiffusion SA (CLT) and NV Verenigd Bezit VNU (VNU)), Veronica Omroeporganisatie (Veronica) and Endemol Entertainment Holding BV (Endemol) create a joint venture Holland Media Groep SA (HMG).
2. The business activities of the undertakings concerned are:
 - RTL 4: television and radio production and broadcasting (through CLT),
 - Veronica: television and radio production and broadcasting,
 - Endemol: production of television programmes and exploitation of theatre programmes,
 - HMG: television and radio production and broadcasting.
3. Upon preliminary examination, the Commission finds that the operation could be a concentration within the meaning of Regulation (EEC) No 4064/89 but without a Community dimension. However, the final decision on this point is reserved.

⁽¹⁾ OJ No L 395, 30. 12. 1989. Corrigendum: OJ No L 257, 21. 9. 1990, p. 13.

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 (fax No (32 2) 296 43 01) or by post, under reference number IV/M.533 — RTL/Veronica/Endemol, to the following address:

Commission of the European Communities,
Directorate-General for Competition (DG IV),
Merger Task Force,
Avenue de Cortenberg/Kortenberglaan 150,
B-1049 Brussels.

Standing invitation to tender pursuant to Commission Regulation (EEC) No 570/88 of 16 February 1988 on the sale of butter at reduced prices and the granting of aid for butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs

(95/C 112/05)

(See notice in Official Journal of the European Communities No L 55 of 1 March 1988, page 31)

Tender No: 158

Date of Commission Decision: 26 April 1995

(ECU/100 kg)

| Formula | | A/C—D | | B | |
|-------------------------|---------------------|--------------|-----------------|--------------|-----------------|
| Incorporation procedure | | With tracers | Without tracers | With tracers | Without tracers |
| Minimum price | Butter \geq 82 % | Unaltered | — | — | — |
| | | Concentrated | — | — | — |
| Processing security | | Unaltered | — | — | |
| | | Concentrated | — | — | |
| Maximum aid amount | Butter \geq 82 % | 136 | 132 | 136 | 132 |
| | Butter < 82 % | 131 | 127 | — | — |
| | Concentrated butter | 172 | 168 | 172 | 168 |
| | Cream | — | — | 59 | — |
| Processing security | Butter | 156 | — | 156 | — |
| | Concentrated butter | 198 | — | 198 | — |
| | Cream | — | — | 66 | — |

Communication of Decisions under sundry tendering procedures in agriculture (milk and milk products)

(95/C 112/06)

(See notice in Official Journal of the European Communities No L 360 of 21 December 1982, p. 43)

(ECU/100 kg)

| Standing invitation to tender | Tender No | Date of Commission Decision | Maximum aid | End-use security |
|--|-----------|-----------------------------|-------------|------------------|
| Commission Regulation (EEC) No 429/90 of 20 February 1990 on the granting by invitation to tender of an aid for concentrated butter intended for direct consumption in the Community (OJ No L 45, 21. 2. 1990, p. 8) | 118 | 25. 4. 1995 | 199 | 223 |

(ECU/100 kg)

| Standing invitation to tender | Tender No | Date of Commission Decision | Minimum selling price | Processing security |
|--|-----------|-----------------------------|-----------------------|---------------------|
| Commission Regulation (EEC) No 3398/91 of 20 November 1991 on the sale by invitation to tender of skimmed-milk powder for the manufacture of compound feedingstuffs and amending Regulation (EEC) No 569/88 (OJ No L 320, 22. 11. 1991, p. 16) | 73 | 24. 4. 1995 | 207,53 | 45 |

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

Notice on cooperation between national courts and the EFTA Surveillance Authority in applying Articles 53 and 54 of the EEA Agreement

(95/C 112/07)

A. The present notice is issued pursuant to the rules of the Agreement on the European Economic Area (EEA Agreement) and the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (Surveillance and Court Agreement).

B. The European Commission issued, on 13 February 1993, a notice on cooperation between national courts and the Commission in applying Articles 85 and 86 of the EC Treaty (OJ No C 39, 13. 2. 1993, p. 6). This non-binding act contains principles and rules which the Commission follows in the field of competition. It also explains the ways in which the Commission envisages to cooperate with national courts.

C. The EFTA Surveillance Authority considers the subject of the above mentioned act to be EEA relevant. In order to maintain equal conditions of competition and to ensure a uniform application of the EEA competition rules throughout the European Economic Area the EFTA Surveillance Authority adopts the present notice exercising the power conferred to it in Article 5 (2) (b) of the Surveillance and Court Agreement. It intends to follow the principles and rules laid down in this notice when applying the EEA competition rules.

D. In particular, the purpose of the notice is to achieve effective cooperation in relations between national courts in the EFTA States⁽¹⁾ and the EFTA Surveillance Authority. It spells out how the EFTA Surveillance Authority intends to assist such national courts by close cooperation in the application of Articles 53 and 54 of the EEA Agreement in individual cases; always taking into account the independence of national courts.

I. Introduction

1. The creation of a homogeneous European Economic Area, with free movement of goods, persons, services and capital, enables firms in the EEA to embark on new activities and consumers to benefit from increased competition. The EFTA Surveillance Authority considers that these advantages must not be jeopardized by restrictive or abusive practices of undertakings and that the objectives laid down in the EEA Agreement thus reaffirm the importance of a system ensuring that competition is not distorted.

2. In the day-to-day application of EEA competition rules, national competition authorities, national courts, the Community courts, the EFTA Court, the Commission and the EFTA Surveillance Authority each assume their own tasks and responsibilities, as foreseen in the EEA Agreement. If the competition process is to work well in the European Economic Area, effective cooperation between these institutions must be ensured.

3. According to the case-law of the Court of Justice of the European Communities, provisions of the EC Treaty may have direct effect, in the sense that they penetrate into the internal legal order without the aid of any national measure, to the extent that their character makes this appropriate⁽²⁾. Such provisions, like Community regulations (which are by nature and function in the system of Community sources of law directly applicable⁽³⁾) must be applied by national courts without the intervention of a legal measure designed to transpose Community law into national law.

⁽¹⁾ For the purpose of this notice, any reference to the EFTA States means the EFTA States in respect of which the EEA Agreement has entered into force.

⁽²⁾ See for example Case 26/62, Van Gend en Loos v. Nederlandse administratie der belastingen, [1963] ECR, p. 1; Case 28/67, Firma Molkerei-Zentrale Westfalen/Lippe GmbH v. Hauptzollamt Paderborn, [1968] ECR, p. 143.

⁽³⁾ See for example Case 43/71, Politi v. Ministry for Finance of the Italian Republic, [1971] ECR p. 1039.

The EFTA Surveillance Authority considers that the situation is different as regards EEA law, in so far as the EFTA States are concerned. In those States, the internal effect of EEA law is governed by the respective constitutional law, subject to Protocol 35 to the EEA Agreement. According to this Protocol, the EFTA States are under an obligation to ensure, if necessary by a separate statutory provision, that in cases of conflict between implemented EEA rules and other statutory provisions the implemented EEA rules prevail. According to the EFTA Court, it is inherent in the nature of such a provision that individuals and economic operators in cases of conflict between implemented EEA rules and national statutory provisions must be entitled to invoke and to claim at the national level any rights that could be derived from provisions of the EEA Agreement, as being or having been made part of the respective national legal order, if they are unconditional and sufficiently precise (*).

4. The assistance and cooperation offered to national courts of the EFTA States in accordance with this notice will, primarily, relate to individual cases pending with these courts and will take the form of information or answers given directly to the court concerned. However, in order to give general guidance for the interpretation of competition rules of the EEA Agreement to economic operators, as well as to national competition authorities and to national courts, the EFTA Surveillance Authority will also endeavor to handle individual cases under its competence in such a way that transparency and public knowledge of these rules and their application is promoted.

5. The EFTA Surveillance Authority may, if appropriate, close the file on a case by issuing a comfort letter, rather than taking a formal decision in the case. Such comfort letters will normally be made known to the public and also explain why, and on what grounds, the comfort letter has been issued.

II. Powers

6. The EFTA Surveillance Authority is, together with the Commission, the administrative authority responsible for the implementation of competition policy in the EEA and for this purpose has to act in the public interest. National courts, on the other hand, have the task of safeguarding the subjective rights of private individuals in their relations with one another.

7. In performing these different tasks, national courts and the EFTA Surveillance Authority possess concurrent powers for the application of Articles 53 (1) and 54 of

the EEA Agreement. In the case of the EFTA Surveillance Authority, the power is conferred by Article 55 of the EEA Agreement and by the provisions laid down in Protocol 4 to the Surveillance and Court Agreement. In the case of the national courts, the power derives from the fact that Article 53 (1) and 54 of the EEA Agreement, which in the opinion of the EFTA Surveillance Authority fulfil the implicit criteria in Protocol 35 to the EEA Agreement of being unconditional and sufficiently precise, have been incorporated in the national legal order of the EFTA States (*).

8. In this way, national courts are able to ensure, in accordance with the applicable national procedural law, that the competition rules will be respected for the benefit of private individuals. In addition, Article 53 (2) enables them to determine, in accordance with the national procedural law applicable, the civil law effects of the prohibition set out in Article 53 (*).

9. However, the EFTA Surveillance Authority, and the Commission, pursuant to Article 9 of Chapter II of Protocol 4 to the Surveillance and Court Agreement, and of Regulation No 17 (*), respectively, have sole power, on the conditions set out in Article 56 of the EEA Agreement, to exempt certain types of agreements, decisions and concerted practices from this prohibition. The competent surveillance authority, pursuant to Article 56, may exercise this power by taking a decision exempting a specific agreement in an individual case. In addition, the EEA Agreement contains acts corresponding to Community regulations granting block exemptions for certain categories of agreements, decisions and concerted practices.

10. Although national courts are not competent to apply Article 53 (3), they may nevertheless apply the acts

(*) See paragraph 3 of this notice.

(*) See the judgments of the Court of Justice of the European Communities in Case 56/65, LTM v. MBU, [1966] ECR, p. 337, Case 48/72, Brasserie de Haecht v. Wilkin-Janssen, [1973] ECR, p. 77 and Case 319/82, Ciments et Bétons v. Kerpen & Kerpen, [1983] ECR, p. 4173, concerning the corresponding provision in Article 85 of the EC Treaty.

Article 6 of the EEA Agreement provides that, without prejudice to future developments of case-law, the provisions of this Agreement, in so far as they are identical in substance to corresponding rules of the Treaty establishing the European Community and the Treaty establishing the European Coal and Steel Community and to acts adopted in application of these two Treaties, shall in their implementation and application, be interpreted in conformity with the relevant rulings of the Court of Justice of the European Communities given prior to the date of signature of the EEA Agreement.

(*) Council Regulation No 17 of 6 February 1962: First Regulation implementing Articles 85 and 86 of the Treaty (OJ No 13, 21. 2. 1962, p. 204/62; English Special Edition 1959-62, p. 87).

(*) See Case E-1/94, judgment of 16 December 1994, paragraph 77 (not yet reported).

in the EEA Agreement providing for block exemption pursuant to that provision. The provisions of such acts, which in the opinion of the EFTA Surveillance Authority fulfil the implicit criteria in Protocol 35 to the EEA Agreement of being unconditional and sufficiently precise, have been incorporated in the national legal order of the EFTA States (*). National courts may also, in accordance with the applicable national procedural law, apply the individual exemption decisions adopted by the EFTA Surveillance Authority or the Commission pursuant to Article 53 (3), as well as an individual exemption decision adopted by the Commission pursuant to Article 85 (3) of the EC Treaty before the entry into force of the EEA Agreement (**).

11. The powers of the EFTA Surveillance Authority and those of national courts differ not only in their objective and content, but also in the ways in which they are exercised. The EFTA Surveillance Authority exercises its powers according to the procedural rules laid down by Chapter II of Protocol 4 to the Surveillance and Court Agreement, whereas national courts exercise theirs in the context of national procedural law.

12. The Court of Justice of the European Communities has laid down the principles which govern procedures and remedies for invoking, before national courts in Community Member States, directly applicable Community law:

'Although the Treaty has made it possible in a number of instances for private persons to bring a direct action, where appropriate, before the Court of Justice, it was not intended to create new remedies in the national courts to ensure the observance of Community law other than those already laid down in national law. On the other hand ... it must be possible for every type of action provided for by national law to be available for the purpose of ensuring observance of Community provisions having direct effect, on the same conditions concerning the admissibility and procedure as would apply were it a question of ensuring observance of national law.'⁽¹⁰⁾

(*) See paragraph 3 of this notice.

(**) Article 13 of Protocol 21 to the EEA Agreement provides that agreements, decisions and concerted practices which benefit from an individual exemption granted pursuant to Article 85 (3) of the EC Treaty before the entry into force of the Agreement shall continue to be exempted as regards the provisions of the Agreement, until their date of expiry as provided for in the decisions granting these exemptions or until the Commission otherwise decides, whichever date is the earlier.

⁽¹⁰⁾ Case 158/80, *Rewe v. Hauptzollamt Kiel*, [1981] ECR, p. 1805, paragraph 44, see also Case 33/76, *Rewe v. Landwirtschaftskammer Saarland*, [1976] ECR, p. 1989; Case 79/83, *Hartz v. Deutsche Tradax*, [1984] ECR, p. 1921; Case 199/82, *Amministrazione delle Finanze dello Stato v. San Giorgio*, [1983] ECR, p. 3595.

13. The EFTA Surveillance Authority considers that these principles also apply in the event of breach of the EEA competition rules; individuals and companies should have access to all procedural remedies provided for by national law in the EFTA States on the same conditions as would apply if a comparable breach of national law were involved. This equality of treatment concerns not only the definitive finding of a breach of competition rules, but embraces all the legal means capable of contributing to effective legal protection. In the opinion of the EFTA Surveillance Authority, national courts should take provisional measures, should bring, by injunction, an effective end to infringements of the EEA competition rules, and should award compensation for the damage suffered as a result of infringements, where such remedies are available in proceedings relating to similar national law.

14. The EFTA Surveillance Authority considers that the simultaneous application of national competition law is compatible with the application of EEA law, provided that it does not impair the effectiveness and uniformity of EEA competition rules and the measures taken to enforce them⁽¹¹⁾. Any conflicts which may arise when national and EEA competition law are applied simultaneously are foreseen in the EEA Agreement to be resolved so that EEA law takes precedence. The purpose of this principle is to rule out any national measure which could jeopardize the full effectiveness of the provisions of the EEA Agreement.

III. Application of Articles 53 and 54 of the EEA Agreement by national courts

15. The national court may have to reach a decision on the application of Articles 53 and 54 of the EEA Agreement in several procedural situations. In the case of civil law proceedings, two types of action seem particularly likely; actions relating to contracts and actions for damages. Under the former, the defendant would normally rely on Article 53 (2) to dispute the contractual obligations invoked by the plaintiff. Under the latter, the prohibitions contained in Articles 53 and 54 would normally be relevant in determining whether the conduct which has given rise to the alleged injury is illegal.

16. In such situations, the fact that Articles 53 (1) and 54, which in the opinion of the EFTA Surveillance Authority fulfil the implicit criteria in Protocol 35 to the EEA Agreement of being unconditional and

⁽¹¹⁾ See the judgments of the Court of Justice of the European Communities in Case 14/68, *Walt Wilhelm and Others v. Bundeskartellamt*, [1969] ECR, p. 1; Joined Cases 253/78 and 1 to 3/79, *Procureur de la République v. Giry and Guerlain*, [1980] ECR, p. 2327.

sufficiently precise, have been incorporated in the national legal order of the EFTA States, gives national courts sufficient powers to comply with their obligation to hand down judgment⁽¹²⁾. Nevertheless, when exercising these powers, they must take account of the powers of the EFTA Surveillance Authority and the Commission in order to avoid decisions which could conflict with those taken or envisaged by the EFTA Surveillance Authority or the Commission, depending on which of the authorities is competent to decide upon an individual case in accordance with the provisions of Article 56 of the EEA Agreement, in applying Articles 53 (1), (3) and 54⁽¹³⁾. In addition, national courts must respect a decision by the Commission in application of Article 85 (3) of the EC Treaty taken before the entry into force of the EEA Agreement⁽¹⁴⁾.

17. In its case-law concerning the Community competition rules the Court of Justice has developed a number of principles which make it possible for such conflicting decisions to be avoided⁽¹⁵⁾. The EFTA Surveillance Authority is of the opinion that national courts could take account of these principles in the following manner.

1. *Application of Articles 53 (1), (2) and 54*

18. National courts need to answer the question whether the agreement, decision or practice at issue infringes the prohibitions laid down in Article 53 (1) or 54. Before answering this question, national courts may ascertain whether the agreement, decision or practice has already been the subject of a decision, opinion or other official statement issued by an administrative authority and in particular by the EFTA Surveillance Authority or the Commission. Such statements may provide national courts with significant information for reaching a judgment, even if they are not formally bound by them. It should be noted in this respect that not all procedures before the EFTA Surveillance Authority or the Commission may lead to an official decision, but that cases can also be closed by comfort letters. Whilst this type of letter does not bind national courts, the opinion expressed in such a letter nevertheless constitutes a factor which the national courts may take into account in examining whether the agreements or conduct in question are in accordance with the provisions of Article 53⁽¹⁶⁾.

⁽¹²⁾ See paragraph 3 of this notice.

⁽¹³⁾ See the judgment of the Court of Justice of the European Communities in Case C-234/89, *Delimitis Henninger Bräu*, [1991] ECR I, p. 935, paragraph 47.

⁽¹⁴⁾ See Article 13 of Protocol 21 to the EEA Agreement.

⁽¹⁵⁾ Case 48/72, *Brasserie de Haecht v. Wilkin-Janssen*, [1973] ECR, p. 77; Case 127/73, *BRT v. Sabam*, [1971] ECR, p. 51; Case C-234/89, *Delimitis v. Henninger Bräu*, [1991] ECR I, p. 935.

⁽¹⁶⁾ See the judgment of the Court of Justice of the European Communities in Case 99/79, *Lancôme v. Etos*, [1980] ECR, p. 2511, paragraph 11.

19. If the EFTA Surveillance Authority or the Commission has not ruled on the same agreement, decision or practice, the national courts can always be guided, in interpreting the EEA law in question, by the case-law of the EFTA Court and the Court of Justice of the European Communities and the existing decisions of the EFTA Surveillance Authority and the Commission, as well as by the relevant case-law and decisions of the Court of Justice and the Commission concerning corresponding Community law. National courts are obliged, in their application of the provisions of the EEA Agreement, in so far as they are identical in substance to corresponding Community law, to interpret them in conformity with the relevant rulings of the Court of Justice given prior to the date of signature of the EEA Agreement⁽¹⁷⁾. The national courts could also seek guidance from the general notices in which the EFTA Surveillance Authority has specified categories of agreements which are not caught by the ban laid down in Article 53 (1)⁽¹⁸⁾.

20. On these bases, national courts should generally be able to decide whether the conduct at issue is compatible with Articles 53 (1) and 54. Nevertheless, if the EFTA Surveillance Authority or the Commission has initiated a procedure in a case relating to the same conduct, they may, if they consider it necessary for reasons of legal certainty, stay the proceedings while awaiting the outcome of the authority's action⁽¹⁹⁾. A stay of proceedings may also be envisaged where national courts wish to seek information from the EFTA Surveillance Authority in accordance with the arrangements referred to in Part IV of this notice. Finally, national courts may in any event stay proceedings in order to request an advisory opinion of the EFTA Court in accordance with Article 34 of the Surveillance and Court Agreement.

⁽¹⁷⁾ Article 6 of the EEA Agreement. The date of signature of the Agreement was 2 May 1992.

⁽¹⁸⁾ See the notices of the EFTA Surveillance Authority on:

- exclusive dealing contracts with commercial agents (OJ No L 153, 18. 6. 1994, p. 23),
- agreements, decisions and concerted practices in the field of cooperation between enterprises (OJ No L 153, 18. 6. 1994, p. 25),
- assessment of certain subcontracting agreements (OJ No L 153, 18. 6. 1994, p. 30),
- agreements of minor importance (OJ No L 153, 18. 6. 1994, p. 32).

⁽¹⁹⁾ See the judgment of the Court of Justice of the European Communities in Case 127/73, *BRT v. Sabam*, [1974] ECR, p. 51, paragraph 21. The procedure before the EFTA Surveillance Authority or the Commission is initiated by an authoritative act. A simple acknowledgement of receipt cannot be considered an authoritative act as such; Case 48/72, *Brasserie de Haecht v. Wilkin-Janssen*, [1973] ECR, p. 77 paragraphs 16 and 17.

21. However, where national courts decide to give judgment and find that the conditions for applying Article 53 (1) or 54 are not met, they should pursue their proceedings on the basis of such a finding, even if the agreement, decision or concerted practice at issue has been notified to the EFTA Surveillance Authority. Where the assessment of the facts shows that the conditions for applying Article 53 (1) or 54 are met, national courts must rule that the conduct at issue infringes Article 53 (1) or 54 and take the appropriate measures, including those relating to the consequences that attach to infringement of a statutory prohibition under the civil law applicable.

2. Application of Article 53 (3)

22. If the national court concludes that an agreement, decision or concerted practice is prohibited by Article 53 (1), it needs to check whether it is or will be the subject of an exemption pursuant to Article 53 (3). Here several situations may arise.

23. The national court is required to respect the exemption decisions taken by the EFTA Surveillance Authority or the Commission, as well as exemption decisions taken by the Commission pursuant to Article 85 (3) of the EC Treaty before the entry into force of the EEA Agreement⁽²⁰⁾. Consequently, it must treat the agreement, decision or concerted practice at issue as compatible with EEA law and fully recognize its civil law effects. In this respect mention should be made of comfort letters in which the EFTA Surveillance Authority or the Commission services state that the conditions for applying Article 53 (3) have been met. The EFTA Surveillance Authority considers that national courts may take account of such letters as factual elements.

24. Agreements, decisions and concerted practices which fall within the scope of application of an act corresponding to a Community block exemption regulation referred to in Annex XIV to the EEA Agreement are automatically exempted from the prohibition laid down in Article 53 (1)⁽²¹⁾.

25. Agreements, decisions and concerted practices which are not covered by an act corresponding to a block exemption regulation, and which have not been the subject of an individual exemption decision or a comfort letter may, in the view of the EFTA Surveillance Authority, be examined in the following manner.

26. The national court may first examine whether the procedural conditions necessary for securing exemption are fulfilled, notably whether the agreement, decision or concerted practice has been duly notified to the EFTA Surveillance Authority or the Commission in accordance with Article 4 (1) of Chapter II of Protocol 4 to the Surveillance and Court Agreement and of Regulation No 17, respectively⁽²²⁾. Where no such notification has been made, and subject to Article 4 (2) of Chapter II of Protocol 4 to the Surveillance and Court Agreement and of Regulation No 17, respectively, exemption pursuant to Article 53 (3) is ruled out, so that the national court may decide, pursuant to Article 53 (2), that the agreement, decision or concerted practice is void.

27. Where the agreement, decision or concerted practice has been duly notified to the EFTA Surveillance Authority or the Commission, the national court may assess the likelihood of an exemption being granted in the case in question in the light of the relevant criteria developed by the case-law of the EFTA Court, the Court of Justice of the European Communities and the Court of First Instance, by previous decisions of the EFTA Surveillance Authority and the Commission, by acts corresponding to Community block exemption regulations referred to in Annex XIV to the EEA Agreement, as well as by the case-law and previous decisions of the Court of Justice, the Court of First Instance and the Commission relating to Article 85 (3) of the EC Treaty.

28. Where the national court has in this way ascertained that the agreement, decision or concerted practice at issue cannot be the subject of an individual exemption, it may take the measures necessary to comply with the requirements of Article 53 (1) and (2). On the other hand, if it takes the view that individual exemption is possible, the national court should, subject to the applicable national procedural law, suspend the proceedings while awaiting the competent surveillance authority's decision. If the national court does suspend the proceedings, it nevertheless could, according to the rules of the applicable national law, adopt any interim measures it deems necessary.

29. These considerations do not apply, however, to agreements, decisions and concerted practices which were in existence at the date of entry into force of the EEA Agreement and which were notified to the EFTA Surveillance Authority or the Commission within six months of the date of entry into force of the Agreement. The Court of Justice of the European Communities has held that national courts must consider agreements, decisions and concerted practices which existed before Regulation No 17 entered into force and which were duly notified to the Commission to be valid so long as the Commission or the authorities of the Member States

⁽²⁰⁾ See Article 13 of Protocol 21 to the EEA Agreement.

⁽²¹⁾ A list of the relevant acts and of the official explanatory comments issued by the EFTA Surveillance Authority relating to them is given in the Annex to this notice.

⁽²²⁾ It should be noted that it does not matter whether the agreement, decision or concerted practice has been notified to the surveillance authority which is competent in accordance with Article 56 of the EEA Agreement to decide on the case. See Article 10 of Protocol 23 to the EEA Agreement.

have not taken a prohibition decision or sent a comfort letter to the parties informing them that the file has been closed⁽²³⁾. The EFTA Surveillance Authority considers that a similar principle of provisional validity may apply, with respect to the EEA competition rules, as regards, the abovementioned category of agreements, decisions and concerted practices.

30. The EFTA Surveillance Authority realizes that the considerations set out above concerning the application of Articles 53 and 54 by national courts may be complex and sometimes insufficient to enable those courts to perform their judicial function properly. This may particularly be so where the practical application of Articles 53 (1) and 54 gives rise to legal or economic difficulties, where the competent surveillance authority has initiated a procedure in the same case or where the agreement, decision or concerted practice concerned may become the subject of an individual exemption within the meaning of Article 53 (3). National courts may bring such cases before the EFTA Court for an advisory opinion, in accordance with Article 34 of the Surveillance and Court Agreement. They may also avail themselves of the assistance of the EFTA Surveillance Authority according to the procedures set out below.

IV. Cooperation between national courts and the EFTA Surveillance Authority

31. Article 3 of the EEA Agreement, which is modelled on, and to a great extent reproduces Article 5 of the EC Treaty, puts on the Contracting Parties the obligation to take all appropriate measures to ensure fulfilment of the obligations arising out of the EEA Agreement and to facilitate cooperation within its framework.

The Court of Justice of the European Communities has ruled that, pursuant to Article 5 of the EC Treaty, the Commission has a duty of sincere cooperation *vis-à-vis* judicial authorities of the Community Member States, who are responsible for ensuring that Community law is applied and respected in the national legal system⁽²⁴⁾. The EFTA Surveillance Authority considers that it is under a similar obligation of sincere cooperation *vis-à-vis* national courts of the EFTA States, by virtue of the corresponding Article 3 of the EEA Agreement and Article 2 of the Surveillance and Court Agreement. It further considers that such cooperation can be an important factor in ensuring an effective and consistent application of the EEA competition rules. In light of these considerations, the EFTA Surveillance Authority proposes to cooperate with the national courts of the EFTA States in the following manner.

⁽²³⁾ Case 48/72, *Brasserie de Haecht v. Wilkin-Janssen*, [1973] ECR, p. 77; Case 59/77, *De Bloons v. Bouyer*, [1977] ECR, p. 2359; Case 99/79, *Lancôme v. Etos*, [1980] ECR, p. 2511.

⁽²⁴⁾ Case C-2/88 *Imm. Zwartveld*, [1990] ECR I, p. 3365, paragraph 18; Case C-234/89, *Delimitis v. Henninger Bräu*, [1991] ECR I, p. 935, paragraph 53.

32. The case-law of the EFTA Court, the Court of Justice of the European Communities and the Court of First Instance and the decisions of the EFTA Surveillance Authority and the Commission, both pursuant to Articles 53 and 54 of the EEA Agreement and (where applicable) under the corresponding Articles 85 and 86 of the EC Treaty, the acts corresponding to Community block exemption regulations and the general notices issued by the EFTA Surveillance Authority are all sources of law or explanations which may assist in national courts in examining individual cases.

33. If these sources are insufficient, national courts may, within the limits of their national procedural law, ask the EFTA Surveillance Authority for the following information.

34. First, national courts may ask for information of a procedural nature to enable them to discover whether a certain case is pending before the EFTA Surveillance Authority, whether a case has been the subject of a notification, whether the EFTA Surveillance Authority has officially initiated a procedure or whether it has already taken a position through an official decision or through a comfort letter. If necessary, national courts may also ask the EFTA Surveillance Authority how much time is likely to be required for granting or refusing individual exemption for notified agreements or practices, so as to be able to determine the conditions for any decision to suspend proceedings or whether interim measures need to be adopted⁽²⁵⁾. The EFTA Surveillance Authority, for its part, will endeavour to give priority to cases which are the subject of national proceedings suspended in this way, in particular when the outcome of a civil dispute depends on them.

35. Secondly, where the application of Article 53 (1) or of Article 54 causes them particular difficulties, national courts may ask the EFTA Surveillance Authority for legal information of a general nature. In its replies, the EFTA Surveillance Authority will not consider the merits of the case. In addition, where national courts have doubts as to whether a contested agreement, decision or concerted practice notified to the EFTA Surveillance Authority is eligible for individual exemption, they may ask it to provide them with an interim opinion.

36. The answers given the EFTA Surveillance Authority are not binding on the courts which have requested them. In its replies the EFTA Surveillance Authority will make it clear that its view is not definitive and that right for the national court to request an advisory opinion of the EFTA Court, in accordance with Article 34 of the Surveillance and Court Agreement, is not affected.

⁽²⁵⁾ See paragraphs 20 and 28 of this notice.

37. Lastly, national courts can obtain information from the EFTA Surveillance Authority regarding factual data: statistics, market studies and economic analyses. The EFTA Surveillance Authority will endeavour to communicate these data, within the limits laid down in the following paragraph, or indicate the source from which they can be obtained.

38. It is in the interests of the proper administration of justice that the EFTA Surveillance Authority should answer requests for legal and factual information in the shortest possible time. Nevertheless, the EFTA Surveillance Authority cannot accede to such requests unless several conditions are met. First, the requisite data must actually be at its disposal. Secondly, the EFTA Surveillance Authority may communicate this data only in so far as permitted by the general principle of sound administrative practice.

39. For example, Article 14 of the Surveillance and Court Agreement, as spelt out in Article 20 of Chapter II of Protocol 4 for the purposes of the competition rules, requires the EFTA Surveillance Authority not to disclose information of a confidential nature. In addition, the duty of sincere cooperation deriving from Article 3 of the EEA Agreement and Article 2 of the Surveillance and Court Agreement is one applying to the relationship

between national courts and the EFTA Surveillance Authority and does not concern the position of the parties to the dispute pending before those courts. As *amicus curiae*, the EFTA Surveillance Authority must respect legal neutrality and objectivity. Consequently, it will not accede to requests for information within the framework of the cooperation procedures described in this notice unless they come from a national court, either directly, or indirectly through parties which have been ordered by the court concerned to provide certain information.

V. Final remarks

40. This notice does not relate to the competition rules governing the transport sector. Nor does it relate to the competition rules regarding coal and steel laid down in Protocol 25 to the EEA Agreement.

41. This notice is issued for guidance and does not in any way restrict the rights conferred on individuals or companies by the EEA Agreement.

42. This notice is without prejudice to any interpretation of the provisions of the EEA Agreement which may be given by the Court of Justice of the European Communities or the EFTA Court.

ANNEX

ACTS CORRESPONDING TO COMMUNITY BLOCK EXEMPTION REGULATIONS REFERRED TO IN ANNEX XIV TO THE EEA AGREEMENT AND EXPLANATORY NOTICES OF THE EFTA SURVEILLANCE AUTHORITY

I. Distribution agreements

1. Act corresponding to Commission Regulation (EEC) No 1983/83 concerning exclusive distribution agreements referred to in point 2 of Annex XIV to the EEA Agreement.
2. Act corresponding to Commission Regulation (EEC) No 1984/83 concerning exclusive purchasing agreements referred to in point 3 of Annex XIV to the EEA Agreement.
3. Notice of the EFTA Surveillance Authority concerning the acts referred to in points 2 and 3 of Annex XIV to the EEA Agreement (OJ No L 153, 18. 6. 1994, p. 13).
4. Notice of the EFTA Surveillance Authority modifying the Notice concerning the acts referred to in points 2 and 3 of Annex XIV to the EEA Agreement (OJ No L 186, 21. 7. 1994, p. 69).
5. Act corresponding to Commission Regulation (EEC) No 123/85 concerning motor vehicle distribution and servicing agreements referred to in point 4 of Annex XIV to the EEA Agreement.

6. Notice of the EFTA Surveillance Authority concerning the act referred to in point 4 of Annex XIV to the EEA Agreement (OJ No L 153, 18. 6. 1994, p. 20).
7. Notice of the EFTA Surveillance Authority clarifying the activities of motor vehicle intermediaries (OJ No L 186, 21. 7. 1994, p. 70).

II. Licensing and franchising agreements

1. Act corresponding to Commission Regulation (EEC) No 2349/84 concerning patent licensing agreements referred to in point 5 of Annex XIV to the EEA Agreement.
2. Act corresponding to Commission Regulation (EEC) No 4087/88 concerning franchising agreements referred to in point 8 of Annex XIV to the EEA Agreement.
3. Act corresponding to Commission Regulation (EEC) No 556/89 concerning know-how licensing agreements referred to in point 9 of Annex XIV to the EEA Agreement.

III. Cooperative agreements

1. Act corresponding to Commission Regulation (EEC) No 417/85 concerning specialization agreements referred to in point 6 of Annex XIV to the EEA Agreement.
 2. Act corresponding to Commission Regulation (EEC) No 418/85 concerning research and development agreements referred to in point 7 of Annex XIV to the EEA Agreement.
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Publication of decisions by Member States to grant or revoke operating licences pursuant to Article 13 (4) of Regulation (EEC) No 2407/92 on licensing of air carriers ⁽¹⁾

(95/C 112/08)

NORWAY

Operating licences granted

Category B: Operating licences including the restriction of Article 5 (7) (a) of Regulation (EEC) No 2407/92

| Name of air carrier | Address of air carrier | Permitted to carry | Decision effective since |
|---------------------|---------------------------|------------------------|--------------------------|
| Hamarfly AS | Postboks 2053, 2301 Hamar | Passenger, cargo, mail | 22. 3. 1995 |

Operating licences revoked

Category B: Operating licences including the restriction of Article 5 (7) (a) of Regulation (EEC) No 2407/92

| Name of air carrier | Address of air carrier | Permitted to carry | Decision effective since |
|--|-----------------------------------|------------------------|--------------------------|
| Ariel Aviation AS | Grønberg Gård, 1540 Vestby | Passenger, cargo, mail | 14. 3. 1995 |
| Den Norske Luftfartsskole/Øivind Skounfeit | Postboks 76, 3201 Sandefjord | Passenger, cargo, mail | 1. 2. 1995 |
| Trafikkflygerskolen AS | Trondheim Lufthavn, 7500 Stjørdal | Passenger, cargo, mail | 22. 3. 1995 |

⁽¹⁾ OJ No L 240, 24. 8. 1992, p. 1.

III

(Notices)

COMMISSION

Amendment to notice of invitation to tender for the refund for the export of Oats to all third countries

(95/C 112/09)

(Official Journal of the European Communities No C 49 of 28 February 1995)

Page 11, the text of paragraph 2 under heading I 'Subject', is amended as follows:

2. The total quantity in respect of which there may be fixed a maximum export refund as provided in Article 5 (1) of Commission Regulation (EEC) No 1533/93⁽¹⁾, as last amended by Regulation (EC) No 3304/94⁽²⁾, is approximately 300 000 tonnes.

⁽¹⁾ OJ No L 341, 30. 12. 1994, p. 48.

Amendment to notice of invitation to tender for the refund for the export of common wheat to all third countries

(95/C 112/10)

(Official Journal of the European Communities No C 142 of 25 May 1994)

Page 14, the text of paragraph 2 under heading I 'Subject', is amended as follows:

2. The total quantity in respect of which there may be fixed a maximum export refund as provided in Article 5 (1) of Commission Regulation (EEC) No 1533/93⁽¹⁾, as last amended by Regulation (EC) No 3304/94⁽²⁾, is approximately 4 300 000 tonnes.

⁽¹⁾ OJ No L 341, 30. 12. 1994, p. 48.

Study on the practical aspects of implementing Article 7 (guarantees in case of insolvency or bankruptcy) of Directive 90/314/EEC regarding trips, holidays and package tours

Open procedure

(XXIV/95/U6/004)

(95/C 112/11)

1. **Awarding authority:** European Commission, Directorate-General XXIV 'Consumer Policy Service', Unit 6 (J70-5/9), rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel.

Tel. (02) 295 04 26. Facsimile (02) 296 32 79/296 59 78.

2. **The contract involves:** Within the context of its follow-up of the application of Council Directive No 90/314/EEC of 13. 6. 1990 regarding trips, holidays and package tours, the Commission wishes to have as complete information as possible of the practical aspects in each of the states belonging to the European Economic Area, on implementing Article 7 of the directive (justification by the organizer and/or the retailer of sufficient specific guarantees to ensure, in case of insolvency or bankruptcy, reimbursement of the sums deposited and consumer repatriation).

The contract thus involves:

A - Describing the current situation, in each of the states, in the area covered by Article 7 of the directive before it comes into force.

B - If the directive has been amended:

a) analysis of the new legislation, within the context of Article 7 with a clear description of the system introduced in each state;

b) looking into the question of finding out:

— if the legislation adopted in a state allows organizers and/or retailers (being other EEA member state nationals) to freely become members of the systems introduced in this state instead of those in their original state,

— if the system introduced in each state makes it obligatory to accept organizers and/or retailers from other EEA member states as members,

c) looking into the question of finding out if the amendment has been done correctly.

C - If the directive has not been amended:

a) reasons why;

b) possible legal and economic problems posed by the amendment of Article 7;

c) current state of the amendment works.

D - Conclusions and recommendations

3. **Place of delivery for the report:** Provisional and final reports must be sent to the awarding authority at the address in 1.

4. a), b)

c) Tenderers who are legal persons must detail the names and professional qualifications of the personnel responsible for carrying out the service.

5. Tenders may be submitted for all EEA states, for a number of these states or for 1 state. The tenderer must indicate for which state(s) he is tendering.

When a tenderer tenders for several states, he must indicate the price offered for each state, as well as the total value of his offer; the Commission reserves the right to accept this offer in relation to a single state or a more limited number of states, amongst those for which the tenderer has tendered.

6. **Variants:** Variants are not permitted.

7. **Time limit for execution:** The provisional report (comprising the provisional results and an evaluation of the completed works) must be submitted within 7 months from the date of contract signature. The final report, in which the study results shall appear, must be submitted within 10 months from the date of contract signature.

8. **Documentation**

a) The necessary documentation may be requested by facsimile or mail from the address in 1.

- b) The final date for requesting documentation is set at 20 days from the date of publication of this notice in the Official Journal of the European Communities.
- c) The documentation, comprising an invitation to tender and specifications will be sent, free of charge, to anyone requesting it.
9. a) The final date for receipt of tenders is set at 52 days from the date of publication of this notice in the Official Journal of the European Communities.
- b) **Address to which they are to be sent:** As in 1.
- c) **Languages:** Tenders must be drawn up in 1 of the official European Union languages.
- 10., 11.
12. **Payment terms:** The payment terms will be in the tender documents.
Prices are to be firm and final.
13. **Legal form of the tenderer:** Any natural or legal person, including a public organization, may tender. Groups of service providers may tender; the transformation of such groups into a specific legal form may be required subsequently once the contract has been awarded to them.
14. **Information to be provided:** At the tendering stage, the tenderer must provide all the information needed to confirm his professional and technical competence. When the tenderer wishes to subcontract part of the work and/or use a network of correspondents, he must make special reference to it and provide the same detailed information on the subcontractors and/or the correspondents of the network.
15. **Period during which the tenderer is bound to keep open his tender:** Until 31. 3. 1996.
16. **Selection criteria:**
- tenderer's experience and competence in the law sector and in the area of tourist services,
 - quality and reliability of the subcontractors and/or correspondents of the network,
 - possibility of covering several states under the same conditions with respect to quality.
17. **Contract award criteria:** Taking account of the conditions listed in 14 and 16, the contract will be awarded on the basis of:
- the methodology envisaged for conducting the study,
 - the economically most advantageous tender.
- The Commission reserves the right not to select any tenderers if the proposed prices exceed the budgetary limits set for this study.
18. **Other information:** SThis notice contains all the information on the basis of which tenderers are invited to request invitation to tender documents, in accordance with the procedure described in 8.
19. **Date of dispatch of the notice to the Office for Official Publications of the European Communities:** 24. 4. 1995.
20. **Date of receipt of the notice by the Office for Official Publications of the European Communities:** 24. 4. 1995.
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CORRIGENDA

Phare — computer equipment

(Official Journal of the European Communities No C 72, 24. 3. 1995, p. 4, 29143-95)

(95/C 112/12)

Polimex-Cekop Limited, Division C-3, 7/9 Czackiego Street, PL-00-950 Varsovie

Tel. (48-2) 62 37-550/548, (48-22) 26 75 09. Telex 817011/814271 px pl. Facsimile (48-22) 26 55 27, 26 04 93.

instead of:

'Should arrive, at the latest, on 8. 5. 1995 (11.00), local time, at:

— Polimex-Cekop Limited, Division C-3, 7/9 Czackiego Street, PL-00-950 Warszawa.

They will be opened in public session on 8. 5. 1995 (12.00), local time at the same place.'

read:

'Should arrive, at the latest, on 10. 5. 1995 (11.00), local time, at:

— Polimex-Cekop Limited, Division C-3, 7/9 Czackiego Street, PL-00-950 Warszawa.

They will be opened in public session on 10. 5. 1995 (12.00), local time at the same place.'
