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(Information)

COUNCIL

LIST OF APPOINTMENTS MADE BY THE COUNCIL

October, November and December 2002 (social field)

(2003/C 30/01)

Committee	End of term of office	Published in OJ	Person replaced	Resignation	Member/ alternate	Category	Country	Person appointed	Affiliation	Date of Council Decision
Advisory Committee on Freedom of Movement for Workers	6.5.2004	C 168, 13.7.2002	Mr P.A.M. VAN DUN	Resignation	Member	Government	Netherlands	Ms V.K. HOEL	Ministerie van Sociale Zaken en Werkgelegenheid	25.11.2002
Advisory Committee on Social Security for Migrant Workers	22.9.2004	C 245, 11.10.2002	Mr Oliver RÖPKE	Resignation	Member	Workers	Austria	Ms Evelyn REGNER	ÖGB-Europabüro	11.11.2002
Advisory Committee on Vocational Training	29.9.2004	C 243, 9.10.2002	Mr Pat A. HOULIHAN	Resignation	Member	Government	Ireland	Mr Denis COLFER	Department of Enterprise, Trade and Employment Employment and Training Strategy Unit	5.11.2002
Advisory Committee on Vocational Training	29.9.2004	C 243, 9.10.2002	Mr Jos BELLEFROID	Resignation	Alternate	Employers	Belgium	Mr Werner ABELSHAUSEN	Sociaal Departement en Departement Opleiding Belgische Vereniging van Banken	11.11.2002
Advisory Committee on Vocational Training	29.9.2004	C 243, 9.10.2002	Ms Lea BATTISTONI	Resignation	Member	Government	Italy	Ms Aviana BULGARELLI	Ufficio Centrale per l'Orientamento e la Formazione Professionale dei Lavoratori	9.12.2002
Management Board of the European Centre for the Development of Vocational Training	16.12.2002	C 4, 7.1.2000	Mr Aly SCHROEDER	Resignation	Membre	Government	Luxembourg	Mr Gilles ESTGEN	Ministère de l'éducation nationale de la formation professionnelle et des sports	14.10.2002

Committee	End of term of office	Published in OJ	Person replaced	Resignation	Member/ alternate	Category	Country	Person appointed	Affiliation	Date of Council Decision
Administrative Board of the European Foundation for the Improvement of Living and Working Conditions	18.10.2004	C 327, 20.11.2001	Mr Per LAURENTS	Resignation	Alternate	Employers	Denmark	Mr Nils J. ANDREASEN	SALA	14.10.2002
Administrative Board of the European Foundation for the Improvement of Living and Working Conditions	18.10.2004	C 327, 20.11.2001	Ms Barbara DORN	Resignation	Member	Employers	Germany	Mr Rainer SCHMIDT-RUDLOFF	Confederation of German Employers' Associations	2.12.2002

COMMISSION

Euro exchange rates (1)

7 February 2003

(2003/C 30/02)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,0789	LVL	Latvian lats	0,6235
JPY	Japanese yen	129,49	MTL	Maltese lira	0,4209
DKK	Danish krone	7,431	PLN	Polish zloty	4,1618
GBP	Pound sterling	0,6628	ROL	Romanian leu	35617
SEK	Swedish krona	9,1617	SIT	Slovenian tolar	231,1913
CHF	Swiss franc	1,4667	SKK	Slovak koruna	41,912
ISK	Iceland króna	82,46	TRL	Turkish lira	1768000
NOK	Norwegian krone	7,469	AUD	Australian dollar	1,8281
BGN	Bulgarian lev	1,9556	CAD	Canadian dollar	1,6434
CYP	Cyprus pound	0,58015	HKD	Hong Kong dollar	8,4150
CZK	Czech koruna	31,728	NZD	New Zealand dollar	1,97
EEK	Estonian kroon	15,6466	SGD	Singapore dollar	1,8826
HUF	Hungarian forint	246,67	KRW	South Korean won	1277,63
LTL	Lithuanian litas	3,4523	ZAR	South African rand	9,0385

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

Overall summary report on the results of inspections in the field of animal nutrition carried out by the Member States in 2001

(2003/C 30/03)

(Text with EEA relevance)

1. Introduction

Council Directive 95/53/EC of 25 October 1995 ([1]) fixes the principles governing the organisation of official inspections in the field of animal nutrition. In accordance with Article 22(2) of that Directive, Member States shall transmit to the Commission before 1 April 2002 all the relevant information concerning the following controls in the field of animal nutrition:

— the implementation of the programmes setting out the national measures to be taken for the year 2001,

— the implementation of the coordinated monitoring programmes for the year 2001, as provided for in the Commission Recommendation of 5 June 2001 ([2]).

By the deadline (1 April 2002), only three Member States had sent the relevant information to the Commission. On 24 May and 25 June 2002, the Commission representative on the Standing Committee on the Food Chain and Animal Health reminded the Member States' delegations to present their reports. 14 reports have now been sent, on the following dates:

Member State	Date report sent to the Commission
Austria	2.9.2002
Belgium	29.3.2002
Denmark	15.5.2002
Finland	27.5.2002
France	1.8.2002
Germany	14.6.2002
Greece	23.5.2002
Ireland	10.5.2002
Luxembourg	16.5.2002
Netherlands	3.6.2002
Portugal	22.5.2002
Spain	28.3.2002
Sweden	27.3.2002
United Kingdom	18.9.2002

([1]) OJ L 265, 8.11.1995, p. 17. Directive as last amended by Directive 2000/77/EC of the European Parliament and of the Council (OJ L 333, 29.12.2000, p. 81).

([2]) OJ L 161, 16.6.2001, p. 42.

2. Overall summary results

The Member States do not use a uniform reporting format in their national reports. The type and format of the information is quite varied, which limits the possibilities of compiling the data from national sources into a single overall summary report.

In addition to the heterogeneity of the reports, the information in each report is sometimes incomplete or unclear, such as:

— two different figures for the same fact in different parts of the report,

— indication of the number of samples without giving the result,

— information on results without giving the number of samples,

— total of positive and negative results different from the number of samples analysed,

— grouping results on different substances under the same figure,

— other unclear information.

Only some Member States present figures on national production of feedingstuffs and imports from third countries.

On account of those difficulties in reporting, the overall compilation of results for all Member States is very limited and gives only a partial picture of the whole control system. The lack of data does not allow relevant conclusions to be drawn. The same remarks were already made in the conclusions of the overall summary report on the results for the year 2000.

Those difficulties are to be overcome by the adoption of a harmonised reporting model, which is being prepared and is expected to be implemented for the controls in 2003. That model should provide relevant information, but should also be simple enough to be completed by each competent authority.

3. Detailed results

The main results of the coordinated inspection programme for 2001 are presented in Tables 1 to 10.

Some Member States do not present the results of the annual programme separately from those of the coordinated programme. Moreover, in some cases, it is not specified whether the results belong to the coordinated programme or not. Notwithstanding that shortcoming, the tables combine all the results available for each section.

Table 1: Production (1 000 tonnes) of feedingstuffs for sale

	Feed materials of plant origin	Feed materials of animal origin	Mineral feeds	Feed additives	Compound feedingstuffs	Compound feed for non-food producing animals	Total
A							
B							
D	29 510 (a), (b)	4 123 (a), (c)	422		19 613	1 186	
DK (d)					8 356 (e)	698	
E							
EL							
F							
FIN	326	19	190	39	1 375	355	
I							
IRL			54		3 570		
L							
NL					13 341	541	
P							
S	1 270 (f)	30 (f)	32 (f)		2 300	91	
UK (g)	6 826				10 360		

(a) Including inter and intra farm transfers.
(b) Not including fodder crops and by-products (e.g. grass, clover, silage, roots).
(c) Including 3 629 000 tonnes of milk, skimmed and buttermilk, whey, goats milk.
(d) Data from 1999 and 2000.
(e) Including mineral feeds and 1 796 600 tonnes straight-feedingstuff sold directly to farmers.
(f) Feed materials in compound feedingstuffs for sale.
(g) Not including 2 801 thousand tonnes from inter- and intra-farm transfers.

Table 2: Imports (1 000 tonnes) of feedingstuffs

	Feed materials of plant origin	Feed materials of animal origin	Mineral feeds	Feed additives	Compound feedingstuffs	Compound feed for non-food producing animals	Total
A							
B							
D	8 736	92			775	495	
DK							9 610
E							
EL							
F							
FIN (a)	219 + 15	18 + 12	0,2 + 0,1	51 + 14			
I							
IRL							
L							
NL	6 815				149	111	
P							
S (a)	610	8 + 0	2 + 0		26 + 4,8	58,9 + 15,5	
UK							

(a) The first figure corresponds to goods received from other Member States; the second to imports from third countries.

Table 3: Number of samples from imports and national production

	Total	Misc.	Milk repl.	Mineral	Premix	Feed-mat.	Additives	Compound feedingstuffs						
								Ruminant	Pigs	Poultry	Horses	Fish	Other	Total
A	2 140				([a])	228	40 ([a])	737	575	338			222	1 872
B	12 653	56			482	816		3 484	5 488	1 485			842	11 299
D	27 488				384	4 166	248	10 014	5 574	3 722			3 380	22 690 ([b])
DK	11 070 ([c])													
E	21 453													
EL	776	69			2	168		196	31	99		194	17	537
F														
FIN	6 761			24		5 569	([d])						17	1 168 ([d])
I														
IRL	1 808			139		655	16							998
L	220		13	19		16		94	48	25	1		4	172
NL ([e])	1 479	3				706								770
P														
S ([f])	1 823		10	8		344		458	234	248	68	10	443	1 461
UK	1 917	10 ([g])			28	317	62						578	1 500

([a]) Combined figure for additives and premixes.
([b]) Including milk replacers and mineral feeds.
([c]) Including 1 250 samples drawn during inspections on farms and including 6 088 samples for salmonella analyses.
([d]) Combined figure for compound feedingstuffs and additives.
([e]) Partial data: figures relate only to imports from third countries, but there were other samples taken from national production, too.
([f]) Salmonella samples and samples on constituents of animal origin are not included.
([g]) Protein sources.

Comments on Tables 1, 2 and 3

The overall data on production and imports of feedingstuffs are scarce.

Most of the Member States report the number of samples taken. However, samples are categorised according to different criteria.

The lack of data does not allow comparison between the tables in order to assess sampling frequencies.

Table 4: Methods used in laboratory tests

	Method	Sensitivity	Specificity
A			
B	Microscopic identification and estimation of constituents of animal origin in feedingstuffs		
D	Microscopic identification and estimation of constituents of animal origin in feedingstuffs		
DK	Denmark provided references of 100 methods used in laboratory tests		
E			
EL			
F	Microscopic identification and estimation of constituents of animal origin in feedingstuffs		
FIN	Aflatoxins: liquid chromatography — JAOAC 67 (1984) 973 en JAOAC 67 (1984) 597	0,4 µg/kg	e.g. peanuts and soybean meal
	Cadmium and lead: graphite furnace	0,01 mg/kg (Cd), 0,02 (Pb)	all feeds
	Arsenic: hydride generation	0,02 mg/kg (As)	all feeds
	Microscopic identification and estimation of constituents of animal origin in feedingstuffs	0,1 %	feedingstuffs
I			
IRL	Microscopic identification and estimation of constituents of animal origin in feedingstuffs		
L			
NL	Microscopic identification and estimation of constituents of animal origin in feedingstuffs		
P			
S	Microscopic identification and estimation of constituents of animal origin in feedingstuffs plus a number of other methods such as HRGC/HRMS/HPLC etc.		
UK	ELISA for the identification of constituents of animal origin in feedingstuffs		

Comments on Table 4:

Finland reports on methods used. Some Member States mention the use of microscopic identification and estimation of constituents of animal origin in feedingstuffs.

Table 5: Dioxins and PCBs

	Samples	High concentration (dioxins and/or PCB)	Remarks
A	272	0	42 samples tested for dioxins and 230 for PCBs
B	11 126	13	
D	7 460	321	1 968 samples tested for dioxins (135 with high concentration) and 5 492 for PCBs (186 with high concentration)
DK	193	—	
E	299	0	
EL			
F	67	0	
FIN			
I			
IRL	59		
L	3		
NL	519	3	Positives: clay mineral and mineral mix
P	52	0	3 classified as suspect
S	6	5	
UK			

Comments on Table 5:

Belgium carried out extensive testing for dioxins and PCBs, most of it as part of a national contaminants surveillance system.

Sweden ran a project targeted on fish and fish products, which could explain the high frequency of samples with a high concentration of dioxins.

Other Member States found relatively fewer anomalies.

Table 6: Heavy metals

	Samples					Non-complying				
	Pb	Cd	As	Hg	Total	Pb	Cd	As	Hg	Total
A	285	287	94	29	695	1	0	0	0	1
B ([a])					590					23
D ([b])	2 239	2 236	1 422	1 190	7 087	8	17	3	1	29
DK	22	22	20	6	70	1	0	0	0	1
E	528	528	257	512	1 825	0	0	0	2	2
EL										
F	25	69	67	20	181	0 %	2 %	0 %	42 %	
FIN	66	66			132	0	0			0
I										
IRL	68	41	2		111	0	0			0
L	4	4			8					
NL	303	296	333	288	1 220			1	1	1
P										
S			43	62	105			0	0	0
UK										

([a]) Including testing for fluorine.
([b]) Including samples of additives and premixtures.

Comments on Table 6:

The number of non-complying samples is small, with the exception of the results provided by France (mercury in fish meal) and Belgium.

Table 7: Salmonella

	Samples	Positive	Remarks
A	239	13	Comprising 59 samples of feed materials (5 positive; highest incidence in fish meal: 3 positive in 19 samples) and 180 samples of compound feedingstuffs (8 positive)
B	119	1	In feed materials of animal origin and compound feedingstuffs
D			No separate results reported
DK	6 088	106	Comprising 3 094 samples of feed materials and compound feedingstuffs (0,8 % positive) and 2 994 hygiene samples from production plants (2.7 %)
E	990	17	
EL	52	1	43 in feed materials (1 positive) + 9 in compound feedingstuffs
F	1 046	37	Including 34 samples of fish meal (0 positive) and 91 samples of compound feedingstuffs (1 positive)
FIN	7 027	33	Comprising 5 030 samples of vegetable origin feed materials and compound feedingstuffs from abroad (25 positive), 1 487 samples of compound feedingstuffs and raw materials of domestic production (1 positive) and 510 samples in marketing control (6 positive in pet food and 1 in fur animals)
I			
IRL	115	4	Comprising 33 samples of feed materials (2 positive) and 82 samples of compound feedingstuffs (2 positive)
L			
NL			Details can be found in the 2001 zoonosis report
P			
S	15 150	104	The figure of total samples does not include all import samples and mandatory auto control samples. The total figure includes HACCP -environmental samples as well. The positive samples include also follow-up investigation samples after initial detection. More detail on these figures can be found in the zoonosis report of 2002
UK	55 083	858	Comprising 24 394 samples of animal origin (290 positive), 28 852 samples of vegetable origin (550 positive) and 1 837 of mineral origin or others (18 positive)

Comments on table 7:

Even though the Commission Recommendation for a coordinated programme indicates feed materials of vegetable origin as the scope of Salmonella checks, in some cases it is not possible to distinguish whether the results reported by Member States refer only to this type of feed. The results presented in the table therefore comprise all available results for Salmonella.

There is a relatively large number of samples (from less than 1 % up to 5,4 %) contaminated with salmonella.

Table 8: Feed additives with maximum level (correct use)

	Samples	Non-complying	Remarks
A	4 683	150	Comprising tests of antibiotics and coccidiostats, probiotics, trace elements and vitamins
B	2 588	583	
D	19 701	326	For checking established maximum levels
DK	1 114	130	61 samples analysed for antibiotic, coccidiostats and growth promoters, 1 053 samples drawn on farms analysed for copper, zinc, manganese, iron and selenium
E			
EL			
F			
FIN	280	45	
I			
IRL	3 732	34	Through labelling checks
L			
NL			
P			
S	67	5	Five cases of cross contamination of narasin. The remaining samples refer to vitamins and trace elements and maximum levels were not exceeded, but 10 cases did not comply with the labelling
UK	326	25	Non-zootechnical additives (e.g. trace elements and vitamins) only

Comments on Table 8:

Ireland found a low frequency of non-complying samples, but the evaluation was carried out through labelling checks only.

The results provided by Belgium and Germany, which carried out analyses, show a much higher rate of non-compliance.

Table 9: Antibiotics banned as growth promoters

	Samples	Non-complying	Remarks
A	818	68	
B	740	48	88 % of the positive samples are due to sulfamide residues
D	2 210 [a]	21	Excluding the samples which were taken from farms
DK	293	9	Including 127 (7 non-complying) samples drawn on farms. The samples were analysed for content of tetracycline, avoparcin, tylosinfosfat, virginiamycin, spiramycin, bacitracin zinc, lyncomycin, spectinomycin, penicillin, avilamycin and streptomycin
E			
EL	66	0	Tetracycline, oxytetracycline, chlortetracycline, carbadox, tylosin, sulfamides, furazolidone
F			
FIN	27	0	Including samples of coccidiostats and other medicinal substances such us lasalocid sodium, salinomycin sodium and narasin
I			
IRL		0	No detection of unauthorised use of antibiotics as growth promoters
L			
NL	222	7	
P	24		Some further for carbadox and olaquindox, but the data are grouped together with β-agonists
S	10	8	Tylosin and chlortetracycline
UK			

[a] Including only analyses for non-authorised additives for feedingstuffs (belonging to the groups antibiotics, growth promoters, coccidiostats and other drugs); not including analyses for other non authorised pharmacological active substances.

Comments for table 9:

The results are difficult to compare because each Member State searched for different substances. However, from the data received, the presence of forbidden antibiotics used as growth promoters was found in a significant number of samples.

Table 10: Constituents of animal origin

	Samples	Non-complying	Remarks
A	1 349	137	Non-complying samples: 110 < 0,1 %, 14 < 0,5 %, 4 *ca.* 0,5 %, 9 > 0,5 %
B	983	5	
D	25 828	1 064	Including samples from farms
DK	1 262	127	1 010 samples from feedingstuffs companies: fish meal in 73 samples (most cases << 0,5 %) in January-March and in 15 samples (most cases << 0,5 %) in April-December; meat/bone meal in 10 samples (all << 0,5 %) in January-March and in 8 samples (*) (most cases << 0,5 %) in April-December. (*) Three of the samples were drawn from fat 218 samples from farms: fish meal in 17 samples (most cases << 0,5 %) in January-March and in 2 samples (all << 0,5 %) in April-December; meat/bone meal was detected in only 2 samples (all << 0,5 %) in April-December. 34 samples from imports: none contained traces of fish meal or meat/bone meal.
E	19 825	252	
EL	343	1,5 %	
F	2 851	34	
FIN	1 216	3	686 controls for meat/bone meal (3 positive < 0,5 %) and 530 for fish meal
I			
IRL	1 237	60	10 positives for meat/bone meal (all traced back to a single consignment of imported maize gluten feed) and 50 positives for fish meal
L	101	25	Mammalian tissue and fish meal, where this is forbidden. 21<< 0,5 %; 3 < 0,5 %; 1 > 0,5 %
NL	2 754	44	33 positives for meat bone fragments and 11 for fish bone fragments
P	755	0	
S	454	32	All positive samples detected before July 2001
UK	8 272	8	

Comments on Table 10:

The results are difficult to compare because the Member States do not carry out identical monitoring programmes, e.g. targeting, number of samples, sensitivity of the methods of analysis can be different. In addition, it is not always clear whether the non-complying samples refer to meat-and-bone meal and/or fish meal.

Nevertheless, it has to be pointed out that the highest number of non-compliances in respect to the presence of constituents of animal origin in compound feedingstuffs was found at the beginning of 2001. Since then the number of non-compliances decreased significantly during the second half of 2001 and this trend continued into the early part of 2002.

4. **Conclusions**

The format of the reports provided is not homogeneous and from the activities carried out it is not possible to draw clear conclusions on areas requiring a coordinated action at Community level.

However, the results regarding controls of heavy metals show a generally low level of infringements which is not the case for the investigations on the presence of antibiotics banned as growth promoters in feedingstuffs, where the number of non-complying samples was significant according to the data received.

It is necessary to make progress on the establishment of a harmonised model for reporting the annual results of national controls in the field of animal nutrition.

In the meantime, the Commission considers appropriate to include the following targeted controls in the recommendation for a coordinated programme for 2003:

— restrictions on the production and use of feed materials of animal origin,

— contamination of certain industrial by-products with dioxins as a result of processing,

— presence of antibiotics banned as growth promoters.

These three issues should be subject to increased and coordinated control because they are currently identified as of particular concern in terms of feed safety. Firstly, it must be ensured that the restrictions on the production and use of feed materials of animal origin are effectively applied. Secondly, recent contamination of feed with dioxins has shown that some stages of the production process involve a higher risk, so that certain feed materials should be targeted for specific control. Thirdly, it must be ensured that banned antibiotics are not used as growth promoters in animal nutrition.

Notice concerning anti-dumping measures on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Romania

(2003/C 30/04)

By its judgment of 9 January 2003 in Appeal C-76/00 P, the Court of Justice of the European Communities **set aside the judgment of the Court of First Instance of the European Communities of 15 December 1999 in Joined Cases T-33/98 and T-34/98 *Petrotub and Republica* v *Council***. In doing so, it **annulled Council Regulation (EC) No 2320/97 of 17 November 1997** [1] imposing definitive anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Hungary, Poland, Russia, the Czech Republic, Romania and the Slovak Republic, repealing Regulation (EEC) No 1189/93 and terminating the proceeding in respect of such imports originating in the Republic of Croatia, **in so far as it concerns imports into the European Community manufactured by the following companies located in Romania**:

— **Petrotub SA,**

— **Republica SA.**

Consequently, the definitive anti-dumping duties paid pursuant to Council Regulation 2320/97 on imports in to the European Community of certain seamless pipes and tubes of iron or non-alloy steel falling within CN codes ex 7304 10 10, ex 7304 10 30, 7304 31 99, 7304 39 91 and 7222 39 93 manufactured by the abovementioned companies (under TARIC additional codes 8468, 8514 for Petrotub and 8469, 8515 for Republica) should be reimbursed. The reimbursement must be requested from national customs authorities in accordance with applicable national customs legislation.

As a consequence of the judgment of 9 January 2003, Petrotub SA and Republica SA are no longer subject to the anti-dumping measures imposed by Council Regulation (EC) No 2320/97 of 17 November 1997.

(1) OJ L 322, 25.11.1997, p. 1.

Publication of an application for registration pursuant to Article 6(2) of Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin

(2003/C 30/05)

This publication confers the right to object to the application pursuant to Article 7 of the abovementioned Regulation. Any objection to this application must be submitted via the competent authority in the Member State concerned within a time limit of six months from the date of this publication. The arguments for publication are set out below, in particular under point 4.6, and are considered to justify the application within the meaning of Regulation (EEC) No 2081/92.

COUNCIL REGULATION (EEC) No 2081/92

APPLICATION FOR REGISTRATION: ARTICLE 5

PDO (x) PGI ( )

National application No: 6/2001

1. **Responsible department in the Member State**

Name: Ministero delle Politiche agricole e forestali

Address: Via XX Settembre n. 20

I-00187 Roma

Tel. (39) 06 481 99 68

Fax (39) 06 42 01 31 26

2. **Applicant group**

2.1. Name: Consorzio Melinda scarl

2.2. Address: Via Tento, 200/9

I-38023 Cles (TN)

2.3. Composition: producer/processor (x) other ( )

3. **Type of product:** Class 1.6 – Fruits, vegetables, cereals, whether or not processed.

4. **Specification**

(Summary of requirements under Article 4(2)):

4.1. ***Name***

'mela Val di Non (Val di Non apple)'

4.2. ***Description***

A. **Varieties**

Apples covered by the PDO mela Val di Non are produced in the following varieties: Golden Delicious, Renetta del Canada, Red Delicious.

B. **Characteristics of the product**

<u>External appearance:</u>

On release for consumption, the fruit must be intact, with a fresh, healthy appearance, clean and free of foreign matter and odours.

The fruit must be:

— oblong, truncated cone-shaped for Golden Delicious and Red Delicious;

— truncated or flattened cone-shaped for Renetta del Canada.

The fruit is typically:

— from green to yellow in colour, occasionally with red tones, for Golden Delicious;

— red on a green background for Red Delicious;

— yellow-green with a rough skin for Renetta del Canada.

Chemical characteristics:

The fruit must have the following minimum sugar content:

— 12 °Brix for Golden Delicious

— 9 °Brix for Red Delicious;

— 9° Brix for Renetta del Canada.

The fruit must have the following minimum acidity level:

— 5 meq NaOH/100 g for Golden Delicious;

— 3,5 meq NaOH/100 g for Red Delicious;

— 8 meq NaOH/100 g for Renetta del Canada.

In addition, on harvest Golden Delicious apples must have a minimum Thiault index of

'total sugars (g/l) + acidity (g/l of malic acid) × 10' equal to 170.

Physical characteristics:

Hardness must not be less than:

— 5 kg/cm^2 for Golden Delicious;

— 5,5 kg/cm^2 for Red Delicious;

— 5 kg/cm^2 for Renetta del Canada.

Size and class:

The mela Val di Non PDO is reserved for apples of the 'Extra' Class and Class I. The minimum size is 65 mm. The minimum quality standards for the different varieties and classes are those laid down by Regulation (EEC) No 920/89, as amended.

Organoleptic characteristics:

The valued organoleptic characteristics of mela Val di Non apples derive from the correct balance of the above physic-chemical criteria, in particular:

— Golden Delicious apples are distinguished by their crunchy and juicy flesh and by their particular sweet-acidic taste;

— Red Delicious apples have a more doughy flesh with a predominantly sweetish taste;

— Renetta del Canada apples have varying consistency and taste depending on when they are eaten, ranging form a crunchy and decidedly acidic flesh to a doughy, sweet flesh, but maintain, however, strongly individual organoleptic characteristics.

4.3. ***Geographical area***

The mela Val di Non PDO production area is the catchment area of the River Noce as it flows through the Val di Sole and the Val di Non, also known as the Valli del Noce or Anaunia, in the Autonomous Province of Trento.

The area of the two valleys covers the whole of the territory of the following municipalities:

Andalo, Amblar, Bresimo, Brez, Cagnò, Caldes, Campodenno, Castelfondo, Cavareno, Cavedago, Cavizzana, Cis, Cles, Cloz, Commezzadura, Coredo, Croviana, Cunevo, Dambel, Denno, Dimaro, Don, Flavon, Fondo, Livo, Malè, Malosco, Mezzana, Monclassico, Nanno, Ossana, Peio, Pellizzano, Rabbi, Revò, Romallo, Romeno, Ronzone, Ruffrè, Rumo, Sanzeno, Sarnonico, Sfruz, Smarano, Spormaggiore, Sporminore, Taio, Tassullo, Terres, Terzolas, Ton, Tres, Tuenno, Vermiglio and Vervò.

4.4. ***Proof of origin***

Historical references:

Proof of origin is provided by historical references attesting to the long fruit-growing tradition of the area. This goes back to antiquity, as can also be seen from place names (Malè and Malosco derive their names from the Latin Maletum, 'place of apples') and authoritative historical sources (Carta di Regola of the Villa di Dardine of 1564 and Carta di Regola of Cles of 1641).

In a letter of 1739, a noble family was asked to send a basket of 'pomi rosmarini' to Vienna, already famed for their quality as far away as the capital of the Habsburg Empire.

From the beginning of the nineteenth century the sources become numerous and in the second half of the century fruit growers won a whole series of awards and prizes for their fruit at international expositions.

Cultural references:

There are numerous references in paintings and other works of art since before the Renaissance attesting to the importance of apples in the area, including poems in the local dialect to apples and fruit production in the valley.

Social and economic references:

The more than 5 000 growers of mela Val di Non apples, most of whom are members of storage, processing and sales cooperatives, together with the considerable economic activity connected with transport, packaging and processing constitute the economic basis of the valleys in which the apples are produced.

Traceability:

Attestation that mela Val di Non PDO apples are from the defined geographical production area is issued by the inspection body referred to in point 7 on the basis of checks on fulfilment of a range of requirements on growers throughout the production cycle.

The main requirements to be fulfilled by growers and/or packers in order to ensure the traceability of the product throughout the production cycle are:

— entry on a list of mela Val di Non producers;

— maintaining a register of all the land on which mela Val di Non apples are grown;

— maintaining production and packaging registers.

4.5. ***Method of production***

Cultivation system:

The cultivation methods used in the orchards in which mela Val di Non PDO apples are grown are traditional and aim to maintain the correct balance between growth and fruit production, thereby achieving a quality product. To that end, the cultivation systems use standard trees and quenouille-trained trees.

Planting density:

Excessively dense planting is not permitted, the maximum number of plants being 4 800/ha.

Soil management:

The traditional production methods used in the area include the grassing of the land between the rows of trees for the whole productive life of the parcel and mowing during spring and summer. This is particularly important, not only ensuring the continuous and natural replacement of soil nutrients but also maintaining the soil's physical and biological structure by replacing organic substances. The additional mineral nutrients required are therefore minimal.

Control of production:

Production is controlled by means of appropriate pruning and thinning operations designed to ensure the best possible quality product. Pruning must be carried out manually each year during the winter dormant period and aims to ensure the right balance between the production of fruiting buds and vigour.

Irrigation:

Irrigation is essential in order to obtain a quality product and is carried out from March to October as required.

Harvesting:

Harvesting is exclusively manual and is carried out in August, September, October and the first two weeks of November depending on the ripeness of the varieties concerned.

Yield:

The maximum permitted yield is 68 t/ha.

Packaging

mela Val di Non apples must be packed in packaging permitting clear identification of the product.

4.6. ***Link***

Natural environment

Soil: Mela Val di Non apples are produced in an area that is highly suited to the production of apples of excellent organoleptic quality. The area's soils are formed from ‘dolomitic’ rock and in themselves provide an element of unity. One of the features of this type of soil is its exceptionally high level of exchangeable magnesium, often as much as twice the level considered normal in other fruit-growing areas.

The organic content of the soil, at between 4 % and 6 %, is excellent, as is the nitrogen content. The soil also has good levels of other macroelements and of minor elements.

Climate: the fruit-growing area has an extremely favourable south-south-east exposure and a climate ranging from temperate-oceanic to continental-alpine, strongly mitigated by the area's particular tectonic formation (wide glacial valley).

The area's low rainfall (an average of five to seven rainy days per month) means that there are up to 300 days of sunshine every year. The complete absence of fog and mist throughout the year and the low humidity results in a very clear atmosphere which allows the strong sunlight to play its full role in the biosynthesis of sugars and in developing the full ‘bouquet’ of aromas that characterise the apples produced in the area.

The clearness of the air during the hottest part of the day is also favoured by a southerly breeze that regularly gets up in the late morning (known as the Ora del Garda), caused by the movement of air masses originating over Lake Garda, the largest of the Italian lakes.

Air quality throughout the production area is constantly monitored by the *Agenzia provinciale per la protezione dell'ambiente* (Provincial Environmental Protection Agency), which can certify the absence of urban atmospheric pollution in the whole mela Val di Non production area.

The cool spring temperatures, during the initial phases in the development of the young fruit, promote the presence of natural gibberellin in the plant, which promotes efficient cell multiplication, producing a crunchy, naturally elongated fruit with, in the Delicious varieties, a typical truncated cone shape.

Rational irrigation prevents growth stress and ensures the balanced growth of flesh and skin, allowing the fruit to grow harmoniously throughout the summer, producing, in the case of the Delicious varieties, a particularly smooth skin without defects caused by russeting.

In addition, the alpine climate (hot days and cold nights) permits an excellent balance between the high level of photosynthesis products produced during the day and the low levels of sugar lost during the night. The balance is very positive, sugar losses caused by nocturnal respiration, which are directly proportional to night-time temperatures, being severely restricted by a climate that is particularly cool, even during summer nights.

The almost constant clear nights also play another vital role, covering the growing and ripening fruit in morning dew that, as it evaporates with the first rays of the sun, cools the fruit, producing an important reaction in the skin, giving it a pink tone in the case of Golden Delicious and Renetta del Canada and a bright, glossy red colour in that of Red Delicious.

The landscape, in an alpine region with a typical range of flora and its own particular wild fauna, described by botanists and naturalists, attests to the harmonious nature of the relationship between cultivation and the natural environment.

The human environment

Alongside the natural environment, centuries-long human intervention has had a decisive effect on the strong link between mela Val di Non apples and the defined production area, described in the historical information concerning the proof of origin and proven by an extensive historico-cultural and scientific bibliography.

The deep roots of the rural population in the production area, its age-old experience, its agricultural skills handed down from generation to generation, continuous research and the use of specific, traditional cultivation methods have created the conditions to permit apple-growing to consolidate over time to become what it is today, the historical, traditional and cultural heritage of the whole territory and the basis of its economy.

Today, 15 000 people out of a total population of 35 000 in the area work in apple production.

The life of the area's population moves in time with the phenology of apple production (in particular blossoming, ripening and harvesting) and many popular festivals, cultural events and congresses are linked to apples and to the significance of apple-growing in integrated mountain agriculture, in terms both of conserving the landscape and the natural environment and of agricultural traditions.

The link between natural and human environmental factors

The links between the above factors are such that the natural and human environments and the climate form an indissoluble whole.

This has resulted in the production of a special type of apple with unique organoleptic and quality characteristics that is highly renowned and appreciated, Val di Non apples everywhere enjoying a high reputation, with both consumers and the trade.

According to official surveys, Val di Non apples have for several decades constituted a category by themselves.

Mela Val di Non apples usually command prices on average 20 to 25 % and occasionally as much as 40 to 45 % higher than apples of the same size and colour, i.e. of the same commercial class, grown elsewhere.

This consistently higher price, linked to the provenance of the apples, is enjoyed by all three of the varieties for which protection as a mela Val di Non PDO is requested, i.e. Golden Delicious, Renetta del Canada and Red Delicious.

The wide range of results obtained in qualitative analyses of mela Val di Non apples, reveals not only the natural variability of the product but also a higher average quality. This is recognised by consumers who are prepared to pay considerably more for apples grown in this production area.

As well as being appreciated by consumers for their particular qualities linked to the environment, the renown of mela della Val di Non apples is shown by the prizes and certificates of merit they have won at numerous national and international fairs and exhibitions.

This is due to the total involvement, as regards culture, work and economic activity, of the inhabitants of the area in the process of production of mela Val di Non apples, that has created a strong link between the product and the environment and, in particular, over time a strong 'sentimental' link between the people of the valleys and this exceptional fruit.

4.7. ***Inspection body***

Name: CSQA

Address: Via San Gaetano, 74
I-36016 Thiene (VI)

4.8. ***Labelling***

The words **P.D.O 'mela Val di Non'** must appear on sales packaging and on individual apples.

It is prohibited to add to the designation any indication of origin not expressly provided for in the above specification or any additional indications likely to mislead consumers.

4.9. ***National requirements:*** —

EC No: IT/00197/2001/05.30.

Date of receipt of the full application: 10 July 2002.

STATE AID — BELGIUM

Aid C 30/2002 (ex NN 36/2002) — 'Special tax ruling scheme for US foreign sales corporations'

Invitation to submit comments pursuant to Article 88(2) of the EC Treaty

(2003/C 30/06)

(Text with EEA relevance)

By means of the letter dated 12 April 2002 and reproduced in the authentic language on the pages following this summary, the Commission notified Belgium of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the abovementioned measure.

Interested parties may submit their comments on the measure in respect of which the Commission is initiating the procedure within one month of the date of publication of this summary and the following letter to:

European Commission
Directorate-General for Competition
State Aid Registry
B-1049 Brussels
Fax (32-2) 296 12 42.

These comments will be communicated to Belgium. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

SUMMARY

Procedures

On 11 November 1998 the Commission adopted a notice on the application of the State aid rules to measures relating to direct business taxation [1] (hereinafter referred to as the notice), in which it stated its intention to examine or re-examine all the tax arrangements in force in the Member States.

In this connection, the Commission, by letter D/51238 of 23 March 2001, asked the Belgian authorities for information on the special tax ruling scheme for US foreign sales corporations ('FSCs'). The reply from the Belgian Government was received by letter dated 18 May 2001.

Description of the measure in respect of which the Commission is initiating the procedure

Under US tax legislation, companies taxable in the United States of America that engage in sales activities outside the country may assign some of those sales to subsidiaries or branches established in certain countries (including Belgium). These subsidiaries or branches are then recognised by the US authorities as FSCs. The income from sales assigned to FSCs receives favourable tax treatment in the United States of America.

FSCs established in Belgium may approach the Belgian tax administration and ask for their taxable income to be calculated on the basis of rules that derogate from ordinary law. These rules differ according to whether the sales are made in Belgium via a branch or a subsidiary of the US company.

If the FSC is a branch (FSC branch), the tax base is determined by applying the cost-plus method, which consists in applying a mark-up to the costs incurred by the branch. In the particular case of the Belgian FSC scheme, these costs do not include direct costs relating to advertising, sales promotion, carriage of goods and credit risks or the corporation tax paid by the FSC. The mark-up applied to total costs calculated in this way is 8 %. This gives a notional tax base which attracts the standard rate of Belgian corporation tax.

(1) OJ C 384, 10.12.1998.

If the FSC is a subsidiary (a company enjoying legal personality in Belgium: FSC subsidiary), its tax base is, in principle, determined on the basis of its profits for accounting purposes as in the case of companies subject to the ordinary-law tax regime. However, where profits determined in this way represent at least 8 % of the admissible costs incurred by the FSC, the Belgian tax administration considers that the operations between the FSC and affiliated companies have been carried out under market conditions and accepts the taxable income declared without investigating the matter further. The tax base obtained in this way attracts the standard rate of Belgian corporation tax.

The special scheme authorised by the Belgian tax administration is valid for three years and is tacitly renewable. Notice of termination may be given by each party six months before the end of the three-year period.

Assessment of the measure

The Commission takes the view that the FSC scheme is an aid scheme since it meets the four cumulative criteria of Article 87(1) of the EC Treaty.

The scheme confers on FSCs or the groups to which they belong an advantage which relieves them of charges normally borne by their budgets.

In the case of FSC branches, the advantage derives, on the one hand, from the exclusion of costs (advertising, sales promotion, carriage of goods, cover for credit risks) from their notional tax base, resulting in a much lower level of taxation than would have been the case with the conventional method of taxation, and, on the other, from the application of a small mark-up in calculating the flat-rate tax base. The 8 % mark-up seems small given the nature of the activities (sales) carried out by FSCs. Application of a small mark-up reduces taxation.

In the case of FSC subsidiaries, the advantage derives from the way in which the minimum mark-up, i.e. 8 % of admissible costs incurred, is calculated. As with FSC branches, the admissible costs to which the mark-up is applied relate to only a very small proportion of the operations carried out by FSCs and the 8 % mark-up seems low. The minimum mark-up calculated in this way thus seems to be substantially lower than that normally generated by FSC activities. The advantage here derives from the fact that the tax administration refrains explicitly from monitoring the 'at arm's length' nature of operations between FSC and affiliated companies once the minimum mark-up is reached. This approach, together with a small mark-up, reduces the level of corporation tax compared with the conventional method for determining taxable income.

— The tax reductions resulting from the method applied lead to a reduction in tax revenue and hence in State resources.

— Intra-Community trade is affected inasmuch as the purpose of FSCs is to sell goods that, generally speaking, involve substantial intra-Community trade. The tax advantages for FSCs are such as to strengthen their competitive position on the relevant markets.

— The measure is selective or specific in that it favours only companies authorised by the US authorities and established in Belgium. These criteria do not seem justified by the nature or general scheme of the Belgian tax system.

Since the measure has not been notified to the Commission, it constitutes aid that has been granted illegally.

None of the exemptions provided for in Article 87(2) and (3) seems applicable in the case in point. Accordingly, the Commission has doubts as to the compatibility of the FSC tax scheme with the common market.

TEXT OF THE LETTER

'Met dit schrijven stelt de Commissie België ervan in kennis, dat zij na onderzoek van de door uw autoriteiten met betrekking tot de bovengenoemde steunmaatregel verstrekte inlichtingen heeft besloten de procedure van artikel 88, lid 2, van het EG-Verdrag in te leiden.

In 1997 heeft de Raad (Ecofin) een gedragscode inzake de belastingregeling voor ondernemingen [2] goedgekeurd om een einde te maken aan de schadelijke praktijken op dit gebied. Zoals de Commissie in deze gedragscode had toegezegd, publiceerde zij in 1998 een mededeling over de toepassing van de regels betreffende steunmaatregelen van de staten op maatregelen op het gebied van de directe belasting op ondernemingen [3], waarin zij nogmaals benadrukt deze regels strikt te zullen toepassen, met inachtneming van het beginsel van gelijke behandeling. Deze procedure past in het kader van bovengenoemde mededeling.

[2] PB C 2 van 6.1.1998, blz. 2.

[3] PB C 384 van 10.12.1998.

1. **ACHTERGROND**

1. Bij brief D/51238 van 23 maart 2001 heeft de Commissie de Belgische autoriteiten gevraagd inlichtingen te verstrekken over het fiscaal rulingstelsel voor Amerikaanse verkoopcentra (Foreign Sales Corporations, hierna FSC's genoemd). Bij schrijven D/51659 van 23 april 2001 heeft de Commissie gevolg gegeven aan het door de Belgische regering bij fax van 9 april 2001 gedane verzoek en de oorspronkelijke antwoordtermijn verlengd tot 15 mei 2001. De Belgische regering heeft geantwoord bij brief van 18 mei 2001.

2. **BESCHRIJVING VAN HET BELASTINGSTELSEL VAN TOEPASSING OP IN BELGIË GEVESTIGDE US FOREIGN SALES CORPORATIONS**

2. Krachtens het Amerikaanse belastingrecht kunnen in de Verenigde Staten belastingplichtige ondernemingen waarvan de activiteit bestaat in het verrichten van voor de uitvoer bestemde verkopen, een deel van de opbrengsten van deze verkopen aan buiten de Verenigde Staten gevestigde dochterondernemingen of bijkantoren toewijzen. Deze dochterondernemingen of bijkantoren worden dan door de Amerikaanse autoriteiten erkend als FSC's. Op aan FSC's toegewezen verkoopopbrengsten is in de Verenigde Staten een gunstige belastingregeling van toepassing.

3. In België gevestigde FSC's kunnen de Belgische belastingdienst verzoeken hun belastbaar inkomen te berekenen volgens regels die van het gewone recht afwijken. Deze regels verschillen al naar gelang de in België gerealiseerde verkopen via een bijkantoor of via een dochteronderneming van het betrokken Amerikaanse bedrijf plaatsvinden.

4. Indien de FSC de vorm aanneemt van een bijkantoor (hierna „bijkantoor-FSC" genoemd), dan wordt het belastbare resultaat ervan vastgesteld volgens de zogeheten „cost plus"-methode. Deze methode bestaat erin een percentage op de door het bijkantoor gemaakte kosten toe te passen om de belastbare winst te bepalen. In het kader van de Belgische regeling voor FSC's worden de volgende kosten evenwel niet in aanmerking genomen: directe kosten in verband met reclame, verkoopbevordering, goederenvervoer en kredietrisico's, alsook de door de FSC betaalde inkomstenbelasting. Op het aldus berekende totale bedrag van de kosten wordt een winstpercentage van 8 % toegepast. Op die manier wordt een fictief belastbaar resultaat verkregen, dat aan het normale tarief van de Belgische vennootschapsbelasting onderworpen is.

5. Indien de FSC is opgericht als een dochteronderneming (een vennootschap die in België rechtspersoonlijkheid bezit, hierna „dochter-FSC" genoemd), dan wordt het belastbare resultaat ervan in beginsel vastgesteld op basis van de boekhoudkundige winst, net zoals dat voor de aan het gewone belastingstelsel onderworpen vennootschappen het geval is. Indien de aldus berekende winst echter tenminste 8 % bedraagt van de in aanmerking komende kosten die door de FSC zijn gemaakt, dan neemt de Belgische belastingdienst aan dat de transacties tussen de FSC en de verbonden ondernemingen tegen marktvoorwaarden („at arm's length") zijn gesloten en aanvaardt hij zonder aanvullend onderzoek het aangegeven belastbaar inkomen. Het aldus verkregen belastbare resultaat is aan het normale tarief van de Belgische vennootschapsbelasting onderworpen.

6. Amerikaanse ondernemingen die van deze regeling gebruik willen maken, moeten jaarlijks aan de Belgische belastingdienst het bewijs leveren dat de betrokken FSC nog steeds door de Amerikaanse autoriteiten als zodanig wordt erkend.

7. De door de Belgische belastingdienst toegestane bijzondere regeling geldt voor een termijn van drie jaar, die stilzwijgend kan worden verlengd. De regeling kan door de belastingdienst of de onderneming worden opgezegd zes maanden voordat de termijn van drie jaar verstrijkt.

3. **BEOORDELING VAN DE STEUNMAATREGEL**

Steunkarakter van de maatregelen: toepasselijkheid van artikel 87, lid 1, van het EG-Verdrag

8. Om als steunmaatregel in de zin van artikel 87, lid 1, van het EG-Verdrag te worden aangemerkt, moet een maatregel tegelijkertijd aan elk van de hieronder belichte vier criteria voldoen.

9. In de eerste plaats moet de maatregel een voordeel verlenen dat de lasten verlicht die een onderneming normaliter met haar eigen middelen moet dragen.

10. De Commissie acht de toepassing van een alternatieve aanslagwijze, namelijk een berekeningsmethode van het type „cost plus", in beginsel gerechtvaardigd om met handelstransacties tussen verbonden ondernemingen rekening te houden. De toepassing van een alternatieve berekeningsmethode moet evenwel ten doel hebben tot een aanslag te komen die vergelijkbaar is met die welke bij twee onafhankelijke ondernemingen zou worden verkregen door middel van de klassieke berekeningswijze, waarbij de belastbare winst wordt berekend door het verschil te maken tussen de baten en de lasten van de onderneming. In dit stadium is de Commissie van oordeel dat dit niet het nagestreefde doel is en dat de in het specifieke geval van de FSC's gehanteerde „cost plus"-methode de FSC's, of de groep waarvan zij deel uitmaken, een economisch voordeel kan opleveren.

11. In het geval van de regeling voor bijkantoor-FSC's (zie punt 4) kan het voordeel enerzijds voortvloeien uit het feit dat bij de vaststelling van de fictieve belastinggrondslag van deze bijkantoren met sommige kosten (kosten op het

gebied van reclame, verkoopbevordering, goederenvervoer en kredietrisico's) geen rekening wordt gehouden. Al deze kostenelementen houden immers rechtstreeks verband met de verkoop, die het voornaamste bedrijfsdoel van de FSC's vormt en dus een aanzienlijk deel van hun bedrijvigheid vertegenwoordigt. Het is derhalve niet uitgesloten dat de uit hoofde van deze regeling belaste winst slechts van een zeer beperkt deel van de in werkelijkheid door de FSC's gesloten transacties afkomstig is en de verschuldigde belasting daardoor aanzienlijk lager uitvalt dan die welke op grond van de klassieke aanslagwijze zou zijn verkregen. Het voordeel van deze regeling voor bijkantoor-FSC's kan anderzijds voortvloeien uit het hanteren van een laag percentage voor het berekenen van hun forfaitaire belastinggrondslag. Dit percentage van 8 % lijkt inderdaad gering in het licht van de aard van de door de FSC's verrichte activiteiten. Er mag immers worden aangenomen dat aan de direct met de verkoop verband houdende activiteiten van niet-administratieve aard gewoonlijk veel grotere winstmarges verbonden zijn. Het gebruik van een gering percentage voor het vaststellen van de belastbare winst resulteert dan ook in een belastingvermindering.

12. Wat de dochter-FSC's (zie punt 5) betreft, kunnen dankzij de vaststelling van een minimumwinstmarge van 8 % van de in aanmerking komende gemaakte kosten wellicht bepaalde misbruiken worden vermeden, maar wanneer geen aanvullende controles worden verricht dan kan dit een averechts effect hebben. Evenals bij de bijkantoor-FSC's hebben de in aanmerking komende kosten waarop het winstpercentage wordt toegepast, slechts op een zeer beperkt deel van de FSC-activiteiten betrekking en lijkt het percentage van 8 % aan de lage kant. De aldus berekende minimummarge lijkt derhalve aanmerkelijk kleiner dan die welke normaliter aan de activiteiten van de FSC verbonden is. In dit geval kan het voordeel voortvloeien uit het feit dat de belastingdienst er zodra de minimummarge is bereikt uitdrukkelijk van afziet om te controleren of de transacties tussen de FSC en de verbonden ondernemingen „at arm's length" geschieden. Dit feit in combinatie met een geringe winstmarge lijkt er dan ook toe te leiden dat de betrokken ondernemingen minder belastingen moeten betalen dan wanneer de klassieke methode voor de vaststelling van het belastbaar inkomen zou zijn toegepast.

13. In de tweede plaats moet het voordeel worden toegekend met staatsmiddelen. De vermindering van de belastinggrondslag (zie punt 11) in het geval van bijkantoor-FSC's en het hanteren van een ontoereikende referentiemarge (zie punt 12) in het geval van dochter-FSC's kunnen leiden tot een vermindering van de belastingontvangsten, die staatsmiddelen zijn.

14. In de derde plaats moet de maatregel de mededinging en het handelsverkeer tussen de lidstaten ongunstig beïnvloeden. Aan dit criterium lijkt al a priori te zijn voldaan, aangezien FSC's ten doel hebben goederen te verkopen waarin binnen de Gemeenschap over het algemeen intensief handel wordt gedreven en deze verkoopcentra tevens deel uitmaken van multinationale groepen. Volgens de jurisprudentie van het Hof van Justitie ([4]) en zoals in punt 11 van bovengenoemde mededeling wordt benadrukt, kan bovendien „op grond van het enkele feit dat de steun de positie van deze onderneming ten opzichte van andere concurrerende ondernemingen in het intracommunautaire handelsverkeer versterkt, worden aangenomen dat dit handelsverkeer ongunstig is beïnvloed." De fiscale voordelen die FSC's — of de groepen waartoe zij behoren — genieten, kunnen hun positie op de communautaire markten versterken ten opzichte van hun concurrenten.

15. Tenslotte moet de maatregel specifiek of selectief zijn, in die zin dat hij bepaalde ondernemingen of bepaalde producties begunstigt. Aangezien de betrokken fiscale bepalingen uitsluitend gelden voor FSC's, dochterondernemingen of bijkantoren van Amerikaanse ondernemingen die door de Amerikaanse belastingautoriteiten zijn erkend, mag worden aangenomen dat aan het selectiviteitscriterium is voldaan.

16. In punt 23 van bovenbedoelde mededeling wordt het volgende gesteld: „Het feit dat sommige maatregelen differentieel van aard zijn, betekent niet noodzakelijk dat zij als steunmaatregelen moeten worden beschouwd". Sommige maatregelen die op het eerste gezicht steunmaatregelen lijken, kunnen immers gerechtvaardigd blijken gelet op de aard en de opzet van het belastingstelsel. In het geval van de FSC's lijken noch de aard van hun activiteiten (de verkoop van goederen), noch de toepassing van belastingverdragen de gedifferentieerde behandeling te rechtvaardigen die Amerikaanse FSC's genieten ten opzichte van andere ondernemingen die hun goederen op de communautaire of niet-communautaire markten verkopen.

17. De voor dergelijke FSC's geldende regeling lijkt derhalve als een steunmaatregel in de zin van artikel 87, lid 1, van het EG-Verdrag te moeten worden aangemerkt.

Nieuw karakter van de steunmaatregel

18. Ondanks het verzoek van de Commissie hebben de Belgische autoriteiten de teksten tot invoering van de regeling niet verstrekt en evenmin nader gepreciseerd op welk moment deze is ingesteld. Aangezien naar van 1984 daterende wetgeving van de Verenigde Staten wordt verwezen, lijkt de regeling niet vóór de inwerkingtreding van het Verdrag tot uitvoering te zijn gebracht en derhalve niet te kunnen worden beschouwd als bestaande steun in de zin van artikel 1, onder b) i), van Verordening (EG) nr. 659/1999 van de Raad tot vaststelling van nadere bepalingen voor de toepassing van artikel 93 van het EG-Verdrag (PB L 83 van 27.3.1999, blz. 1). De steunmaatregel lijkt nooit door de Commissie of de Raad te zijn goedgekeurd en evenmin geacht te zijn goedgekeurd in de zin van artikel 1, onder b) ii) en iii), van genoemde verordening. Aangezien de regeling nog steeds van kracht lijkt te zijn, kan zij ook niet overeenkomstig artikel 1, onder b) iv), als bestaande steun worden beschouwd omdat de verjaringstermijn is verstreken. Tenslotte blijft de regeling niet beperkt tot onlangs geliberaliseerde economische sectoren en lijkt zij dus geen steun te zijn geworden na de inwerkingtreding ervan vanwege de ontwikkeling van de gemeenschappelijke markt, zoals bedoeld in artikel 1, onder b) v), van genoemde verordening.

([4]) Arrest van het Hof van Justitie van 17 september 1980 in zaak 730/79, Philip Morris.

19. Voorts lijkt de omstandigheid dat de regeling enige gelijkenissen kan vertonen met andere maatregelen die de Commissie in het verleden niet als staatssteun heeft aangemerkt, niet te volstaan om haar de status van bestaande steun te verlenen. Tenslotte heeft de Commissie naar aanleiding van vorenvermelde mededeling van 1998 de controle van staatssteunmaatregelen op het gebied van de directe belasting op ondernemingen weliswaar geïntensiveerd, maar deze intensivering lijkt niet van dusdanige aard dat het nieuwe karakter van de onderhavige maatregel erdoor wordt beïnvloed.

20. Onder die omstandigheden en tevens rekening houdend met het feit dat de Belgische autoriteiten niet hebben gepoogd aan te voeren dat het om bestaande steun ging en slechts summiere informatie hebben verstrekt, is de Commissie in dit stadium van oordeel dat de maatregel nieuwe steun betreft in de zin van artikel 1, onder c), van Verordening (EG) nr. 659/1999.

Onderzoek van de verenigbaarheid

21. Aangezien de belastingregeling voor in België gevestigde FSC's als een steunmaatregel mag worden beschouwd, dient te worden nagegaan of deze eventueel uit hoofde van de afwijkingen waarin de leden 2 en 3 van artikel 87 van het EG-Verdrag voorzien, alsnog met de gemeenschappelijke markt verenigbaar is.

22. De afwijkingen van artikel 87, lid 2, zijn hier niet van toepassing.

23. De afwijking van artikel 87, lid 3, onder a), die voorziet in de mogelijkheid steunmaatregelen toe te staan die de economische ontwikkeling bevorderen van streken waarin de levensstandaard abnormaal laag is of waar een ernstig gebrek aan werkgelegenheid heerst, is evenmin toepasbaar omdat geen enkel deel van het Belgische grondgebied aan deze criteria voldoet.

24. De Belgische belastingregeling voor FSC's behoort evenmin tot de categorie van de projecten van gemeenschappelijk Europees belang die in aanmerking komen voor de afwijking van artikel 87, lid 3, onder b).

25. Tenslotte dient te worden nagegaan of de betrokken regeling in aanmerking komt voor de afwijking van artikel 87, lid 3, onder c), die steunmaatregelen toestaat die de ontwikkeling van bepaalde vormen van economische bedrijvigheid of van bepaalde regionale economieën vergemakkelijken, mits de voorwaarden waaronder het handelsverkeer plaatsvindt daardoor niet zodanig worden veranderd dat het gemeenschappelijk belang wordt geschaad.

26. Aangezien de in het kader van de betrokken regeling toegekende belastingvoordelen niet afhankelijk zijn van het verrichten van investeringen, het scheppen van arbeidsplaatsen of het opzetten van specifieke projecten, vormen zij uitsluitend een verlichting van vaste lasten en kunnen zij bijgevolg als exploitatiesteun worden aangemerkt. Dergelijke steun is niet van dien aard dat hij op duurzame wijze tot de ontwikkeling van activiteiten of regio's bijdraagt, aangezien het effect ervan ophoudt zodra geen steun meer wordt verleend. De Commissie is dan ook van oordeel dat de betrokken steunmaatregel het handelsverkeer zodanig kan veranderen dat het gemeenschappelijk belang wordt geschaad.

27. De Belgische regeling voor FSC's lijkt dus op het eerste gezicht voor geen van de afwijkingen van artikel 87 van het EG-Verdrag in aanmerking te kunnen komen. De Commissie betwijfelt bijgevolg of de steunmaatregel verenigbaar is met de gemeenschappelijke markt.

28. Gelet op de bovenstaande overwegingen verzoekt de Commissie het Koninkrijk België in het kader van de procedure van artikel 88, lid 2, van het EG-Verdrag binnen een maand vanaf de datum van ontvangst van dit schrijven zijn opmerkingen te maken en alle dienstige inlichtingen te verstrekken voor de beoordeling van de steunmaatregel. De Commissie wenst meer in het bijzonder in kennis te worden gesteld van alle relevante wettelijke en bestuursrechtelijke teksten, alsook van het aantal ondernemingen die op de Belgische regeling voor FSC's een beroep hebben gedaan, waarbij onderscheid moet worden gemaakt tussen FSC's die als bijkantoor en FSC's die als dochteronderneming in België zijn opgericht.

29. De Commissie zou tenslotte ook graag de opmerkingen van België en van de belanghebbenden vernemen in verband met een eventueel gewettigd vertrouwen dat terugvordering van de steun in de weg zou staan, ingeval deze steun onrechtmatig en onverenigbaar zou worden verklaard.

30. De Commissie wijst België op de schorsende werking van artikel 88, lid 3, van het EG-Verdrag. Zij verwijst tevens naar artikel 14 van Verordening (EG) nr. 659/1999, krachtens hetwelk elke onrechtmatige steun van de begunstigde kan worden teruggevorderd.'.

'Par la présente, la Commission a l'honneur d'informer la Belgique que, après avoir examiné les informations fournies par les autorités belges, elle a décidé d'ouvrir la procédure prévue à l'article 88, paragraphe 2, du traité CE.

En 1997, le Conseil Ecofin adoptait un code de conduite sur la fiscalité des entreprises ([2]) afin de mettre fin aux pratiques dommageables en la matière. À la suite de l'engagement pris dans ce code, la Commission publiait en 1998 une communication relative à l'application des règles en matière d'aides d'État aux mesures relevant de la fiscalité directe des entreprises ([3]) réaffirmant sa détermination d'appliquer ces règles avec rigueur et dans le respect du principe d'égalité de traitement. La présente procédure s'inscrit dans le cadre de cette communication.

([2]) Journal officiel des Communautés européennes (JO C 2 du 6.1.1998, p. 2).

([3]) JO C 384 du 10.12.1998.

1. **HISTORIQUE**

1. Par lettre D/51238 du 23 mars 2001, la Commission a demandé aux autorités belges de lui fournir des renseignements sur le régime fiscal de *ruling* applicable aux sociétés de vente américaines (*Foreign Sales Corporations*, ci-après dénommées «FSC»). À la suite de la demande du gouvernement belge, par télécopie du 9 avril 2001, la Commission a, par lettre D/51659 du 23 avril 2001, prolongé le délai initial de réponse au 15 mai 2001. La réponse du gouvernement belge a été reçue par lettre du 18 mai 2001.

2. **DESCRIPTION DU RÉGIME FISCAL APPLICABLE AUX US FOREIGN SALES CORPORATIONS ÉTABLIES EN BELGIQUE**

2. Selon le droit fiscal américain, les sociétés imposables aux États-Unis qui exercent des activités de vente à l'exportation peuvent attribuer une partie des revenus tirés de ces ventes à des filiales ou succursales établies hors des États-Unis. Ces filiales ou succursales sont alors reconnues par les autorités américaines comme FSC. Le revenu des ventes attribuées aux FSC est soumis, aux États Unis, à un régime fiscal de faveur.

3. Les FSC établies en Belgique ont la possibilité d'introduire une demande auprès de l'administration fiscale belge afin que leur revenu imposable soit calculé selon des règles dérogeant au droit commun. Ces règles diffèrent selon que les ventes sont réalisées en Belgique par l'intermédiaire d'une succursale de la société américaine ou d'une filiale de cette société.

4. Si la FSC prend la forme d'une succursale (ci après dénommée «FSC-succursale»), le résultat imposable est déterminé selon la méthode dite du «cost plus» qui consiste à appliquer un taux de marge bénéficiaire aux coûts encourus par la succursale. Dans le cas particulier du régime belge des FSC, ces coûts ne comprennent pas les coûts directs relatifs à la publicité, à la promotion des ventes, au transport des marchandises et aux risques de crédit ni les impôts sur le revenu payés par la FSC. Le taux de marge bénéficiaire appliqué au total des coûts ainsi calculé est de 8 %. On obtient alors un résultat imposable fictif qui est soumis au taux normal de l'impôt belge des sociétés.

5. Si la FSC prend la forme d'une filiale [société ayant la personnalité juridique en Belgique (ci-après dénommée «FSC-filiale»)], son résultat imposable est en principe déterminé sur la base du bénéfice comptable comme pour les sociétés soumises au régime fiscal de droit commun. Toutefois, lorsque le bénéfice ainsi déterminé représente au moins 8 % des frais admissibles encourus par la FSC, l'administration fiscale belge considère que les opérations entre la FSC et les sociétés liées ont été réalisées aux conditions du marché (*at arm's length*) et accepte les revenus imposables déclarés, sans investigation complémentaire. Le résultat imposable ainsi obtenu est soumis au taux normal de l'impôt belge des sociétés.

6. Les entreprises américaines souhaitant bénéficier de ce régime doivent chaque année fournir à l'administration fiscale belge la preuve que la FSC est toujours reconnue comme telle par les autorités américaines.

7. Le régime spécial accordé par l'administration fiscale belge est valable pour trois années et est reconductible tacitement. Il peut être dénoncé par l'administration fiscale ou par l'entreprise six mois avant la fin de la période de trois ans.

3. **APPRÉCIATION DE LA MESURE**

Caractère d'aide des mesures: applicabilité de l'article 87, paragraphe 1, du traité CE

8. Pour être qualifiée d'aide au sens de l'article 87, paragraphe 1, du traité CE, une mesure doit satisfaire cumulativement aux quatre critères développés ci-après.

9. En premier lieu la mesure doit procurer un avantage qui allège les charges qui grèvent normalement le budget des entreprises.

10. La Commission considère que le recours à une méthode alternative d'imposition, de type «cost plus» est, en principe, légitime lorsqu'il s'agit de tenir compte des transactions commerciales entre sociétés liées. Toutefois, le recours à une méthode de calcul alternative doit avoir pour objectif une imposition comparable à celle qui aurait pu être obtenue entre deux opérateurs indépendants au moyen de la méthode classique où le bénéfice imposable est obtenu par différence entre les résultats et les charges de l'entreprise. La Commission estime à ce stade que cet objectif n'est pas poursuivi et que la méthode de «cost plus» utilisée dans le cas précis des FSC est susceptible de conférer un avantage économique auxdites FSC ou au groupe dont elles font partie.

11. Dans le régime appliqué aux FSC-succursales (point 4), l'avantage pourrait résulter, d'une part, de l'exclusion de frais (frais de publicité, de promotion des ventes, de transport des marchandises, frais liés à la prise en compte des risques de crédit) de leur base fictive d'imposition. En effet, tous ces éléments de coût se rapportent directement aux opérations de vente, principal objet des FSC, qui représentent donc une part importante de leurs activités. Dès lors, le bénéfice soumis à impôt dans le cadre de ce régime pourrait ne prendre en compte qu'une partie très limitée des opérations effectivement réalisées par les FSC et se traduire par une imposition nettement inférieure à celle qui aurait prévalu avec la méthode d'imposition classique. L'avantage de ce régime pour les FSC-succursales pourrait résulter, d'autre part, de l'utilisation d'un taux de marge faible pour calculer leur base imposable forfaitaire. Ce taux de 8 % semble faible eu égard à la nature des activités exercées par les FSC. Il semble, en effet, que les opérations directement liées à la vente, de nature non administrative, génèrent d'ordinaire des marges bénéficiaires sensiblement supérieures. Or, l'utilisation d'un taux de marge faible réduit l'impôt.

12. Dans le cas des FSC-filiales (point 5), la fixation d'une marge minimale de 8 % des frais encourus admissibles permet peut-être d'éviter certains abus mais est susceptible d'avoir un effet inverse en l'absence de contrôles complémentaires. Comme dans le cas des FSC-succursales, les frais admissibles auxquels le taux de marge est appliqué ne

prennent en compte qu'une partie très limitée des opérations réalisées par les FSC et le taux de marge de 8 % semble faible. La marge minimale ainsi calculée semble donc sensiblement inférieure à celle générée d'ordinaire par les activités exercées par les FSC. L'avantage pourrait résulter ici du fait que l'administration renonce explicitement à contrôler le caractère «at arm's length» des opérations entre la FSC et les sociétés liées dès que la marge minimale est atteinte. Cette renonciation, attachée à une marge faible, semble permettre une réduction de l'impôt des sociétés concernées par rapport à la méthode classique de détermination du revenu imposable.

13. En second lieu, l'avantage doit être octroyé au moyen de ressources de l'État. La réduction de l'assiette de l'impôt (paragraphes 13 et 11) dans le cas des FSC-succursales, l'utilisation d'une marge de référence insuffisante (paragraphe 12) dans le cas des FSC-filiales, pourraient entraîner la perte de recettes fiscales qui constituent des ressources d'État.

14. La mesure en cause doit, en troisième lieu, affecter la concurrence et les échanges entre les États membres. Ce critère apparaît d'emblée rempli dans la mesure où les FSC ont pour objectif de vendre des marchandises faisant en général l'objet d'un commerce intracommunautaire intense et font partie de groupes multinationaux. En outre, conformément à la jurisprudence de la Cour [4] et comme souligné au point 11 de la communication précitée, «le simple fait que l'aide renforce la position de cette entreprise par rapport à d'autres entreprises concurrentes dans les échanges intracommunautaires permet de considérer que ces échanges ont été affectés». En raison des avantages fiscaux dont ils bénéficient, les FSC ou les groupes auxquels elles appartiennent pourraient avoir, sur les marchés communautaires, une position renforcée par rapport à leurs concurrentes.

15. Enfin, la mesure doit être sélective ou spécifique en favorisant certaines entreprises ou certaines productions. Dans la mesure où les dispositions fiscales en cause ne concernent que les FSC, filiales ou succursales de sociétés américaines ayant obtenu un agrément auprès des autorités fiscales américaines, ou les groupes auxquels elles appartiennent, le critère de la sélectivité semble rempli.

16. Comme le souligne le point 23 de la communication précitée, «la nature différentielle de certaines mesures ne doit pas forcément les faire considérer comme des aides d'État». Certaines mesures apparaissant comme des aides peuvent en effet se révéler justifiées au regard de la nature et de l'économie du système. Dans le cas présent, ni la nature des activités des FSC, la vente de marchandises, ni l'application de conventions préventives de double imposition ne semblent pouvoir justifier le traitement différencié dont bénéficient les FSC américaines par rapport à d'autres sociétés qui vendent leurs marchandises sur les marchés communautaires ou extracommunautaires.

17. Le régime accordé à ces FSC semble donc constituer une aide au sens de l'article 87, paragraphe 1, du traité CE.

Caractère d'aide nouvelle de la mesure

18. Malgré la demande de la Commission, les autorité belges n'ont pas fourni les textes instituant le régime et n'ont pas davantage précisé à quel moment il a été établi. Dans la mesure où il fait référence à une législation des États-Unis qui remonte à 1984, le régime ne semble pas être antérieur à l'entrée en vigueur du traité et ne semble donc pas pouvoir être considéré comme une aide existante au sens de l'article 1er, point b) i), du règlement (CE) nº 659/1999 du Conseil du 22 mars 1999, portant modalités d'application de l'article 93 du traité CE (JO L 83 du 27.3.1999, p. 1). Il ne semble avoir jamais été autorisé par la Commission ni par le Conseil, ni être réputé avoir été autorisé, au sens de l'article 1er, points b) ii) et iii), dudit règlement. Dès lors que le régime semble être toujours en vigueur, il ne peut davantage être considéré comme existant en raison de l'expiration du délai de prescription, conformément au point iv) de la même disposition. Enfin, le régime n'est pas limité à des secteurs économiques récemment libéralisé et ne semble donc pas être devenu une aide après sa mise en vigueur, en raison de l'évolution du marché commun, au sens du point v) de ladite disposition.

19. Par ailleurs, la circonstance que le régime puisse comporter certaines analogies avec d'autres mesures que la Commission a considérées, par le passé, comme ne constituant pas des aides d'État, ne semble pas pouvoir lui conférer le statut d'aide existante. Enfin, s'il est vrai que la Commission a intensifié son activité de contrôle des mesures relevant de la fiscalité directe des entreprises du point de vue des aides d'État à la suite de la communication de 1998 précitée, cela ne semble pas davantage de nature à influencer le caractère nouveau de la mesure.

20. Dans ces conditions, compte tenu également de ce que les autorités belges n'ont pas cherché à prétendre qu'il s'agissait d'une aide existante et n'ont présenté que des informations sommaires, la Commission estime, à ce stade, que la mesure constitue une aide nouvelle au sens de l'article 1er, point c), du règlement (CE) nº 659/1999.

Examen de la compatibilité

21. Dans la mesure où le régime fiscal applicable aux FSC établies en Belgique constitue une aide, il y a lieu d'examiner son éventuelle compatibilité à la lumière des dérogations prévues à l'article 87, paragraphes 2 et 3, du traité CE.

22. Les dérogations prévues à l'article 87, paragraphe 2 ne sont pas d'application en l'espèce.

23. La dérogation prévue à l'article 87, paragraphe 3, point a), qui prévoit la possibilité d'autoriser des aides destinées à favoriser le développement économique de régions dans lesquelles le niveau de vie est anormalement bas, ou dans lesquelles sévit un grave sous-emploi, ne saurait être invoquée dans la mesure où aucune partie du territoire belge ne répond à ces critères.

(4) Arrêt de la Cour du 17 septembre 1980, Philip Morris, affaire 730.79.

24. De même, le régime fiscal belge des FSC ne saurait être qualifié de projet d'intérêt européen commun éligible à la dérogation prévue à l'article 87, paragraphe 3, point b).

25. Enfin, il convient d'examiner si le régime en question est susceptible de bénéficier de la dérogation prévue à l'article 87, paragraphe 3, point c) qui autorise les aides facilitant le développement de certaines activités ou régions pour autant que les conditions des échanges ne soient pas altérées dans une mesure contraire à l'intérêt commun.

26. Les avantages fiscaux accordés dans le cadre du régime précité n'étant pas liés à la réalisation d'investissements, à la création d'emploi ou de projets spécifiques, ils constituent uniquement des allégements de charge continus et peuvent, par conséquent, être qualifiés d'aides au fonctionnement. De telles aides au fonctionnement ne sont pas susceptibles de favoriser durablement le développement d'activités ou régions dans la mesure où leurs effets prennent fin dès que les aides s'arrêtent. La Commission estime donc que les aides en question sont susceptibles d'altérer les échanges dans une mesure contraire à l'intérêt commun.

27. Le régime belge des FSC ne semble *a priori* pouvoir bénéficier d'aucune des dérogations prévues à l'article 87 du traité CE. La Commission exprime donc ses doutes quant à la compatibilité de ces aides avec le marché commun.

28. Compte tenu des considérations qui précèdent, la Commission invite le Royaume de Belgique, dans le cadre de la procédure de l'article 88, paragraphe 2, du traité CE, à présenter ses observations et à fournir toute information utile pour l'évaluation de la mesure dans un délai d'un mois à compter de la date de réception de la présente. La Commission souhaite notamment recevoir une communication de tous les textes législatifs, réglementaires et administratifs pertinents et connaître le nombre de sociétés bénéficiant du régime belge des FSC, en distinguant selon qu'elles sont implantées en Belgique sous la forme d'une succursale ou d'une filiale.

29. Enfin, la Commission souhaiterait également recueillir les observations de la Belgique et des parties intéressées sur une éventuelle confiance légitime de nature à faire obstacle à la récupération des aides, au cas où ces aides seraient qualifiées d'illégales et d'incompatibles.

30. La Commission rappelle à la Belgique l'effet suspensif de l'article 88, paragraphe 3, du traité CE et se réfère à l'article 14 du règlement (CE) n° 659/1999 qui prévoit que toute aide illégale pourra faire l'objet d'une récupération auprès de son bénéficiaire.'

Non-opposition to a notified concentration

(Case COMP/M.3006 — Acea Distribuzione/BTicino/Siemens)

(2003/C 30/07)

(Text with EEA relevance)

On 19 November 2002 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 (EEC) No 4064/89. The full text of the decision is only available in Italian and will be made public after it is cleared of any business secrets it may contain. It will be available:

— as a paper version through the sales offices of the Office for Official Publications of the European Communities (see list on the last page),

— in electronic form in the 'CIT' version of the CELEX database, under document No 302M3006. CELEX is the computerised documentation system of European Community law.

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Notification of cooperation agreements

(Case COMP/C-2/38.553 — Dentsu + Publicis + Madame Badinter)

(2003/C 30/08)

(Text with EEA relevance)

1. On 31 October 2002 the Commission received notification under Articles 2 and 4 of Council Regulation No 17 from Publicis Group SA (Publicis), Madame Elizabeth Badinter and Dentsu Inc. (Dentsu) regarding a range of agreements entered into between the notifying parties.

2. Publicis is a French company, publicly traded on the Paris stock exchange. It is controlled by Madame Elizabeth Badinter who holds, directly and indirectly, a controlling share interest in Publicis. Dentsu is a Japanese company, publicly traded on the Tokyo stock exchange. It is not controlled by any shareholder or grouping of shareholders.

3. Dentsu, Publicis and the controlling shareholder of the latter have entered into various agreements, setting forth the terms and conditions of Dentsu's participation in the share capital of Publicis and the terms and conditions of a strategic partnership. This partnership aims at (i) facilitating the ability for Dentsu's clients to benefit from the Publicis (including Bcom3) global network and (ii) facilitating the ability of the clients of Publicis to access Dentsu's know-how in advertising services in Japan. By way of the notified agreements, the parties expect to compete more effectively with the large global networks of advertising groups, as well as with local competitors, to the greater benefit of their respective clients.

4. Following a preliminary analysis, the Commission considers that the notified agreement might be covered by Regulation No 17.

5. The Commission invites interested third parties to submit any observations they may have on the notified agreements.

6. Observations must reach the Commission not later than thirty days following the date of this publication. They can be sent by fax (No (32-2) 295 01 28) or by post, under reference number COMP/C-2/38.553 — Dentsu + Publicis + Madame Badinter, to the following address:

European Commission
Competition DG
Directorate C
Unit C-2 (Media)
B-1049 Brussels

Non-opposition to a notified concentration

(Case COMP/M.3030 — Eaton/Delta)

(2003/C 30/09)

(Text with EEA relevance)

On 22 January 2003, 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 (EEC) No 4064/89. The full text of the decision is only available in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

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Non-opposition to a notified concentration

(Case COMP/M.3055 — Rautakirja/Hachette Distribution Services/JV)

(2003/C 30/10)

(Text with EEA relevance)

On 29 January 2003, 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 (EEC) No 4064/89. The full text of the decision is only available in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

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Non-opposition to a notified concentration

(Case COMP/M.2879 — 3* Wallenius Lines AB/Wilhelmsen ASA/Hyuandai Merchant Marine)

(2003/C 30/11)

(Text with EEA relevance)

On 29 November 2002 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(2) of Council Regulation (EEC) No 4064/89. The full text of the decision is only available in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

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