

English edition

Legislation

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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 3597/92

of 14 December 1992

fixing the import levies on cereals and on wheat or rye flour, groats and meal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EEC) No 1738/92 ⁽²⁾, and in particular Article 13 (5) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy ⁽³⁾, as last amended by Regulation (EEC) No 2205/90 ⁽⁴⁾, and in particular Article 3 thereof,

Whereas the import levies on cereals, wheat and rye flour, and wheat groats and meal were fixed by Commission Regulation (EEC) No 1820/92 ⁽⁵⁾ and subsequent amending Regulations;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in

the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,

- for the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

Whereas these exchange rates being those recorded on 11 December 1992;

Whereas the aforesaid corrective factor affects the entire calculation basis for the levies, including the equivalence coefficients;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 1820/92 to today's offer prices and quotations known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 2727/75 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 15 December 1992.

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

Done at Brussels, 14 December 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 180, 1. 7. 1992, p. 1.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁵⁾ OJ No L 185, 4. 7. 1992, p. 1.

ANNEX

to the Commission Regulation of 14 December 1992 fixing the import levies on cereals and on wheat or rye flour, groats and meal

<i>(ECU/tonne)</i>	
CN code	Levy (°)
0709 90 60	133,28 (°) (°)
0712 90 19	133,28 (°) (°)
1001 10 10	172,61 (°) (°) (10)
1001 10 90	172,61 (°) (°) (10)
1001 90 91	146,53
1001 90 99	146,53 (11)
1002 00 00	157,21 (°)
1003 00 10	125,45
1003 00 90	125,45 (11)
1004 00 10	115,17
1004 00 90	115,17
1005 10 90	133,28 (°) (°)
1005 90 00	133,28 (°) (°)
1007 00 90	138,09 (°)
1008 10 00	49,09 (11)
1008 20 00	111,58 (°)
1008 30 00	37,98 (°)
1008 90 10	(7)
1008 90 90	37,98
1101 00 00	217,94 (°) (11)
1102 10 00	232,90 (°)
1103 11 10	280,06 (°) (10)
1103 11 90	234,55 (°)

(1) Where durum wheat originating in Morocco is transported directly from that country to the Community, the levy is reduced by ECU 0,60/tonne.

(2) In accordance with Regulation (EEC) No 715/90 the levies are not applied to products imported directly into the French overseas departments, originating in the African, Caribbean and Pacific States.

(3) Where maize originating in the ACP is imported into the Community the levy is reduced by ECU 1,81/tonne.

(4) Where millet and sorghum originating in the ACP is imported into the Community the levy is applied in accordance with Regulation (EEC) No 715/90.

(5) Where durum wheat and canary seed produced in Turkey are transported directly from that country to the Community, the levy is reduced by ECU 0,60/tonne.

(6) The import levy charged on rye produced in Turkey and transported directly from that country to the Community is laid down in Council Regulation (EEC) No 1180/77 and Commission Regulation (EEC) No 2622/71.

(7) The levy applicable to rye shall be charged on imports of the product falling within CN code 1008 90 10 (triticale).

(8) On importation into Portugal the levy is increased by the amount specified in Article 2 (2) of Regulation (EEC) No 3808/90.

(9) No levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC, except if paragraph 4 of the same Article applies.

(10) An amount equal to the amount fixed by Regulation (EEC) No 1825/91 is to be levied in accordance with Article 101 (4) of Decision 91/482/EEC.

(11) Products falling within this code, imported from Poland, Czechoslovakia or Hungary under the Interim Agreements concluded between those countries and the Community, and in respect of which EUR.1 certificates issued in accordance with Regulation (EEC) No 585/92 have been presented, are subject to the levies set out in the Annex to that Regulation.

COMMISSION REGULATION (EEC) No 3598/92

of 14 December 1992

fixing the premiums to be added to the import levies on cereals, flour and malt

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 1738/92⁽²⁾, and in particular Article 15 (6) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy⁽³⁾, as last amended by Regulation (EEC) No 2205/90⁽⁴⁾, and in particular Article 3 thereof,

Whereas the premiums to be added to the levies on cereals and malt were fixed by Commission Regulation (EEC) No 1821/92⁽⁵⁾ and subsequent amending Regulations;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,

- for the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

Whereas these exchange rates being those recorded on 11 December 1992;

Whereas, on the basis of today's cif prices and cif forward delivery prices, the premiums at present in force, which are to be added to the levies, should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The premiums referred to in Article 15 of Regulation (EEC) No 2727/75 to be added to the import levies fixed in advance in respect of cereals and malt coming from third countries shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 15 December 1992.

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

Done at Brussels, 14 December 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 180, 1. 7. 1992, p. 1.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁵⁾ OJ No L 185, 4. 7. 1992, p. 4.

ANNEX

to the Commission Regulation of 14 December 1992 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

(ECU/tonne)

CN code	Current	1st period	2nd period	3rd period
	12	1	2	3
0709 90 60	0	0	0	0
0712 90 19	0	0	0	0
1001 10 10	0	0	0	0
1001 10 90	0	0	0	0
1001 90 91	0	0	0	0
1001 90 99	0	0	0	0
1002 00 00	0	0	0	0
1003 00 10	0	0	0	0
1003 00 90	0	0	0	0
1004 00 10	0	0	0	0
1004 00 90	0	0	0	0
1005 10 90	0	0	0	0
1005 90 00	0	0	0	0
1007 00 90	0	0	0	0
1008 10 00	0	0	0	0
1008 20 00	0	0	0	0
1008 30 00	0	0	0	0
1008 90 90	0	0	0	0
1101 00 00	0	0	0	0

B. Malt

(ECU/tonne)

CN code	Current	1st period	2nd period	3rd period	4th period
	12	1	2	3	4
1107 10 11	0	0	0	0	0
1107 10 19	0	0	0	0	0
1107 10 91	0	0	0	0	0
1107 10 99	0	0	0	0	0
1107 20 00	0	0	0	0	0

COMMISSION REGULATION (EEC) No 3599/92
of 11 December 1992

**on the supply of white sugar as urgent aid for the people of Albania pursuant to
Council Regulation (EEC) No 3106/92**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Economic Community,

Article 1

Having regard to Council Regulation (EEC) No 3106/92 of 26 October 1992 on urgent action for the supply of agricultural products to the people of Albania⁽¹⁾, and in particular Article 5 thereof,

1. A tendering procedure is hereby initiated for the award of contracts for the supply pursuant to Regulation (EEC) No 3106/92 of two lots of 5 000 tonnes of white C sugar in accordance with the conditions laid down in this Regulation.

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy⁽²⁾, as last amended by Regulation (EEC) No 2205/90⁽³⁾, and in particular Article 5 (3) thereof,

2. The supply of each of the two lots shall include:

- (a) the mobilization of white C sugar produced in the Community within the meaning of the sixth subparagraph of point (c) of Article 24 (1a) of Council Regulation (EEC) No 1785/81⁽⁴⁾.

The sugar to be supplied must satisfy the quality and characteristic requirements laid down in Annex I. The product must be packed and labelled in accordance with the instructions in that Annex;

Whereas Regulation (EEC) No 3106/92 provides for urgent action for the free supply of agricultural products intended for the people of Albania; whereas the Albanian authorities have also requested the supply of white sugar; whereas this request should be granted; whereas pursuant to Article 2 of that Regulation suppliers are to be chosen by tendering procedure;

- (b) transport to the port of Durres at the expense of the successful tenderer, by 7 February 1993 at the latest. Delivery shall include unloading and placement at the entry of the storehouse at destination.

Whereas it is necessary to determine the conditions for participating in the tendering procedure for the award of supply contracts and the obligations of the successful tenderers;

Where the last subparagraph of Article 2 (2) applies, transport must be effected by 14 February 1993 at the latest.

Whereas, as regards the securities to be lodged by suppliers, Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products⁽⁵⁾, as last amended by Regulation (EEC) No 3745/89⁽⁶⁾, should apply;

Tenderers shall take out at their own expense the appropriate insurance to cover the goods up to the delivery stage fixed.

Article 2

Whereas the goods delivered do not qualify for export refunds and are not subject to compensatory amounts;

1. Tenders shall be transmitted by written telecommunication to the intervention agency of the Member State in which the goods are packed and stored prior to shipment.

Whereas the appropriate communications to ensure the optimal monitoring of operations until the taking over at destination should be provided for,

2. Tenders must be lodged in their entirety before 12.00 noon (Brussels time) on 7 January 1993.

Where no award is made under Article 5 (1), tenders must be lodged for a second submission before 12.00 noon (Brussels time) on 14 January 1993.

⁽¹⁾ OJ No L 312, 29. 10. 1992, p. 2.

⁽²⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽³⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁴⁾ OJ No L 205, 3. 8. 1985, p. 5.

⁽⁵⁾ OJ No L 364, 14. 12. 1989, p. 54.

⁽⁶⁾ OJ No L 177, 1. 7. 1981, p. 4.

Article 3

1. Tenders shall be valid only if they :
 - (a) indicate the precise reference to this Regulation ;
 - (b) indicate the name and address and in particular the telex/telefax number of a tenderer established in the Community ;
 - (c) cover an entire lot (net weight) ;
 - (d) indicate the total amount of the tender, expressed in ecus per tonne of goods. In addition, the amount shall be broken down to show separately the price offered for the manufacture and packaging of the goods, and the transport and other costs (including insurance) from the storehouse to the delivery stage referred to at Article 1 (2) (b) ;
 - (e) indicate, for transport by sea, the port of shipment in the Community ;
 - (f) indicate the exact address of the packaging plant and storehouse at which the goods are kept prior to dispatch ;
 - (g) are accompanied by proof that the tenderer has lodged a tendering security of ECU 20 per tonne in the name of the intervention agency in accordance with Title III of Regulation (EEC) No 2220/85. This proof shall be furnished by means of a document issued by the guarantor.
2. A tender which is not presented in accordance with this Article or which contains conditions other than those laid down in this Regulation shall not be valid.
3. No tender may be changed or withdrawn.

Article 4

The competent agencies referred to in Article 2 shall transmit to the Commission, by written telecommunication (telefax 2963305), not later than 24 hours following the closing date fixed for the submission of tenders for each of the two lots, the following information :

- (a) the number of tenders submitted within the deadline referred to in Article 2 and in accordance with Article 3 ;
- (b) separately and clearly for each tender :
 - the total ecu price offered, and the breakdown provided for in Article 3 (1) (d),
 - the places of packing and storage prior to dispatch,
 - the business name of the tenderer established in the Community.

Article 5

1. On the basis of the tenders received :
 - the delivery shall be awarded to the tenderer(s) whose tender(s) quote the lowest amounts ; in the event of equal quotes, awards will be made by drawing lots,
 - or, where necessary, no award shall be made, in particular where the tenders submitted exceed the prices normally obtaining on the market.
2. Within seven working days following the closing date for submission of tenders, the Commission shall inform each Member State of the tenders which have been accepted and of the awards which have not been made.
3. Within 10 working days following the closing date for submission of tenders, the agency referred to in Article 2 (1) shall inform all tenderers by written telecommunication of the outcome of the tendering procedure. Where an award is made, the successful tenderer shall be informed thereof immediately by written telecommunication.

Article 6

The tendering security provided for in Article 3 (1) (g) shall be released without delay :

- if a tender is not accepted or if no award is made,
- to the successful tenderer when proof is provided of the lodging of the delivery security in accordance with Article 7.

Article 7

Within five working days of being notified of the award of the delivery contract, the successful tenderer shall provide the agency indicated in Article 2 with proof that a delivery security amounting to 10 % of the tender amount, in accordance with Title III of Regulation (EEC) No 2220/85, has been lodged in its name. The proof shall be furnished by means of a document issued by the guarantor.

Article 8

1. The successful tenderer shall present the application for payment of the delivery to the intervention agency referred to in Article 2.

The application shall be accompanied by :

- the export certificate referred to in Article 12,

- the customs declarations of exportation,
- the transport documents,
- the T 5s, if necessary,
- the original of the take-over certificate drawn up in accordance with the specimen in Annex II and issued by the beneficiary or his representative (Agro Export, Ministry of External Trade, Tirana).

Where the certificate is not issued by the beneficiary, the Commission shall designate the agency competent to issue the certificate in accordance with the specimen referred to above.

2. The payment shall be made for the quantity of goods (net weight) recorded at the take-over and confirmed in the document of conformity provided for in Article 9 (2).

Article 9

1. The goods shall be inspected by the intervention agency of the Member State in which packing and storage are carried out before the consignment indicated by the successful tenderer in his offer. The inspection shall concern the quantity, the quality, packaging and labelling of the supply.

Following inspection, the agency shall issue a certificate of conformity.

2. An inspection of conformity of the supply as regards quantity, quality, packaging and labelling shall be carried out in the country of destination by an agency or a control firm designated by the agency mentioned in paragraph 1 in agreement with the successful tenderer. A certificate of conformity shall be issued following the inspection and transmitted directly to the intervention agency.

3. The agencies or control firms responsible for the inspections shall take separate representative samples, to be retained for the Commission, before loading in the Community as well as at the place of destination.

4. The costs relating to the inspections as well as the cost of samples shall be borne by the successful tenderer.

Article 10

1. For the purposes of releasing the delivery security, the primary requirement within the meaning of Article 20 of Regulation (EEC) No 2220/85 shall be completion of the delivery in accordance with the conditions laid down.

The quantity delivered shall be considered satisfactory where the net weight when taken over by the beneficiary is not more than 1 % less than the quantity awarded.

2. Proof of fulfilment of the obligations relating to the supply shall be given to the agency concerned by presenting the documents referred to in Article 8.

3. In the event of particular difficulties, the Commission shall take the appropriate measures.

Article 11

1. Except in cases of *force majeure*, the successful tenderer shall bear all risks which the goods may incur, in particular loss or deterioration as far as the supply stage laid down.

2. In cases of *force majeure*, the successful tenderer shall be freed from all or part of his obligations. In such cases, the competent agency responsible for payment shall take the appropriate measures after consulting the Commission.

Article 12

Without prejudice to Article 3 (1) of Regulation (EEC) No 2630/81 (*) box 20 (special conditions) of licence applications and export licences for C sugar shall indicate: 'Urgent aid — Regulation (EEC) No 3599/92. Export refunds and monetary compensatory amounts are not applicable'.

Article 13

The conversion rates to be used for payment of tenders and for the tendering and delivery securities shall be the agricultural conversion rates in force on the closing date for submission of tenders.

Article 14

1. Member States shall communicate to the Commission all information concerning the carrying out of a delivery, in particular the results of the inspections referred to in Article 9, actual delivery schedules and any incidents occurring during delivery.

2. The Commission shall communicate in good time to the competent agencies of the Member States all the information necessary to facilitate the proper execution of deliveries.

Article 15

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

(*) OJ No L 258, 11. 9. 1981, p. 16.

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

Done at Brussels, 11 December 1992.

For the Commission
Ray MAC SHARRY
Member of the Commission

ANNEX I

1. **Characteristics and quality of the goods** : white sugar of category 2 standard quality (Council Regulation (EEC) No 793/72 (OJ No L 94, 21. 4. 1972, p. 1.)) meeting the requirements set out in Article 3 (3) of Commission Regulation (EEC) No 2103/77 (OJ No L 246, 27. 9. 1977, p. 12.).

The rule provided at the second indent of Article 18 (2) (a) of Regulation (EEC) No 2103/77 is binding for determination of the sugar category.

2. **Packaging and marking** : new jute bags, with inner polythene bag at least 0.05 mm thick, minimum weight of jute and polythene 420 g, net capacity 50 kilograms.

Marking : the European flag (see OJ No C 114, 29. 4. 1991, p. 1, Annexes I and II).

3. Since the goods may be rebagged, the successful tenderer must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.
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ANNEX II

TAKE-OVER CERTIFICATE

I, the undersigned :

.....
(surname, name, business name)

acting for for the account of

..... hereby certify that the goods described below,
delivered pursuant to Commission Regulation (EEC) No 3599/92 have been taken over :

— Date and place of take-over :
.....

— Type of goods :
.....

— Tonnage (net) weight taken over :
.....

— Packaging :
.....
.....
.....

Observations :

.....
.....
.....
.....
.....

Signature :

Date :

COMMISSION REGULATION (EEC) No 3600/92

of 11 December 1992

laying down the detailed rules for the implementation of the first stage of the programme of work referred to in Article 8 (2) of Council Directive 91/414/EEC concerning the placing of plant protection products on the market

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market⁽¹⁾, and in particular Article 8 (2) thereof,

Whereas the Commission is to commence a programme of work for the gradual examination of active substances available on the market two years after the date of notification of Directive 91/414/EEC;

Whereas, given the very high number of active substances on the market on that date, a selection has already been made, taking into account in a balanced manner such aspects as health and/or environmental concern, the possibility of residues in treated products, the importance of the preparations containing these substances for agriculture, any manifest data gaps (or, conversely, the presence of a complete, updated data package), and any similarity of chemical or biological properties;

Whereas the relationship between producers, Member States and the Commission and the obligations on each of the parties for the implementation of the programme should be laid down;

Whereas a notification procedure has to be provided by which interested producers have the right to inform the Commission of their interest in securing the inclusion of an active substance in Annex I to the Directive and of their undertaking to submit all the requisite information for a proper evaluation of, and decision on, that active substance in the light of the criteria for inclusion set out in Article 5 of Directive 91/414/EEC;

Whereas it is necessary to define the obligations of notifiers with regard to the formats, the periods and the recipient authorities for the information to be submitted; whereas the administrative consequences which shall follow if these obligations are not satisfied have to be defined;

Whereas technical or scientific information about the potentially dangerous effects of an active substance or its residues submitted within the relevant time-limits by any other interested parties should also be taken into consideration for this evaluation;

Whereas the evaluation studies should be distributed among the competent authorities of the Member States; whereas, therefore, for each active substance a rapporteur Member State should be designated to examine and evaluate the information submitted, in close consultation with experts from other Member States, and to present to the Commission the results of the assessment and a recommendation that a decision be taken with regard to the active substance concerned;

Whereas the proceedings established under this Regulation should not prejudice proceedings to be undertaken in the framework of other Community legislations;

Whereas, in order to avoid duplication of work, and in particular experiments involving vertebrate animals, specific provisions have to be provided to stimulate producers to submit collective dossiers;

Whereas the procedures under the Regulation should not prejudice the possibility of investigation and prohibitory action under Council Directive 79/117/EEC⁽²⁾, as last amended by Commission Directive 91/188/EEC⁽³⁾, where information becomes available to the Commission showing that the requirements for prohibition provided for in Directive 79/117/EEC may be satisfied; whereas at the time of adoption of this Regulation such information regarding Atrazin and Quintozene is under particular examination;

Whereas procedural and administrative measures have to be taken at this time in order to ensure that the evaluation of active substances can effectively start from the date of implementation of Directive 91/414/EEC;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plant Health,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation lays down detailed rules for the implementation of the first stage of the programme of work referred to in Article 8 (2) of Directive 91/414/EEC (hereinafter referred to as 'the Directive'). The first stage involves an assessment of the substances listed in Annex I to this Regulation with a view to their possible inclusion

⁽¹⁾ OJ No L 230, 19. 8. 1991, p. 1, as corrected in OJ No L 170, 25. 6. 1992, p. 40.

⁽²⁾ OJ No L 33, 8. 2. 1979, p. 36.

⁽³⁾ OJ No L 92, 13. 4. 1991, p. 42.

in Annex I to Directive 91/414/EEC. The provisions of Article 6 (2) and (3) and the second subparagraph of Article 6 (4) of the Directive shall not apply to a substance listed in Annex I to this Regulation as long as the procedures provided in this Regulation with regard to such substance have not been finalized.

2. This Regulation shall apply without prejudice to:

- (a) reviews conducted by Member States, and in particular reviews with a view to authorization renewals under Article 4 (4) of the Directive;
- (b) reviews by the Commission pursuant to Article 5 (5) of the Directive;
- (c) assessments carried out under Directive 79/117/EEC.

Article 2

1. For the purpose of this Regulation, 'plant protection products', 'substances', 'active substances', 'preparations' and 'authorization of a plant protection product' shall have the meanings set out in Article 2 of the Directive.

2. The following definitions shall also apply for the purpose of this Regulation:

- (a) 'Producers' means
 - for active substances produced within the Community, the manufacturer or a person established within the Community designated by the manufacturer as his sole representative,
 - for active substances produced outside the Community, the person established within the Community and designated by the manufacturer as his sole representative or, whenever such person has not been designated, the importer(s) into the Community of the active substance, either on its own or in a preparation;
- (b) 'Committee' means the Standing Committee on Plant Health, referred to in Article 19 of the Directive.

Article 3

Member States shall designate an authority to coordinate cooperation with producers, other Member States and the Commission, and generally for the implementation of the programme of work referred to in Article 8 (2) of the Directive. They shall inform the Commission of the name of the designated authority.

Article 4

1. Any producer wishing to secure the inclusion of an active substance referred to in Annex I hereto, or any salts, esters or amines thereof, in Annex I to the Directive,

shall so notify the Commission within six months of the date of entry into force of this Regulation.

Without prejudice to the foregoing subparagraph, producers of an active substance listed in Annex I are also bound to inform the Commission within the same period when they no longer seek its inclusion in Annex I to the Directive.

2. Notification must be made to the Commission, DG VI, rue de la Loi 200, B-1049 Brussels, in accordance with the notification as shown in Annex II hereto, completed and containing the undertaking referred to in part 5 of the specimen notification.

3. Any producer who has not notified in time any given active substance referred to in paragraph 1 will be permitted to participate in the programme referred to in Article 1 only collectively with other notifiers of that active substance or, in the case referred to in paragraph 4 hereof, in assisting the notifying Member State, with the agreement of the original notifiers.

4. The Commission shall inform the Member States through the Committee when, for any given active substance, no producer has presented a notification in accordance with paragraph 2. Member States shall be able to declare their interest in securing the inclusion of the active substance in Annex I to the Directive, by means of the specimen notification shown in Annex II hereto. Notification must be sent to the Commission as quickly as possible, and no later than six months after the Member States have been informed by the Commission. The Member State having presented the notification shall carry out the duties of a producer as set out in Articles 5 to 8 hereof.

5. When, following the above procedure, no producer or Member State has notified an interest in obtaining the inclusion of a given active substance in Annex I to the Directive, a decision not to include that active substance may be taken in accordance with the final subparagraph of Article 8 (2) of the Directive.

Article 5

1. The Commission shall examine with the Committee the notifications referred to in Article 4 (2) and (4).

2. Following the examination referred to in paragraph 1, decisions shall be adopted on the following, according to the procedure under Article 19 of the Directive, in the form of a regulation:

- (a) the list of active substances adopted for assessment with a view to their possible inclusion in Annex I to the Directive;
- (b) designation of a rapporteur Member State for each active substance included in the list referred to in (a).

3. In the list referred to in paragraph 2 (a), certain substances with similar structures or chemical properties may be grouped together; if an active substance has been notified with different compositions which may lead to different toxicological properties or have different environmental effects, these may be listed separately.

4. For each substance adopted for assessment, the regulation referred to in paragraph 2 shall give:

- the names of all producers who have presented a notification in accordance with Article 2 (1), or, where appropriate, the Member States which have presented a notification under Article 4 (4),
- the name of the Member State designated as rapporteur,
- the deadline for the submission to the rapporteur Member State of the dossiers referred to in Article 6 hereof, generally laying down a period of 12 months for the compilation of the documents, and for the submission by any interested parties of technical or scientific information with regard to the potentially dangerous effects of the substance or its residues on human and/or animal health and/or on the environment.

5. When, during the reassessment referred to in Articles 6, 7 and 8 hereof, an imbalance becomes apparent in the responsibilities borne by the Member States as rapporteurs, it may be decided, using the procedure under Article 19 of the Directive, to designate a different Member State as rapporteur for a particular substance.

Article 6

1. Within the time-limit referred to in the third indent of Article 5 (4), the notifiers specified in the regulation referred to in that Article must, individually or collectively, send to the designated authority of the rapporteur Member State, for any given active substance:

- (a) the summary dossier referred to in paragraph 2 hereof; and
- (b) the complete dossier referred to in paragraph 3 hereof.

They shall also send this information to the experts as referred to in Article 7 (2), and, if so requested, to the competent authority referred to in Article 3 of each Member State.

Where for any substance the regulation as envisaged in Article 5 (4) indicates several notifications, the notifiers

concerned shall take all reasonable steps to present collectively the dossiers referred to in the first subparagraph. Where a dossier was not presented by all notifiers concerned, it shall mention the efforts made and the reasons why certain producers have not participated.

2. The summary dossier shall include the following:

- (a) a copy of the notification; in the case of a joint application made by several producers, a copy of the notifications presented in accordance with Article 4 and the name of the person designated by the producers concerned as being responsible for the joint dossier and the processing of the dossier in accordance with this Regulation;
- (b) the recommended conditions for the use of an active substance, to be considered in relation to its inclusion in Annex I to the Directive;
- (c) for each point of Annex II to the Directive, the available summaries and results of trials, the name of the person or institute that has carried out the trials; the same information for each point of Annex III to the Directive relevant to the assessment of the criteria referred to in Article 5 of the Directive and for one or more preparations which are representative for the conditions of use referred to in subparagraph (b);
- (d) when the information referred to in certain points of subparagraph (c) is not available:

- either, in accordance with the introductory provisions of Annexes II and III of the Directive, the scientific or technical reasons demonstrating that the information is not necessary for the assessment of the active substance according to the criteria referred to in Article 5 of the Directive,
- or an undertaking by the producer or producers submitting the dossier that the missing information will be sent at a later date; a detailed timetable and documents showing that the undertaking can be fulfilled must be submitted.

3. The complete dossier shall contain the protocols and the complete study reports concerning all the information referred to in paragraph 2 (c).

4. Where, for any given active substance, the dossiers referred to in paragraph 1 are not sent within the time-limit laid down in Article 5 (4) or where the dossiers sent clearly do not satisfy the requirements laid down in paragraphs 2 and 3 hereof, the rapporteur Member State shall inform the Commission, giving the reasons pleaded by the notifiers.

5. On the basis of the report of the rapporteur Member State referred to in paragraph 4, the Commission shall present to the Committee a draft decision not to include the active substance in Annex I, in accordance with the final subparagraph of Article 8 (2) of the Directive, unless :

- a new time-limit has been granted for the submission of a dossier fulfilling the requirements of paragraphs 2 and 3 ; a new time-limit will only be granted where the delay is proved to have been caused by efforts to present collective dossiers or by *force majeure*,
- a Member State informs the Commission of its wish to secure the inclusion of the active substance concerned in Annex I to the Directive and its readiness to ensure the composition of the dossiers as referred to in paragraph 1 hereof and to carry out the duties of notifier as set out in Articles 7 and 8 hereof.

Article 7

1. For each active substance for which it has been designated rapporteur, the Member State shall :

- (a) examine the dossiers referred to in Article 6 (2) and (3), in the order in which they are received from the notifier or notifiers concerned, as well as any information as referred to in the third indent of Article 5 (4) and any other available information ; if several dossiers are presented for one active substance, the dossier presented last will determine the order of its examination ;
- (b) immediately after examining a dossier, ensure that notifiers submit the updated summary dossier to the other Member States and to the Commission ;
- (c) send the Commission, as quickly as possible and at the latest 12 months after receipt of a dossier as referred to in Article 6 (2) and (3), a report of its assessment of the dossier, including a recommendation :
 - to include the active substance in Annex I to the Directive, stating the conditions for its inclusion, or
 - to remove the active substance from the market, or
 - to suspend the active substance from the market, with the option of reconsidering the inclusion of the active substance in Annex I after submission of the results of additional trials or of additional information specified in the report, or
 - to postpone any decision on possible inclusion pending the submission of the results of additional trials or information specified in the report.

2. From the start of the examination referred to in paragraph 1 (a), the rapporteur Member State may request the notifiers to improve the dossier, or add to it. Moreover, the rapporteur Member State shall, during this examination, consult with experts from other Member

States, accepted by the Commission on a proposal from the Member States concerned, with regard to the whole or certain parts of the dossier.

3. After receiving the summary dossier and the report referred to in paragraph 1, the Commission shall refer the dossier and the report to the Standing Committee on Plant Health for examination.

After that examination, the Commission shall, without prejudice to any proposal it may submit with a view to amending the Annex to Directive 79/117/EEC, present to the Committee either a draft directive to include the active substance in Annex I to the Directive, setting out (where appropriate) the conditions for such inclusion, or else a draft decision pursuant to the final subparagraph of Article 8 (2) of the Directive, whereby that active substance is not included in Annex I thereto.

4. However, where, following the examination referred to in paragraph 3, the submission of the results of certain additional trials or of additional information is required, the Commission shall determine :

- the time-limit within which the results or information concerned must be submitted to the rapporteur Member State and the experts designated according to paragraph 2 above,
- the time-limit within which the notifiers concerned must communicate to the rapporteur Member State and to the Commission their undertaking to submit the required results or information within the time-limit laid down in the first indent.

5. The Commission shall submit to the Committee a draft decision for non-inclusion in Annex I to the Directive. In accordance with the final subparagraph of Article 8 (2) thereof, where :

- the notifiers concerned have not communicated their undertaking to submit the required results within the time limit referred to in the second indent of paragraph 4,
- the rapporteur Member State has informed the Commission that the results referred to in the first indent of paragraph 4 have not been submitted within the time limit laid down.

Article 8

1. After receiving the results of the additional trials or the additional information, the rapporteur Member State must :

- (a) examine it in conjunction with the results of the dossier already submitted for the substance concerned ;
- (b) immediately after such examination, ensure that the summary of the additional trials and the results of those trials or the additional information are sent by the notifier to the other Member States and to the Commission ;

(c) communicate as quickly as possible, and within nine months at the latest following receipt of the results or information, to the Commission, the report of its assessment of the whole dossier including a recommendation :

- to include the active substance in Annex I stating the conditions for such inclusion,
- where the substance is already included in Annex I, to maintain or amend the conditions for inclusion, or
- to remove the active substance from the market, or
- to suspend the active substance from the market, with the option of reconsidering the inclusion of the active substance in Annex I after submission of certain additional trials or information in order to clarify any inconclusive points resulting from the additional trials or information submitted in accordance with Article 7 (4);
- or, where the results of the additional trials or information do not permit definite conclusions to be drawn, to postpone the decision pending the submission of certain further trials in order to clarify any inconclusive points resulting from the additional trials submitted in accordance with Article 7 (4).

2. The procedure provided for in Article 7 (2) is applicable to the examinations referred to in paragraph 1 (a) hereof.

3. After receiving the summary and report referred to in paragraph 1, the Commission shall refer them to the Committee for examination in the light of the examination already carried out in accordance with the first subparagraph of Article 7 (3).

After this examination, the Commission shall, without prejudice to any proposal it may submit with a view to

amending the Annex to Directive 79/117/EEC, present to the Committee either a draft decision to include the active substance in Annex I to the Directive, setting out (where appropriate) the conditions for such inclusion, or else a draft decision pursuant to the final subparagraph of Article 8 (2) of the Directive, whereby that active substance is not included in Annex I thereto. In the case of an active substance already listed in the said Annex, the draft decision may amend the conditions governing inclusion.

4. Where, following the examination by the Committee referred to in the first subparagraph of paragraph 3 above, the results of further trials appear necessary, Article 7 (4) and (5) and Article 8 (1) shall apply. In such cases, the Commission shall give the notifiers concerned its detailed reasons for requesting additional trials.

Article 9

Where, in respect of a substance mentioned in Annex A, the Commission presents a proposal for a total prohibition under Directive 79/117/EEC, the periods provided in this Regulation shall be suspended until a decision on this proposal has been taken. Where the Council decides on the total prohibition of the substance in the Annex to Directive 79/117/EEC, the procedure under this Regulation will be terminated.

Article 10

This Regulation shall enter into force on 1 February 1993.

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

Done at Brussels, 11 December 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX I

LIST OF SUBSTANCES COVERED BY THE FIRST STAGE OF THE WORK PROGRAMME
PROVIDED FOR IN ARTICLE 8 (2) OF DIRECTIVE 91/414/EEC

Name

1. Acephate	31. Chlorothalonil	60. Amitrole (Aminotriazole)
2. Metamidophos	32. Dinocap	61. Atrazine
3. Aldicarb	33. Fenarimol	62. Simazine
4. Amitraz	34. Fentin acetate	63. Bentazone
5. Azinphos-ethyl	35. Fentin hydroxide	64. Chlorotoluron
6. Azinphos-methyl	36. Flusilazole	65. 2,4-D
7. Carbendazim	37. Imazalil	66. 2,4-DB
8. Benomyl	38. Mancozeb	67. Ethofumesate
9. Thiophanate-methyl	39. Maneb	68. Fluroxypyr
10. Chlorpyrifos	40. Zineb	69. Glyphosate
11. Chlorpyrifos-methyl	41. Metiram	70. Ioxynil
12. Cyfluthrin	42. Propineb	71. Bromoxynil
13. Beta-cyfluthrin	43. Thiram	72. Isoproturon
14. Cyhalothrin	44. Ferbam	73. MCPA
15. Lambda-cyhalothrin	45. Ziram	74. MCPB
16. Cypermethrin	46. Propiconazole	75. Mecoprop
17. Alpha-cypermethrin	47. Pyrazophos	76. Mecoprop-P
18. DNOC	48. Quintozene	77. Metsulfuron
19. Deltamethrin	49. Thiabendazole	78. Tifensulfuron
20. Dinoterb	50. Vinclozolin	79. Triasulfuron
21. Endosulfan	51. Procymidone	80. Molinate
22. Fenthion	52. Iprodione	81. Monolinuron
23. Fenvalerate	53. Chlozolate	82. Linuron
24. Esfenvalerate	54. Chlorpropham	83. Paraquat
25. Lindane	55. Propham	84. Diquat
26. Parathion	56. Daminozide	85. Pendimethalin
27. Parathion-methyl	57. Maleic hydrazide	86. Desmedipham
28. Permethrin	58. Tecnazene	87. Phenmedipham
29. Benalaxyl	59. Alachlor	88. Propyzamide
30. Metalaxyl		89. Pyridate
		90. Warfarin

ANNEX II

MODEL

Notification of an active substance according to Article 4 (1) of Regulation (EEC) No 3600/92

1. *Identification data on the notifier*
 - 1.1 Manufacturer of the active substance (name, address, including location of plant):
 - 1.2 Notifying company (name, address, etc.) (if different from 1.1):
 - 1.2.a. Acting as:
 - sole representative designated by the manufacturer,
 - importer not designated as sole representative of the manufacturer.
 - 1.3 Name of the (physical) person responsible for the notification and further engagements resulting from Regulation (EEC) No 3600/92.
 - 1.3.1. Address for correspondence:
 - 1.3.2. (a) Telephone No:
(b) Telex No:
(c) Telefax No:
 - 1.3.3. (a) Contact:
(b) Alternative:
2. *Information to facilitate identification*
 - 2.1 Common name proposed or ISO-accepted, and synonyms, specifying, where relevant, any salts or esters produced by the manufacturer.
 - 2.2 Chemical name (IUPAC nomenclature).
 - 2.3 Manufacturer's development code number(s).
 - 2.4 CAS, CIPAC and EEC numbers (if available).
 - 2.5 Empirical and structural formula, molecular mass.
 - 2.6 Specification of purity of the active substance in g/kg or g/l as appropriate.
 - 2.7 Identity of isomers, impurities and additives (e.g. stabilizers), together with the structural formula and the possible range expressed in g/kg or g/l.
3. *Information on use conditions to be covered by the inclusion in Annex I and supported by the applicant*
 - 3.1 Function, e.g. fungicide, herbicide, insecticide, repellent, growth regulator.
 - 3.2 Field of use envisaged, e.g. field, glasshouse, food or feed storage, home garden.
 - 3.3 Any specific health, agricultural, plant health or environmental conditions under which the active substance may or should not be used.
 - 3.4 Harmful organisms controlled and crops or products protected or treated.
4. *Information on authorized uses known to the notifier*
 - 4.1 Countries where there is registration (EC).
 - 4.2 Countries where there is registration (non EC).
 - 4.3 Registered uses in EC, including all relevant conditions.
 - 4.4 Formulations Name, type (GIFAP/FAO code) and content of active substance (in g/kg or g/l).
5. *Undertaking to submit dossier*

The notification confirms that the above information is honest and correct. He agrees to submit to the competent authorities of the designated reporting Member State the dossiers as set out in Article 6 of Regulation (EEC) No 3600/92 within a period of 12 months of the Commission decision provided for in Article 5 (4) of this Regulation. Whenever this decision mentions several notifiers for this active substance, the notifier will undertake all reasonable efforts to present a single dossier collectively with the other notifiers.

Signature (of the person competent to act for the company mentioned under 1.1).

COMMISSION REGULATION (EEC) No 3601/92

of 14 December 1992

laying down detailed rules for the application of specific measures for table olives

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1332/92 of 18 May 1992 introducing specific measures for table olives⁽¹⁾, and in particular Article 5 thereof,

Whereas Regulation (EEC) No 1332/92 provides for a Community contribution towards the financing of measures to encourage an increase in the consumption of table olives in the Community;

Whereas the chief measures to be taken into consideration for granting Community financial assistance should be defined;

Whereas these measures must form part of a coherent strategy and must provide guarantees regarding the attainment of medium-term objectives and the safeguarding of Community interests; whereas the measures must involve the principal economic operators in the sector concerned, be presented in a uniform manner and contain sufficient information to enable them to be assessed;

Whereas in order to encourage grouped initiatives and contacts between those concerned, provision should be made for a system for the dissemination of draft measures; whereas such dissemination should be carried out by intermediary bodies appointed by the Member States;

Whereas detailed rules should be laid down to govern cooperation between the bodies appointed by the Member States and the Commission with a view to evaluating and selecting projects;

Whereas the various rules for carrying out commitments will be the subject of contracts between the parties concerned and the competent national agencies, drawn up on the basis of standard contracts made available by the Commission;

Whereas the Member States must supervise implementation of the measures and the Commission must be kept informed of the results of the measures provided for in this Regulation;

Whereas Regulation (EEC) No 1332/92 also provides for a Community contribution for the constitution of working capital with the objective of stabilizing supply;

Whereas, in order to ensure that this aid scheme operates properly, the information which the bodies applying for

aid must give to the competent authority regarding their working capital and economic activity, as well as the verification which the national authority must carry out must be defined;

Whereas, in order to ensure that such working capital is constituted as rapidly as possible, provision should be made for the possibility of granting advances; whereas the conditions in which such advances may be paid and the amount thereof must also be determined; whereas, however, payment of advances must be subject to the lodging of a security to ensure that recipients fulfil their obligations;

Whereas suitable penalties must be laid down for serious failures to comply with the obligations provided for in Regulation (EEC) No 1332/92 and this Regulation;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Oils and Fats,

HAS ADOPTED THIS REGULATION:

TITLE I

Promotional measures

Article 1

1. Measures to develop the consumption of table olives in the Community as referred to in Article 1 of Regulation (EEC) No 1332/92 shall fall within the framework of programmes.
2. 'Programme' means a coherent body of measures meeting the following requirements:
 - they must be on a sufficient scale to help increase the disposal of products and consumption, and/or
 - they must enable production to be adjusted and tailored to market requirements.
3. Programmes may be carried out over a period lasting one or more years but not exceeding three years, commencing on the date of signing of contracts as referred to in Article 7 (3).

(¹) OJ No L 145, 27. 5. 1992, p. 1.

Article 2

1. Programmes shall, in particular, cover more than one of the following measures :

- market surveys and consumer tests,
- research on the production of olives with a low salt content,
- development of new, environmentally sound production techniques,
- dissemination of research results in the areas of agronomy, nutrition and marketing to operators,
- development of new forms of market presentation and packaging,
- studies on nutrition and diet,
- organization of promotional campaigns,
- organization of and participation in trade fairs and exhibitions,
- preparation of publications and audiovisual material.

2. Measures which are receiving Community aid under other regulations or any other grant or subsidy shall not be eligible.

Article 3

1. The programmes referred to in Article 1 shall be presented by groups whose members include representatives of the various branches of the table-olive sector, such as producers' organizations or associations thereof and traders or associations thereof.

2. The groups submitting the aid application shall be solely responsible for the implementation of the measures in respect of which financial assistance is granted. The groups shall have the legal capacity to carry out the measures and shall be based in the Community.

Article 4

1. The groups referred to in Article 3 may forward preliminary draft programmes to the competent body designated by the Member State in which they are based showing the measures they propose to carry out under this Regulation, in accordance with the model in Annex I. Groups comprising organizations from several Member States shall be deemed to be based in the Member State in which the organization with the highest holding is based. Such preliminary draft programmes shall be forwarded not later than 31 January each year. However, in the first year of application, such programmes shall be forwarded by 15 March at the latest.

2. The body referred to in paragraph 1 shall send the preliminary draft programmes it has received to the

Commission, who shall circulate them to the competent bodies in the other Member States.

Article 5

1. Applications for financing shall be lodged with the competent body in the Member State in which the group or responsible partner is based, not later than 30 April each year. However, in the first year, applications may be lodged by 15 June at the latest.

Applications shall contain all the particulars set out in Annex II.

2. The competent body shall check the accuracy of the information in the applications and their compliance with this Regulation. It shall request additional information if necessary and draw up a reasoned opinion. This opinion shall contain an assessment of the economic coherence of the programmes and the technical quality of the measures, the accuracy of the estimates and the financing plans and the implementation capability.

The abovementioned body shall reject applications containing information which is obviously false or to which Article 2 (2) applies.

3. The competent body shall draw up a list of all the applications for aid and send it to the Commission with a copy of the applications selected, the reasoned opinion, and the reasons for not having selected the others. This information shall be sent not later than 30 June each year. However, for the first year of application, this information shall be sent by 15 August at the latest.

Article 6

Following scrutiny by the Management Committee for Oils and Fats, in accordance with Article 38 of Council Regulation No 136/66/EEC⁽¹⁾, the Commission shall draw up a list of the successful applications for Community financial assistance at the earliest opportunity.

The list shall be drawn up on the basis of the coherence of the strategies, the economic and technical merit of the proposed measures and programmes, their likely impact, the innovations they represent and their capacity to produce a significant increase in the consumption of table olives, and assurances as to the effectiveness and representativeness of the groups.

⁽¹⁾ OJ No 172, 30. 9. 1966, p. 3025/66.

Priority shall be given to measures covering more than one Member State and likely to have an impact on the Community market.

The Commission shall notify the list of selected measures to the competent bodies in the Member States immediately. The list shall be published in the 'C' series of the *Official Journal of the European Communities*.

Article 7

1. Applicants shall be informed individually of the outcome of their applications as promptly as possible by the competent body.

2. The competent bodies shall conclude contracts for the selected measures with the parties concerned within two months of notification of the list.

To that end the bodies shall use the standard contracts made available to them by the Commission. Those contracts shall contain the applicable general conditions which the contracting party shall be deemed to know and accept.

3. Contracts shall be subject to the lodging of a security equal to 15 % of the Community aid in favour of the competent body to ensure proper execution.

Such securities shall be lodged in accordance with Title III of Commission Regulation (EEC) No 2220/85⁽¹⁾.

Securities shall be released within the time-limits and under the conditions laid down in the first subparagraph of Article 8 (7).

Article 8

1. The parties concerned may submit applications for an advance as from the date of signing of the contract.

Advances may cover 30 % of the maximum Community aid.

Advances shall be paid subject to provision in favour of the competent body of a security of equivalent amount lodged in accordance with Title III of Regulation (EEC) No 2220/85.

2. Payments shall be made on the basis of quarterly invoices, the first of which shall be submitted together with the relevant supporting documents three months after the date of signing of the contract.

3. Applications for the balance shall be submitted not later than the end of the third month following completion of the measures provided for in the contract. They shall be accompanied by:

- the relevant supporting documents,
- a statement summarizing the measures carried out,
- a report assessing the results achieved to date and of the use which may be made thereof.

4. The competent body shall immediately forward a copy of the summary statement and of the assessment report referred to in paragraph 3 to the Commission.

The Commission may make observations within 45 days.

5. The balance shall be paid subject to verification of the particulars referred to in paragraph 3 and once it has been ascertained that the obligations laid down in the contract have been fulfilled.

6. The competent body shall make the payments within three months from receipt of applications. However, it may defer payment of an advance or of the balance where further checks are required.

7. The securities referred to in paragraph 1 shall be released subject to payment of the balance of the aid for the measures concerned.

However, on application by the contractor, the security may be released earlier where the advance has been set off against the quarterly payments referred to in paragraph 2.

8. Securities shall be forfeit in part where the advance exceeds the aid to be paid; the proportion of the security corresponding to the amount paid unduly shall be forfeit.

9. Securities shall be forfeit in part or in full in accordance with Regulation (EEC) No 2220/85 where the time limit laid down in paragraph 3 is not met.

Article 9

1. The competent bodies shall take the necessary measures to verify:

- the accuracy of the information and supporting documents supplied,
- fulfilment of all the contractual obligations,

in particular by means of technical, administrative and accounting checks at the premises of the contracting party, any partners of the contracting parties and subcontractors.

They shall inform the Commission immediately of any irregularities discovered.

2. With a view to the application of paragraph 1, where measures carried out by the contractor are executed in a Member State other than that in which the contracting competent body is established, the competent body of the Member State concerned shall provide the latter with all necessary cooperation.

⁽¹⁾ OJ No L 205, 3. 8. 1985, p. 5.

3. The Commission may at any time take part in the verifications and checks provided for in this Article.

It may also request that certain specific checks be carried out with its participation.

TITLE II

Aid for the constitution of working capital

Article 10

To qualify for specific aid for the constitution of working capital as provided for in Article 3 of Regulation (EEC) No 1332/92, interested parties shall communicate to the competent authority:

- (a) the structure of the working capital and proof of the interested party's contribution to the said capital;
- (b) the arrangements for financing the working capital so that it can operate in a proper manner with a view to attaining the objectives laid down in Article 3 of the abovementioned Regulation; such proof may be provided in the form of statements from a separate bank account;
- (c) supporting documents attesting to the value of the produce marketed:
 - in the first marketing year following the date of recognition of the producers' group or association of producers' groups or the date of establishment of the cooperative or association of cooperatives,
 - or, where applicable, in a subsequent year after recognition or establishment, as the case may be.

The value of the produce marketed shall be determined on the basis of:

- the annual sales in the said marketing year,
- the average producer prices obtained over that marketing year.

Article 11

During the three marketing years following the payment of the aid in accordance with Article 12, the competent authority shall ensure:

- that the working capital has operated and has been sustained as stated in the communication sent pursuant to Article 10 (b),
- that, at the beginning of each marketing year, the capital is reconstituted. The value of stocks of produce

may be taken into account for the purposes of evaluating compliance with this obligation.

For the purposes of verification, the body concerned shall at all times keep at the disposal of the competent authority the bank statements and supporting documents attesting to transactions relevant to the operation of the capital for a period of five years.

Article 12

1. The specific aid for the constitution of working capital, comprising both the aid from the Member State and the Community aid, shall be paid by the competent national authority to the bodies concerned within a maximum of three months after submission of the aid application in accordance with Annex IV, once compliance with Article 11 has been verified.

2. However, Member States may grant and advance payment to interested parties which so request, provided that applicants:

- have submitted an application in accordance with Annex III,
- furnish proof that the working capital has been constituted as provided for in Article 3 of Regulation (EEC) No 1332/92.

Advances shall not exceed 60 % of the total financial contribution from the Member State and the Community to the financing of the working capital, determined on the basis of estimated sales data for the marketing year taken into account in Article 10 (c), in accordance with 4 of Annex III.

Where advances are paid, applications for the balance of the aid shall be submitted in accordance with Annex IV.

3. Payment of advances shall be conditional on the applicants' furnishing proof that a security equal to 110 % of the advance has been lodged.

Securities shall be lodged in accordance with Title III of Regulation (EEC) No 2220/85.

4. Securities shall be released forthwith on payment of the balance of the aid.

5. The security shall be forfeit in part where the advance exceeds the amount of the aid to be paid; the security shall be forfeit to the extent of the amount unduly paid.

6. The security shall be forfeit in full if the application for aid has not been lodged within four months of the end of the second marketing year following the date on which the application for an advance was lodged.

TITLE III

General and financial provisions

Article 13

Marketing years for table olives shall commence on 1 September and shall end on 31 August of the following year.

Article 14

1. The cases where payment is made wrongly, the competent body shall recover the sums paid, plus interest over the period from the date of payment to the date of actual recovery. The interest rate applicable shall be that applied by the European Monetary Cooperation Fund to its operations in ecus, as published in the 'C' series of the

Official Journal, in force on the final date laid down for repayment.

2. Aid recovered and interest shall be paid to the disbursing agencies or departments and deducted by the latter from expenditure financed by the European Agricultural Guidance and Guarantee Fund in proportion to the Community financing.

Article 15

Member States shall take the necessary steps to penalize any failure to fulfil the undertakings given or the obligations contracted under Regulation (EEC) No 1322/92 and under this Regulation.

Article 16

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

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

Done at Brussels, 14 December 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX I

PRELIMINARY DRAFT PROGRAMME

1. Identification of applicant		
Name or company name :		
Place of business in the Member State :		
Address :		
Telephone :	Telex :	Telefax :
2. Partners :		
Name or company name :	Main activity :	Member State :
3. Proposed programme :		
Product(s) concerned :		
Objective :		
Measures envisaged :		
Brief description :		
Duration :	Estimated amount :	
Date :	<i>(Signature)</i> (¹)	

(¹) Of the person authorized by the group or partners.

5.2. Partners (one form for each)

Name or company name :													
Legal status :	Type : (1) <table style="margin-left: 20px; border: none;"> <tr> <td>OP</td><td><input type="checkbox"/></td> <td>IT</td><td><input type="checkbox"/></td> <td>D</td><td><input type="checkbox"/></td> </tr> <tr> <td>A</td><td><input type="checkbox"/></td> <td>C</td><td><input type="checkbox"/></td> <td>O</td><td><input type="checkbox"/></td> </tr> </table>	OP	<input type="checkbox"/>	IT	<input type="checkbox"/>	D	<input type="checkbox"/>	A	<input type="checkbox"/>	C	<input type="checkbox"/>	O	<input type="checkbox"/>
OP	<input type="checkbox"/>	IT	<input type="checkbox"/>	D	<input type="checkbox"/>								
A	<input type="checkbox"/>	C	<input type="checkbox"/>	O	<input type="checkbox"/>								
Main activity :													
Role in the group : <table style="margin-left: 20px; border: none;"> <tr> <td>— partner</td><td><input type="checkbox"/></td> </tr> <tr> <td>— prime contractor</td><td><input type="checkbox"/></td> </tr> </table>		— partner	<input type="checkbox"/>	— prime contractor	<input type="checkbox"/>								
— partner	<input type="checkbox"/>												
— prime contractor	<input type="checkbox"/>												
Responsibility and contribution to implementation of the programme :													
Experience and references (field of activity) :													
Contribution to financing of programme (in national currency) : — First year — Second year — Third year Total :													
Right to use the results :													

(1) OP = Producers' organization
 IT = Processing firm
 AS = Association

C = Trader
 D = Retailer
 O = Other

6. Financing of the programme

6.1. Total cost of programme ⁽¹⁾ ⁽²⁾: (national currency)

6.2. Community contribution requested:

(a) year 1: (national currency)

(b) year 2: (national currency)

(c) year 3: (national currency)

6.3. Contribution of the group: (national currency)

of which:

— own funds:

— loans:

— payments in kind:

— other contributions:

7. General information

Subcontractors: yes no

If yes, specify which:

Specify task(s):

Type of commitment: contract ⁽³⁾ other ⁽³⁾

If other, specify which:

8. Declaration

The undersigned declare(s):

(a) that he/they have the necessary funds to ensure full financing of the programme;

(b) that he/they are not receiving any other Community financial assistance or any other grant or subsidy.

Date:

Signature ⁽⁴⁾

⁽¹⁾ Exclusive of VAT.

⁽²⁾ For the duration of implementation of the programme.

⁽³⁾ Attach copy.

⁽⁴⁾ Of the person authorized by the group or partners.

II

DESCRIPTION OF THE PROGRAMME

Programmes must contain at least the following :

1. A summary of the programme concerning the aspects referred to in points 3 to 6 (not more than two pages).
2. Reasons and objectives.
3. The proposed measures.
4. Strategy : targets, methods, the phases of implementation and the timetable.
5. Implementation of the measures : details of the technical, scientific, economic, financial, media, logistic aspects.
6. The anticipated results and advantages for the sector and the Community market.
7. The criteria for assessing progress and results on completion of the programme.
8. Outlook as regards use and dissemination of results.

III

BUDGET

The net budget for the measures, before tax, expressed in national currency, broken down and reasoned (¹), showing how the amount is to be allocated by category and by year.

The budget shall include the cost of assessing the results of the measures during implementation and on completion and the cost of feasibility studies where necessary.

(¹) On the basis of estimates, fees, etc. and, in the case of subcontracting, offers.

ANNEX III

APPLICATION FOR AN ADVANCE ON THE AID REFERRED TO IN ARTICLE 12

Member State :

Year :

The following data relate to :

Marketing year :

1. Business name :

2. Legal form :

3. Address (street, number, locality, telephone number, telex number, telefax):

— of the administrative headquarters :

— of the sales headquarters :

4. Estimated sales data for the reference marketing year :

Product	Produce harvested (tonnes)	Unsold stocks (tonnes)	Losses (tonnes)	Produce marketed (tonnes)	Average price obtained (national currency/tonne)	Value of produce marketed
	(a)	(b)	(c)	(d) = (a) - (b) - (c)	(e)	(f) = (d) × (e)
Total						

5. Members' funding of working capital :

(a) Membership fees : Other form of funding :

(b) Structure of the working capital constituted :

(c) Amount of the working capital constituted :

..... (national currency)

(d) Advance applied for = $\left(\frac{(c) \times 33}{100}\right)$:

..... (national currency)

(e) Particulars of the security lodged (bank, amount, etc):

.....
.....

6.

To be completed by the Member State

(a) Provisional estimated limit on advance

total (f) of point 4 \times 0,06 :

(b) Advance applied for :

(c) Advance granted (amount (a) or (b), whichever is the lower) :

(d) Amount to be borne by the EAGGF $\left(\frac{(c) \times 45}{55}\right)$:

ANNEX IV

APPLICATION FOR THE PAYMENT OF THE AID REFERRED TO IN ARTICLE 12 OR OF THE BALANCE THEREOF

Member State :

Year :

The following data relate to :

Marketing year :

1. Business name :

2. Legal form :

3. Address (street, number, locality, telephone number, telex number, telefax):

— of the administrative headquarters :

— of the sales headquarters :

4. Sales data for the reference marketing year :

Product	Produce harvested (tonnes)	Unsold stocks (tonnes)	Losses (tonnes)	Produce marketed (tonnes)	Average price obtained (national currency/tonne)	Value of produce marketed
	(a)	(b)	(c)	(d) = (a) - (b) - (c)	(e)	(f) = (d) × (e)
Total						

5. Member's funding of the working capital :

(a) Membership fees : Other form of funding :

(b) Structure of the working capital constituted :

(c) Amount of working capital :

..... (national currency)

6.

To be completed by the Member State

CALCULATION OF SPECIFIC AID

(a) Revolving fund constituted :
..... (national currency)

(b) Specific national and Community aid $\left(\frac{(a) \times 55}{100}\right)$:
..... (national currency)

(c) Maximum limit on basis of produce marketed =
[total (f) in point 4 \times 0,10] :
..... (national currency) :

(d) Specific aid granted (amount (b) or (c), whichever is the lower) :.....
.....

(e) Advance already granted :.....

(f) Balance to be paid (d) - (e) :.....

(g) Amount to be borne by the EAGGF : $\left(\frac{(f) \times 45}{55}\right)$:.....

COMMISSION REGULATION (EEC) No 3602/92
of 14 December 1992

amending Regulation (EEC) No 27/85 laying down detailed rules for the application of Regulation (EEC) No 2262/84 laying down special measures in respect of olive oil

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2262/84 of 17 July 1984 laying down special measures in respect of olive oil⁽¹⁾, as last amended by Regulation (EEC) No 593/92⁽²⁾, and in particular Article 5 thereof,

Whereas, under Article 1 (3) of Regulation (EEC) No 2262/84, the Commission may take part in the discussions held by the agency's management; whereas the arrangements for such participation in the discussions of the four agencies should therefore be laid down;

Whereas, under Article 1 (4) of Regulation (EEC) No 2262/84, Member States shall act upon the agency's findings and shall regularly communicate to the Commission details of the action taken and the sanctions applied as a result of the agency's findings; whereas the intervals at which such communications are to be made and their content are to be laid down;

Whereas experience has shown that the period provided for in Article 6 (2) of Commission Regulation (EEC) No 27/85⁽³⁾, as last amended by Regulation (EEC) No 2427/86⁽⁴⁾, within which the Commission is to take a decision with regard to the amount representing the agency's actual expenditure, is too short; whereas that period should therefore be extended;

Whereas checks to ensure the correct application of Community rules imply an effort to guarantee the quality of olive oil; whereas, therefore, agencies should be allowed to take samples of the olive oil held by the operators covered by the control arrangements;

Whereas the content of the agency's work schedule should be specified;

Whereas the areas in which personnel responsible for control must have the necessary technical knowledge should be specified;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Oils and Fats,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 27/85 is hereby amended as follows:

1. Article 2 (3) and (4) is replaced by the following:

'3. The number of staff on the agency's payroll, their level of training and experience, the resources made available to them and the manner in which the agency's departments are organized shall be such as to permit the duties referred to in Article 1 (2) of Regulation (EEC) No 2262/84 to be carried out.

More specifically, personnel responsible for control shall have the necessary technical knowledge and experience to enable them to carry out the checks specified in Council Regulations (EEC) No 3089/78^(*) and (EEC) No 2261/84^(**) and Commission Regulation (EEC) No 3061/84^(***) and (EEC) No 2677/85^(****), in particular as regards the assessment of agronomic data, technical checks on mills and processing undertakings and the scrutiny of stock records and accounts.

4. The officials shall, for the purpose of carrying out the duties assigned to them pursuant to Regulation (EEC) No 2262/84, be given appropriate powers by the Member State concerned to obtain any information or evidence and carry out any checks which may be necessary for the purpose of the controls provided for, and in particular:

- (a) the authority to check books and other business records;
- (b) the authority to make copies of or take extracts from business records;
- (c) the right to request that information be given verbally, on the spot;
- (d) the right of access to any business premises or land covered by the control arrangements;
- (e) the authority to take samples of the olive oil held by the natural or legal persons subject to inspection.

⁽¹⁾ OJ No L 208, 3. 8. 1984, p. 11.

⁽²⁾ OJ No L 64, 10. 3. 1992, p. 1.

⁽³⁾ OJ No L 4, 5. 1. 1985, p. 5.

⁽⁴⁾ OJ No L 210, 1. 8. 1986, p. 36.

Member States shall take whatever measures are necessary to safeguard the rights vested by their national legal orders in those natural and legal persons who are subject to inspection.

Member States shall recognize the officials' findings as having conclusive force under their national legal orders.

- (*) OJ No L 369, 29. 12. 1978, p. 12.
 (**) OJ No L 208, 3. 8. 1984, p. 3.
 (***) OJ No L 288, 1. 11. 1984, p. 52.
 (****) OJ No L 254, 25. 9. 1985, p. 5.'

2. Article 3 is amended as follows :

(a) Paragraphs 1 and 2 are replaced by the following :

'1. From the 1985/86 marketing year onwards the agency shall propose a work schedule and a budget estimate in respect of each marketing year.

The work schedule shall, without prejudice to the conditions laid down in the Community rules in force, be drawn up on the basis of the representativeness of the operators covered by the control arrangements.

Priority shall, however, be given to any area of activity or region in which there is a major risk of irregularities.

2. The work schedule shall include :

- (a) a plan for the use of the data in the computerized files specified in Article 16 of Regulation (EEC) No 2261/84 ; such data shall include information arising from the register of olive cultivation ;
- (b) a schedule and description of the inspection work the agency plans to carry out ;
- (c) a schedule of the work to be carried out by the agency with a view to determining yields of olives and olive oil ;
- (d) a description of the checks to be conducted on the end-uses of olive oil, olive-residue oil and the by-products thereof, and on the origin of imported olive oil and olive-residue oil ;
- (e) a list of any other work to be carried out at the request of the Member State or the Commission pursuant to the second subparagraph of Article 1 (2) of Regulation (EEC) No 2262/84 ;
- (f) details of the training which the agency intends to provide for its staff ;
- (g) a list of the officials responsible for liaising with the Commission.

The agency shall, moreover, indicate the estimated number of man-days required in respect of each area of activity in the work schedule'.

(b) Points 8 and 9 in paragraph 3 are replaced by the following :

'8. Contribution by the Community, by virtue of Article 1 (5) of Regulation (EEC) No 2262/84.

9. Income pursuant to Article 1 (5) of Regulation (EEC) No 2262/84'.

3. Article 4 is amended as follows :

(a) the second subparagraph of paragraph 1 is replaced by the following :

'The Commission may, within 30 days, and without prejudice to the responsibilities of the Member State concerned, request that the latter introduce any change in the budget or work schedule that the Commission considers appropriate.'

(b) the second subparagraph of paragraph 3 is replaced by the following :

'However, should an exceptional situation arise in which there is a risk of fraud seriously jeopardizing the correct application of Community rules in respect of olive oil, the agency shall inform the Member State in question and the Commission. In such a case, the agency may modify its plan and the inspection work after having obtained the agreement of the Member State in question. That Member State shall inform the Commission thereof without delay.'

4. Article 5 is amended as follows :

(a) paragraphs 2 and 3 are replaced by the following :

'2. The agency shall, not later than 30 days after the end of each quarter, submit to the Member State and the Commission a summary report on the work carried out by the agency, together with a financial statement showing the cash-flow situation and the expenditure incurred by the agency in respect of each budget chapter and a list of the infringements liable to give rise to administrative or penal sanctions recorded as a result of checks carried out over the quarter.

3. Representatives of the Commission, of the Member State concerned and of the agency shall meet at least once every quarter to consider the work carried out by the agency, the work which it intends to carry out in the future, the effects of such work and the general operation of the agency'.

(b) The following paragraph 4 is added :

'4. In order to ensure that the Commission is represented on the agency's management body, in compliance with Article 1 (3) of Regulation (EEC) No 2262/84, the agency shall inform the Commission, by telex or telecopier, at least six days before each meeting of its deliberative or management bodies, the date of such meeting, the relevant agenda and the documents to be discussed in it.'

5. Article 6 (2) is replaced by the following :

'2. Not later than six months after that date the Commission shall take a decision on the amount representing the agency's actual expenditure that is to be granted to the producer Member State in respect of the year in question. That amount, less the advance payments referred to in paragraph 4 shall be paid once it is established that the agency has performed the work assigned to it.'

6. Article 7 is replaced by the following :

Article 7

In accordance with Article 1 (4) of Regulation (EEC) No 2262/84, Member States shall communicate to the

Commission within 30 days of the end of each quarter :

- a list of the infringements liable to give rise to administrative or penal sanctions, recorded by the agency as a result of checks carried out over the preceding quarter, specifying the nature and seriousness of the infringement,
- the rulings relating to administrative or penal sanctions, or decisions not to proceed with a ruling, issued by the Member State's competent authorities on the basis of the agency's list referred to in the preceding indent, specifying, in respect of each ruling, the nature, severity and implications of the sanction, the amount of any fine imposed and, if appropriate, the fact that the infringement represents a second or subsequent offence, as well as the natural or legal person sanctioned and the competent authority which imposed the sanction.'

7. Article 8, and the second subparagraph of Article 9 are deleted.

8. The first subparagraph of Article 9 becomes Article 8.

Article 2

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

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

Done at Brussels, 14 December 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

COMMISSION REGULATION (EEC) No 3603/92
of 14 December 1992
amending Regulations (EEC) No 1356/92 and (EEC) No 1910/92 on a special
intervention measure

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No 2727/75
of 29 October 1975 on the common organization of the
market in cereals ⁽¹⁾, as last amended by Regulation (EEC)
No 1738/92 ⁽²⁾, and in particular Article 8 (3) thereof,

Whereas the last partial invitation to tender under
Commission Regulations (EEC) No 1356/92 ⁽³⁾ and (EEC)
No 1910/92 ⁽⁴⁾ should be postponed;

Whereas the measures provided for in this Regulation are
in accordance with the opinion of the Management
Committee for Cereals,

HAS ADOPTED THIS REGULATION :

Article 1

Article 2 (3) of Regulation (EEC) No 1356/92 is replaced
by the following :

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

Done at Brussels, 14 December 1992.

'3. The invitation shall remain open until 29 April
1993. During the period of its validity weekly awards
shall be made, for which the time limits for the
submission of tenders shall be as prescribed in the
notice of invitation to tender.'

Article 2

Article 2 (3) of Regulation (EEC) No 1910/92 is replaced
by the following :

'3. The invitation shall remain open until 28 April
1993. During the period of its validity weekly awards
shall be made, for which the time limits for the
submission of tenders shall be as prescribed in the
notice of invitation to tender.'

Article 3

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

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 180, 1. 7. 1992, p. 1.

⁽³⁾ OJ No L 145, 27. 5. 1992, p. 58.

⁽⁴⁾ OJ No L 192, 11. 7. 1992, p. 20.

COMMISSION REGULATION (EEC) No 3604/92
of 14 December 1992
fixing the import levies on milk and milk products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EEC) No 2071/92 ⁽²⁾, and in particular Article 14 (8) thereof,

Whereas the import levies on milk and milk products were fixed by Commission Regulation (EEC) No 1528/92 ⁽³⁾, as last amended by Regulation (EEC) No 3435/92 ⁽⁴⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 1528/92 to the prices

known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION :

Article 1

The import levies referred to in Article 14 of Regulation (EEC) No 804/68 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 16 December 1992.

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

Done at Brussels, 14 December 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 215, 30. 7. 1992, p. 64.

⁽³⁾ OJ No L 160, 13. 6. 1992, p. 14.

⁽⁴⁾ OJ No L 347, 28. 11. 1992, p. 56.

ANNEX

to the Commission Regulation of 14 December 1992 fixing the import levies on milk and milk products

(ECU/100 kg net weight, unless otherwise indicated)

CN code	Note (*)	Import levy
0401 10 10		15,99
0401 10 90		14,78
0401 20 11		22,20
0401 20 19		20,99
0401 20 91		27,56
0401 20 99		26,35
0401 30 11		71,12
0401 30 19		69,91
0401 30 31		137,29
0401 30 39		136,08
0401 30 91		230,91
0401 30 99		229,70
0402 10 11	(*)	108,79
0402 10 19	(*)(*)	101,54
0402 10 91	(*)(*)	1,0154/kg + 30,16
0402 10 99	(*)(*)	1,0154/kg + 22,91
0402 21 11	(*)	172,02
0402 21 17	(*)	164,77
0402 21 19	(*)(*)	164,77
0402 21 91	(*)(*)	208,24
0402 21 99	(*)(*)	200,99
0402 29 11	(*)(*)(*)	1,6477/kg + 30,16
0402 29 15	(*)(*)	1,6477/kg + 30,16
0402 29 19	(*)(*)	1,6477/kg + 22,91
0402 29 91	(*)(*)	2,0099/kg + 30,16
0402 29 99	(*)(*)	2,0099/kg + 22,91
0402 91 11	(*)	30,28
0402 91 19	(*)	30,28
0402 91 31	(*)	37,85
0402 91 39	(*)	37,85
0402 91 51	(*)	137,29
0402 91 59	(*)	136,08
0402 91 91	(*)	230,91
0402 91 99	(*)	229,70
0402 99 11	(*)	49,85
0402 99 19	(*)	49,85
0402 99 31	(*)(*)	1,3366/kg + 26,54
0402 99 39	(*)(*)	1,3366/kg + 25,33
0402 99 91	(*)(*)	2,2728/kg + 26,54
0402 99 99	(*)(*)	2,2728/kg + 25,33
0403 10 02		108,79
0403 10 04		172,02

(ECU/100 kg net weight, unless otherwise indicated)

CN code	Note (°)	Import levy
0403 10 06		208,24
0403 10 12	(¹)	1,0154/kg + 30,16
0403 10 14	(¹)	1,6477/kg + 30,16
0403 10 16	(¹)	2,0099/kg + 30,16
0403 10 22		24,61
0403 10 24		29,97
0403 10 26		73,53
0403 10 32	(¹)	0,1857/kg + 28,95
0403 10 34	(¹)	0,2393/kg + 28,95
0403 10 36	(¹)	0,6749/kg + 28,95
0403 90 11		108,79
0403 90 13		172,02
0403 90 19		208,24
0403 90 31	(¹)	1,0154/kg + 30,16
0403 90 33	(¹)	1,6477/kg + 30,16
0403 90 39	(¹)	2,0099/kg + 30,16
0403 90 51		24,61
0403 90 53		29,97
0403 90 59		73,53
0403 90 61	(¹)	0,1857/kg + 28,95
0403 90 63	(¹)	0,2393/kg + 28,95
0403 90 69	(¹)	0,6749/kg + 28,95
0404 10 11 * 11		25,94
0404 10 11 * 14		172,02
0404 10 11 * 17		208,24
0404 10 11 * 21		108,79
0404 10 11 * 24		172,02
0404 10 11 * 27		208,24
0404 10 19 * 11	(¹)	0,2594/kg + 22,91
0404 10 19 * 14	(¹)	1,6477/kg + 30,16
0404 10 19 * 17	(¹)	2,0099/kg + 30,16
0404 10 19 * 21	(¹)	1,0154/kg + 30,16
0404 10 19 * 24	(¹)	1,6477/kg + 30,16
0404 10 19 * 27	(¹)	2,0099/kg + 30,16
0404 10 91 * 11	(²)	0,2594/kg
0404 10 91 * 14	(²)	1,6477/kg + 6,04
0404 10 91 * 17	(²)	2,0099/kg + 6,04
0404 10 91 * 21	(²)	1,0154/kg + 6,04
0404 10 91 * 24	(²)	1,6477/kg + 6,04
0404 10 91 * 27	(²)	2,0099/kg + 6,04
0404 10 99 * 11	(²)	0,2594/kg + 22,91
0404 10 99 * 14	(²)	1,6477/kg + 28,95
0404 10 99 * 17	(²)	2,0099/kg + 28,95
0404 10 99 * 21	(²)	1,0154/kg + 28,95
0404 10 99 * 24	(²)	1,6477/kg + 28,95
0404 10 99 * 27	(²)	2,0099/kg + 28,95
0404 90 11		108,79
0404 90 13		172,02
0404 90 19		208,24
0404 90 31		108,79
0404 90 33		172,02
0404 90 39		208,24
0404 90 51	(¹)	1,0154/kg + 30,16
0404 90 53	(¹) (²)	1,6477/kg + 30,16
0404 90 59	(¹)	2,0099/kg + 30,16
0404 90 91	(¹)	1,0154/kg + 30,16
0404 90 93	(¹) (²)	1,6477/kg + 30,16
0404 90 99	(¹)	2,0099/kg + 30,16

(ECU/100 kg net weight, unless otherwise indicated)

CN code	Note (?)	Import levy
0405 00 10	(⁶)	237,89
0405 00 90		290,23
0406 10 20	(¹) (⁶)	227,36
0406 10 80	(¹) (⁶)	281,26
0406 20 10	(²) (¹) (⁶)	402,01
0406 20 90	(¹) (⁶)	402,01
0406 30 10	(²) (¹) (⁶)	179,91
0406 30 31	(²) (¹) (⁶)	171,62
0406 30 39	(²) (¹) (⁶)	179,91
0406 30 90	(²) (¹) (⁶)	276,63
0406 40 00	(²) (¹) (⁶)	148,14
0406 90 11	(²) (¹) (⁶)	223,39
0406 90 13	(²) (¹) (⁶)	172,10
0406 90 15	(²) (¹) (⁶)	172,10
0406 90 17	(²) (¹) (⁶)	172,10
0406 90 19	(²) (¹) (⁶)	402,01
0406 90 21	(²) (¹) (⁶)	223,39
0406 90 23	(²) (¹) (⁶)	184,54
0406 90 25	(²) (¹) (⁶)	184,54
0406 90 27	(²) (¹) (⁶)	184,54
0406 90 29	(²) (¹) (⁶)	184,54
0406 90 31	(²) (¹) (⁶)	184,54
0406 90 33	(¹) (⁶)	184,54
0406 90 35	(²) (¹) (⁶)	184,54
0406 90 37	(²) (¹) (⁶)	184,54
0406 90 39	(²) (¹) (⁶)	184,54
0406 90 50	(²) (¹) (⁶)	184,54
0406 90 61	(¹) (⁶)	402,01
0406 90 63	(¹) (⁶)	402,01
0406 90 69	(¹) (⁶)	402,01
0406 90 73	(¹) (⁶)	184,54
0406 90 75	(¹) (⁶)	184,54
0406 90 77	(¹) (⁶)	184,54
0406 90 79	(¹) (⁶)	184,54
0406 90 81	(¹) (⁶)	184,54
0406 90 85	(¹) (⁶)	184,54
0406 90 89	(²) (¹) (⁶)	184,54
0406 90 93	(¹) (⁶)	227,36
0406 90 99	(¹) (⁶)	281,26
1702 10 10		23,09
1702 10 90		23,09
2106 90 51		23,09
2309 10 15		78,58
2309 10 19		101,93
2309 10 39		95,95
2309 10 59		80,21
2309 10 70		101,93
2309 90 35		78,58
2309 90 39		101,93
2309 90 49		95,95
2309 90 59		80,21
2309 90 70		101,93

-
- (1) The levy on 100 kg of product falling within this code is equal to the sum of the following:
- (a) the amount per kilogram shown, multiplied by the weight of lactic matter contained in 100 kg of product;
and
 - (b) the other amount indicated.
- (2) The levy on 100 kg of product falling within this code is equal to:
- (a) the amount per kilogram shown, multiplied by the weight of the dry lactic matter contained in 100 kg of product plus, where appropriate,
 - (b) the other amount indicated.
- (3) Products falling within this code imported from a third country under special arrangements concluded between that country and the Community for which an IMA 1 certificate issued under the conditions provided for in Regulation (EEC) No 1767/82 is issued are subject to the levies in Annex I to that Regulation.
- (4) The levy applicable is limited under the conditions laid down in Regulation (EEC) No 715/90.
- (5) No levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC.
- (6) Products falling within this code, imported from Poland, Czechoslovakia or Hungary under the Interim Agreements concluded between those countries and the Community, and in respect of which EUR.1 certificates issued in accordance with Regulation (EEC) No 584/92 have been presented, are subject to the levies set out in the Annex to that Regulation.
-

COMMISSION REGULATION (EEC) No 3605/92
of 14 December 1992
fixing the import levies on white sugar and raw sugar

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector⁽¹⁾, as last amended by Regulation (EEC) No 3484/92⁽²⁾, and in particular Article 16 (8) thereof,

Whereas the import levies on white sugar and raw sugar were fixed by Commission Regulation (EEC) No 1813/92⁽³⁾, as last amended by Regulation (EEC) No 3574/92⁽⁴⁾;

Whereas it follows from applying the detailed rules contained in Commission Regulation (EEC) No 1813/92 to the information known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in

the last subparagraph of Article 3 (1) of Council Regulation (EEC) No 1676/85⁽⁵⁾, as last amended by Regulation (EEC) No 2205/90⁽⁶⁾,

- for the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

Whereas these exchange rates being those recorded on 11 December 1992,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies referred to in Article 16 (1) of Regulation (EEC) No 1785/81 shall be, in respect of white sugar and standard quality raw sugar, as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 15 December 1992.

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

Done at Brussels, 14 December 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 353, 3. 12. 1992, p. 8.

⁽³⁾ OJ No L 183, 3. 7. 1992, p. 18.

⁽⁴⁾ OJ No L 362, 11. 12. 1992, p. 74.

⁽⁵⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁶⁾ OJ No L 201, 31. 7. 1990, p. 9.

ANNEX

to the Commission Regulation of 14 December 1992 fixing the import levies on white sugar and raw sugar

(ECU/100 kg)

CN code	Levy (°)
1701 11 10	40,14 (°)
1701 11 90	40,14 (°)
1701 12 10	40,14 (°)
1701 12 90	40,14 (°)
1701 91 00	47,27
1701 99 10	47,27
1701 99 90	47,27 (°)

(°) The levy applicable is calculated in accordance with the provisions of Article 2 or 3 of Commission Regulation (EEC) No 837/68.

(°) In accordance with Article 16 (2) of Regulation (EEC) No 1785/81 this amount is also applicable to sugar obtained from white and raw sugar containing added substances other than flavouring or colouring matter.

(°) No import levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC. However, an amount equal to the amount fixed by Regulation (EEC) No 1870/91 B to be levied in accordance with Article 101 (4) of the abovementioned Decision.

COMMISSION REGULATION (EEC) No 3606/92
of 14 December 1992

**adjusting the corrective amount on the import of artichokes into the
Community of Ten from Spain**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European
Economic Community,

Having regard to the Act of Accession of Spain and
Portugal,

Having regard to Council Regulation (EEC) No 3709/89
of 4 December 1989 laying down general rules for imple-
menting the Act of Accession of Spain and Portugal as
regards the compensatory mechanism for imports of fruit
and vegetables from Spain ⁽¹⁾, and in particular Article 4
(2) thereof,

Whereas Article 152 of the Act of Accession introduces
from 1 January 1990 a compensatory mechanism for
imports into the Community as constituted on 31
December 1985, hereinafter called 'the Community of
Ten', of fruit and vegetables from Spain for which a
reference price is fixed with regard to third countries;

Whereas Regulation (EEC) No 3709/89 lays down general
rules for applying the said compensatory mechanism and
Commission Regulation (EEC) No 3820/90 ⁽²⁾ lays down
detailed rules for applying the said compensatory
mechanism;

Whereas Commission Regulation (EEC) No 3531/92 ⁽³⁾
introduces a corrective amount on imports of artichokes
into the Community of Ten from Spain;

Whereas Article 3 (4) of Regulation (EEC) No 3709/89
lays down the conditions under which a corrective
amount introduced pursuant to Article 3 (1) of the said
Regulation, is to be adjusted; whereas the said conditions
require that the corrective amount on imports of
artichokes from Spain into the Community of Ten be
adjusted,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 1 of Regulation (EEC) No 3531/92 'ECU 5,78'
is replaced by 'ECU 22,55.'

Article 2

This Regulation shall enter into force on 15 December
1992.

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

Done at Brussels, 14 December 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 363, 13. 12. 1989, p. 3.

⁽²⁾ OJ No L 366, 29. 12. 1990, p. 43.

⁽³⁾ OJ No L 358, 8. 12. 1992, p. 11.

COMMISSION REGULATION (EEC) No 3607/92

of 14 December 1992

altering the import levies on products processed from cereals and rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 1738/92⁽²⁾, and in particular Article 14 (4) thereof,

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice⁽³⁾, as last amended by Regulation (EEC) No 674/92⁽⁴⁾, and in particular Article 12 (4) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy⁽⁵⁾ as last amended by Regulation (EEC) No 2205/90⁽⁶⁾, and in particular Article 3 thereof,

Whereas the import levies on products processed from cereals and rice were fixed by Commission Regulation (EEC) No 3432/92⁽⁷⁾, as last amended by Regulation (EEC) No 3596/92⁽⁸⁾;

Whereas Council Regulation (EEC) No 1906/87⁽⁹⁾, amended Council Regulation (EEC) No 2744/75⁽¹⁰⁾, as regards products falling within CN codes 2302 10, 2302 20, 2302 30 and 2302 40;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis:

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 180, 1. 7. 1992, p. 1.

⁽³⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽⁴⁾ OJ No L 73, 19. 3. 1992, p. 7.

⁽⁵⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁶⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁷⁾ OJ No L 347, 28. 11. 1992, p. 47.

⁽⁸⁾ OJ No L 364, 12. 12. 1992, p. 55.

⁽⁹⁾ OJ No L 182, 3. 7. 1987, p. 49.

⁽¹⁰⁾ OJ No L 281, 1. 11. 1975, p. 65.

— in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,

— for the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

Whereas these exchange rates being those recorded on 11 December 1992;

Whereas the aforesaid corrective factor affects the entire calculation basis for the levies, including the equivalence coefficients;

Whereas the levy on the basic product as last fixed differs from the average levy by more than ECU 3,02 per tonne of basic product; whereas, pursuant to Article 1 of Commission Regulation (EEC) No 1579/74⁽¹¹⁾, as last amended by Regulation (EEC) No 1740/78⁽¹²⁾, the levies at present in force must therefore be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on products processed from cereals and rice covered by Regulation (EEC) No 2744/75 as fixed in the Annex to amended Regulation (EEC) No 3432/92 are hereby altered to the amounts set out in the Annex.

Article 2

This Regulation shall enter into force on 15 December 1992.

⁽¹¹⁾ OJ No L 168, 25. 6. 1974, p. 7.

⁽¹²⁾ OJ No L 202, 26. 7. 1978, p. 8.

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

Done at Brussels, 14 December 1992.

For the Commission
Ray MAC SHARRY
Member of the Commission

ANNEX

to the Commission Regulation of 14 December 1992 altering the import levies on products processed from cereals and rice

(ECU/tonne)

CN code	Import levies (*)	
	ACP	Third countries (other than ACP) (*)
1103 21 00	265,72	271,76
1104 19 10	265,72	271,76
1104 29 11	196,33	199,35
1104 29 31	236,19	239,21
1104 29 91	150,57	153,59
1104 30 10	110,72	116,76
1107 10 11	262,76	273,64
1107 10 19	196,33	207,21
1108 11 00	324,76	345,31
1109 00 00	590,48	771,82

(*) On importation into Portugal, the levy is increased by the amount specified in Article 2 (2) of Regulation (EEC) No 3808/90.

(*) No import levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC.

COMMISSION REGULATION (EEC) No 3608/92
of 14 December 1992
amending Regulation (EEC) No 3385/92 introducing a countervailing charge on
fresh lemons originating in Turkey

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables⁽¹⁾, as last amended by Regulation (EEC) No 1754/92⁽²⁾, and in particular the second subparagraph of Article 27 (2) thereof,

Whereas Commission Regulation (EEC) No 3385/92⁽³⁾, as last amended by Regulation (EEC) No 3532/92⁽⁴⁾, introduced a countervailing charge on fresh lemons originating in Turkey;

Whereas the data required for calculation of the countervailing charge, as communicated to the Commission, led to fixing a new amount from 8 December 1992; whereas a subsequent communication showed those data to be

incomplete; whereas a calculation carried out on the basis of the new data communicated to the Commission require that the countervailing charge on imports of fresh lemons from Turkey into the Community be adjusted,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 1 of Regulation (EEC) No 3385/92 'ECU 12,13' is hereby replaced by 'ECU 8,88'.

Article 2

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

It shall apply with effect from 8 December 1992.

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

Done at Brussels, 14 December 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽²⁾ OJ No L 180, 1. 7. 1992, p. 23.

⁽³⁾ OJ No L 344, 26. 11. 1992, p. 24.

⁽⁴⁾ OJ No L 358, 8. 12. 1992, p. 12.

COUNCIL REGULATION (EEC) No 3609/92
of 14 December 1992

**setting for the 1992/93 marketing year the percentage referred to in Article 3 (1a),
second subparagraph, of Regulation (EEC) No 426/86 in connection with the
premium granted for products processed from tomatoes**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 426/86 of 24 February 1986 on the common organization of the market in products processed from fruit and vegetables⁽¹⁾, and in particular Article 3 (3) thereof,

Having regard to the proposal from the Commission,

Whereas, in order to encourage the conclusion of contracts between groups of tomato producers on the one hand and associations of processors or processors on the other, Regulation (EEC) No 426/86 provides for the grant on certain terms of an additional premium;

Whereas the 'significant specific percentage' for the total quantity of processed tomatoes covered by contracts concluded with producers' groups must be set for the 1992/93 marketing year;

Whereas, in view of the important role played by tomato producers' groups in the producer Member States, it is desirable to maintain at the same level as for the 1991/92 marketing year the percentage of the quantities of tomatoes covered by contracts concluded with producers' associations in relation to the total quantity of processed tomatoes,

HAS ADOPTED THIS REGULATION :

Article 1

For the 1992/93 marketing year, the percentage referred to in Article 3 (1a), second subparagraph of Regulation (EEC) No 426/86 shall be 80 %.

Article 2

This Regulation shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 14 December 1992.

For the Council
The President
J. GUMMER

⁽¹⁾ OJ No L 49, 27. 2. 1986, p. 1. Last amended by Regulation (EEC) No 1569/92 (OJ No L 166, 20. 6. 1992, p. 5).

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 25 November 1992

relating to a proceeding under Article 85 of the EEC Treaty
(IV/33.585 — Distribution of railway tickets by travel agents)

(Only the French text is authentic)

(92/568/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty ⁽¹⁾, as last amended by the Act of Accession of Spain and Portugal, and in particular Articles 3 and 15 thereof,

Having regard to the statement of objections sent to the International Union of Railways on 10 October 1991,

Having given the association of undertakings concerned the opportunity, in accordance with Article 19 (1) of Regulation No 17 and with the provisions of Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19 (1) and (2) of Council Regulation No 17 ⁽²⁾, of being heard on the matters to which the Commission has taken objection,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas :

I. THE FACTS

A. Subject of the proceeding

(1) This proceeding relates to the conditions laid down by the International Union of Railways (Union

Internationale des Chemins de Fer — UIC) for the appointment of travel agents authorized to issue tickets for the carriage of passengers by rail and the conditions under which appointed agents may sell the tickets.

B. The marketing of international tickets for the carriage of passengers by rail

(2) Under the rules currently applicable to rail transport, international transport is carried out on the basis of cooperation between all the railway companies involved in a given journey.

(3) On that basis, the price of an international ticket generally corresponds to the total amount of the fares for the national sections of the journey.

Transport operations are cleared after the event between the railway companies so that each receives the part of the fare corresponding to that part of the service provided by it.

(4) International rail tickets may be sold by the railway companies themselves or by appointed travel agents. The number of appointed agents and the percentage of tickets sold by them in relation to the total number of tickets sold differ considerably from one Member State to another. In 1990, the situation was as follows :

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No 127, 20. 8. 1963, p. 2268/63.

	Number of appointed agents	% of tickets sold by agents	
Germany	1 805	25	
Belgium	211	0,5	Domestic travel :
		53	International travel :
Spain	1 800	24	
France	2 391	20	
Great Britain			
— Domestic travel :	1 983	7,5	Domestic travel :
— International travel :	246	54	International travel :
Greece	140	25	
Italy	1 710	8	
Luxembourg	36	5,2	
Netherlands	184	29	

(5) The trend in the number of appointed agents differs from one railway company to another. Some railway companies, such as the German railways (DB), the Belgian railways (SNCB) and the Spanish railways (RENFE), have increased the number of appointed agents in recent years, while others such as British Rail (BR) and the French railways (SNCF) have done the opposite.

(6) During the procedure the representatives of the UIC declared that the number of international journeys is around 130 million per year, at an average cost of ECU 50 per journey, representing a total turnover of around ECU 6 500 million.

C. Remuneration of ticket distributors

(7) The sale of a travel ticket by a travel agent constitutes a supply of services entailing remuneration.

(8) Such remuneration takes the form of a commission calculated on the basis of the total amount of the price of the ticket. Thus, where an agent sells a ticket for international carriage performed by two railway companies, the agent receives a commission from the two companies, calculated in proportion to the revenue which each receives.

(9) Similarly, where a railway company sells directly an international ticket for carriage which it provides in conjunction with another company, it receives a commission from the other company on whose behalf it sells the ticket.

However, the company selling the ticket 'saves' the commission which it would have paid if the ticket had been sold by a travel agent.

D. International Union of Railways (UIC)

(10) The UIC is a worldwide association of railway companies. Article 1 of the UIC Statutes stipulates that the objectives of the International Union of Railways are :

(a) to carry out or commission research work and studies designed to standardize and improve the equipment and operating practices of the railways for the purpose of international traffic ;

(b) to provide representation for the railways on outside bodies, under the conditions laid down in these Statutes, for the examination of common questions concerning them and for the defence of their interests ;

(c) to ensure coordination and unity of action with international organizations which are parties to the special agreement contained in Appendix 1. Under the terms of the present Statutes organizations other than the UIC shall be known hereinafter as "participating organizations".

(11) The main bodies of the UIC are :

(a) the General Assembly, which decides on any amendments to be made to the Statutes and on the admission or exclusion of a member, issued directives and takes all relevant decisions on the UIC's activities on the basis of proposals submitted by the Board of Management ;

(b) the Board of Management comprises 26 Railways, including the Chairman Railway.

Its objective under the Statutes is as follows :

— 'it shall direct the affairs of the UIC and make decisions of general application ;

— it shall appoint the Chairman Railways of study bodies, and the Members of Committees and Technical Committees ;

— it shall adopt the programme of work of study bodies and give them directives for its execution. It shall take all necessary decisions on the basis of proposals and reports submitted to it by these bodies’;

(c) the Secretary-General, who is appointed by the General Assembly, reports on the UIC's activities to the General Assembly and the Board of Management, submits to the Board of Management the accounts and draft budgets of the General Secretariat, arranges circulation of all decisions made by the UIC and is responsible for public relations at the UIC.

(12) The UIC also includes study bodies, provided for in Article 15 of the Statutes, which are as follows:

1) committees set up by the board of management to study important matters relevant to the railways.

These committees are empowered to set up working bodies as follows, to assist them in their work:

— either Working Parties to examine a specific problem,

— or sub-committees for questions of a continuous nature;

2) technical committees, with committee status, set up by the board of management;

3) offices, bureaux and centres which may be formed by the General Assembly to undertake tasks which cannot be performed by the committees;

4) ad hoc groups of a permanent or temporary character, set up by the board of management as needed.

(13) Article 33 of the Statutes provides that the committees and ad hoc groups referred to in Article 15 must comply with the directives of the UIC Higher Authorities in the preparation of their programme of work for submission to the board of management.

The organizational and working procedures applicable to the committees and ad hoc groups are the subject of special regulations approved by the board of management, set out in ‘leaflet C1’.

(14) Article 1 of the abovementioned leaflet provides as follows:

‘Article 1 — The carrying-out of studies, the performance of joint projects and the exchange of

information shall be entrusted, in accordance with the differing spheres of competence, to the following bodies:

1) Eight committees

Passenger Committee

Freight Committee

Finance Committee

Operating Committee

Locomotive and Rolling Stock Committee

Planning and Economics Committee

Fixed Equipment Committee

Information Processing Committee

2) the Control Committee of the Office for Research and Experiments (ORE)

3) the Brussels Central Clearing House (CCH)

4) the ad hoc groups, including the Legal Group, the Documentation Group and the Statistics Group, set up pursuant to Article 15 of the Statutes’ (unofficial version translated from the French).

(15) Under Article 6 of leaflet C1, the committees have full power of decision on matters included in their working programmes.

(16) The committees comprise representatives of the railways, at a grade immediately below Director-General level.

(17) The conclusions of the studies may take the form of ‘leaflets’. Article 12 of leaflet C1 states in this connection that:

‘The conclusions of a study seeking the adoption of a decision of a mandatory, advisory or explanatory nature must be drafted in a definitive form so as to constitute either a new “leaflet” or an amendment to an existing leaflet. The conclusions must stipulate whether any mandatory measures they prescribe must be applied to all the UIC Railways or only to some of them’ (unofficial version translated from the French).

(18) The voting rights of the railways that are members of committees are determined in accordance with the provisions of Article 47 of the Statutes, which states that the railways shall be granted ‘one vote plus one-fifth of the number of votes assigned to them under Article 43, the calculation being taken to the first decimal point’ (unofficial version translated from the French).

However, a mandatory decision may be taken by a given body only if at least two-thirds of its members are represented and if at least half are actually present and take part in the vote.

- (19) The arrangements for the circulation of the minutes of meetings held by Committees or study groups are set out in Annex 2 to leaflet C1.

In all cases, the General Secretariat is responsible for circulating the minutes of meetings to UIC members.

E. The conditions governing the appointment of travel agents

- (20) The UIC Passenger Committee drew up a 'Travel Agency' leaflet, codified under No 130 in 1952 and subsequently updated on numerous occasions. The 1 July 1979 edition is described as the fourteenth edition, and was itself amended at least 11 times up to 1990.

- (21) Leaflet No 130 defines the general relationship between the railway companies and travel agencies and is accompanied by a standard appointment contract and by a table of commissions granted to agents for international traffic services. The main provisions of the leaflet are as follows:

- (22) *Appointment procedures:*

Under Article 1.a. of UIC leaflet No 130, 'Agencies shall be accredited by the main railway of the country in which they are situated. In respect of through coupons or sectional coupons involving another railway, this official approval shall be given subject to the agreement of the latter. Exceptions to these rules can, however, be made, notably in reciprocal agreements concluded between the various railways'.

The information provided by the undertakings shows that this provision is very widely followed and that the appointment of travel agencies by a railway company outside this country is granted only exceptionally and generally in order to market very specific services.

Such is the case with the SNCF, which has approved an agency in the United Kingdom to sell special tickets for its auto-courette trains.

Similarly, the DSB (Danish Railways) has appointed a number of agencies in Iceland, the United States, Australia and Singapore.

Lastly, the Italian Railways have approved agencies outside Italy, but this involves only agencies of their subsidiary 'CIT'.

- (23) *Use of a standard contract*

Article 1.3 of UIC leaflet No 130 stipulates in this respect:

'In their agreements with agencies, railways are recommended to follow the model contracts shown as Appendix 1 hereto.'

According to the information provided by the railways, this provision is also very widely followed by the railway companies, which incorporate the whole of the model contract or its main provisions into their own contracts.

- (24) *The conditions governing the granting of commissions to agencies*

These are set out in Article 3 of UIC leaflet No 130:

Article 3.1: 'Each railway is recommended to grant agencies the same rate of commission on its sectional coupons and on its proportion of through tickets and coupons. In cases where certain railways which leave the agencies to print their own coupons, desire to differentiate between the rates of commission paid on the two varieties of ticket, in order to pay the agencies for printing, it is desirable that the difference between the rates of commission granted be as low as possible'.

Article 3.2: 'Railways must grant a commission on their proportions of through tickets and coupons and of sectional coupons purchased by agencies at the stations and official offices of the railway which accredited them, inasmuch as the agreement binding the said agencies to this railway does not allow them to make them out themselves.'

Railways are recommended to grant a lower rate of commission (...) on the tickets purchased in this way than that applied in the case of tickets issued by the travel agencies themselves, except in those countries where the issue of certain types of ticket is never entrusted to agencies and where the normal rate applied to tickets issued by agencies is paid on these types of ticket'.

These provisions of the whole of Article 3 are presented as 'essential prescriptions'. The specific provisions of Article 3 (2) are identified as being mandatory for the railway companies.

- (25) The information provided by the railway companies during examination of the case shows that these provisions concerning the conditions for the granting of commissions are very widely applied by the railway companies.

With regard to the rate of commission granted on sectional coupons and through coupons, the six railway companies questioned on this subject replied that they grant the same rate.

Similarly, 11 of the 12 railways companies in the Community grant a lower rate of commission for tickets purchased by agencies than in the case of tickets issued by the agencies themselves. Only the SNCB grants an identical rate of commission in both cases.

- (26) *The setting of the rates of commission*

In the case of tickets issued by agencies, the rates of commission granted by the railway companies up to 31 December 1989 were as follows:

- ten companies granted 9 %
- one company granted 8.5 %
- one company granted 8 %.

These rates were identical in the case of tickets issued between railway companies.

- (27) With regard to the setting of these rates of commission, the Chairman of the UIC Distribution Committee, in reply to a request for information, told the Commission by letter dated 6 March 1990 that 'the Distribution Committee got the rate of commission granted to agencies increased to 10 % as from 1 January 1990. Exception: the Italian Railways kept the former rate of 9 %, the Tunisian Railways and the Compagnie Maritime Transmediterranea 8 %'.

The Chairman of the UIC Distribution Committee also states that 'pending the reprint of leaflet 130, the railways (*) have received the letter a copy of which is attached'.

- (28) The abovementioned letter was sent to the railways by the Chairman of the UIC Distribution Committee on 24 January 1990.

It states that 'pursuant to the decisions of the UIC Passenger Committee of 25 April 1989 and 26 October 1989, please find attached a corrigendum to UIC leaflet No 130 The attached Annex is to be considered to be a provisional corrigendum to leaflet No 130 pending its reprinting by the UIC' (unofficial version translated from the French).

- (29) The abovementioned corrigendum to UIC leaflet 130 states, with regard to commissions:

'The commission rates granted to agencies approved by a foreign railway for services rendered, or to foreign railways for services rendered by their stations, are listed in Appendix 4. These rates shall apply to all services provided in international traffic covered by the TVC and its special Annexes, as well as to all services covered by instructions or agreements that can be assimilated to TCV special Annexes, unless otherwise specified in the corresponding tariffs.

In the case of "reservation" services processed by electronic means as per leaflet No 301-2, the flat commission rate granted by the allocating railway to other railways shall be applicable. The commission rate granted to other railways and to agencies approved by a foreign railway shall, in principle, be uniformly set at 10 %. Railways granting a commission rate of less than 10 % shall only receive from other railways a commission rate matching that which they themselves grant to these railways (reciprocity agreement). Railways shall be able to grant a commission rate higher than that stipulated in Appendix 4, on the basis of bilateral or multilateral agreements. Railways which approve an agency for the sale of services shall themselves settle the full amount of commission due to this agency for services rendered. The same practice shall apply for services which an agency is authorized to obtain from railway ticket counters, with the provision that the reduced commission rate granted in this case shall be included in the commission granted by other railways for the "station" sales of the railway that approved the agency concerned.'

- (30) The abovementioned Appendix 4 stipulates, for each railway, the rate of commission granted to the travel agencies accredited by a foreign railway and the rate granted to the other railways.

All the European railways grant a rate of 10 %, except the Italian railways, which grant a rate of 6 % for tickets issued in stations and 9 % for tickets issued in agencies.

In the case of all the railways, the rate of commission is granted subject to reciprocity by the other railways.

(*) Terminologie de 'Réseaux' utilisée dans le sens 'entreprise ferroviaire'.

(31) The information supplied by the railways to the Commission confirms that they do in fact apply a rate of 10 % with the exception of the Italian railways.

(32) *The obligation to draw up and sell tickets at the official fares indicated in the tariffs*

Article 4 of the standard agreement on the appointment of agencies drawn up by the UIC states with regard to the agencies' obligations:

'The agency is required to draw up and sell the tickets at the official fares indicated in the tariffs and to refrain from charging for the drawing-up of the tickets issued' (unofficial version translated from the French).

(33) Similar provisions are included by the railway companies in the agreements which they use.

Thus, clause 2 (ii) of the agreement used by the British Railways Board states that 'the Agent shall not sell tickets at any price other than the price fixed by the Board and shall ensure that all tickets are dated prior to issue'.

(34) Article 4.5 of the agreement used by the SNCB states that 'the agency shall ensure that the tickets entrusted to it are sold in accordance with the SNCB's regulations and at the prices notified to it'.

(35) Article 5 of the contract used by the SNCF stipulates that 'tickets must be sold at the prices fixed by the railways', and paragraph 5 of the statement of general conditions stipulates that 'tickets must be sold at the prices fixed by the railway. The invoices drawn up in this connection must indicate clearly the sums collected on behalf of the SNCF'.

(36) Some railway companies supplement these provisions by specific provisions relating to the commissions granted to agencies.

(37) Clause 3 of the agreement used by the British Railways Board states that 'the Agent shall retain the full amount of the commission allowed by the Board and shall not pass on such commission or

part thereof by rebate or otherwise to any other person'.

(38) Similarly, the Greek Railways state, in a letter dated 3 April 1990 sent to the Commission, that 'travel agencies appointed by the Greek Railways may not pass on to their customers part of their commission, so as to prevent problems of unfair competition *vis-à-vis* the railways'.

(39) Lastly, the Danish Railways state, in a letter sent to the Commission on 30 May 1990, that travel agencies may pass on part of their commission, but only to their branches.

(40) *Ban on promoting competing means of transport*

Travel agencies authorized to sell railway tickets are generally also authorized to sell tickets for other means of transport such as plane, bus and boat.

(41) Article 1 of the standard agreement drawn up by the UIC stipulates in this respect that 'the Agency is required not to favour, whether by its advertising, by its proposals or by its advice to the public, means of transport competing with the railways and with the other means of transport referred to in paragraph 1' (unofficial version translated from the French) (paragraph 1 refers to the other means of transport operated either by the railways themselves or in association therewith).

II. LEGAL ASSESSMENT

A. Applicability of the competition rules

(42) According to the representatives of the UIC the competition rules are not applicable in this instance, for three main reasons:

- the appointed agents do not assume the risks connected with the performance of the transport contract,
- the railway companies are not in a competitive situation, but cooperate in providing international services,
- agents cannot go beyond merely negotiating and concluding contracts on behalf of the railways and cannot pass on part of their commission.

- (43) The question of the applicability of the competition rules to relations between travel agents and their principals arose in Case 311/85 VVR v Sociale Dienst⁽¹⁾.

The Belgian Government had disputed the applicability of Article 85 of the EEC Treaty, arguing that the relationship between a tour operator and a travel agent was one of principal and agent and that a travel agent had therefore to be regarded as an auxiliary organ of the tour operator.

- (44) On this point, the Court of Justice held that 'a travel agent of the kind referred to by the national court must be regarded as an independent agent who provides services on an entirely independent basis. He sells travel organized by a large number of different tour operators and a tour operator sells travel through a very large number of agents. Contrary to the Belgian Government's submissions, a travel agent cannot be treated as an auxiliary organ forming an integral part of a tour operator's undertaking'.

- (45) This reasoning is applicable to the case in point, since, on the one hand, agents sell transport services, but also hotel, tourist, artistic and other services organized and supplied by a very large number of carriers, tour operators and other providers of services and, on the other, each transport undertaking — in the case in point, each railway company — sells its services through a very large number of distributors, whether agents or other railway companies.

- (46) Travel agents cannot therefore, in this particular instance, be described as auxiliary organs forming an integral part of the railway companies. The relationships between the railway companies and the travel agents are consequently subject to the provisions of Article 85 of the EEC Treaty.

B. Applicability of Council Regulation No 17 of 6 February 1962

- (47) On 10 October 1991, the statement of objections has been sent to the UIC, in accordance with the procedural rules laid down in Council Regulation No 17.
- (48) In its written and oral reply to the statement of objections, the UIC disputed the applicability of

Regulation No 17. According to the UIC, as far as this case is concerned travel agents are providers of services ancillary to transport and, consequently, the procedural rules applicable are Council Regulation (EEC) No 1017/68 of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway⁽²⁾, as amended by the Act of Accession of the Hellenic Republic.

- (49) Article 1 of Regulation (EEC) No 1017/68 provides as follows :

'The provisions of this Regulation shall, in the field of transport by rail, road and inland waterway, apply both to all agreements, decisions and concerted practices which have as their object or effect the fixing of transport rates and conditions, the limitation or control of the supply of transport, the sharing of transport markets, the application of technical improvements or technical cooperation, or the joint financing or acquisition of transport equipment or supplies where such operations are directly related to the provision of transport services and are necessary for the joint operation of services by grouping within the meaning of Article 4 of road or inland waterway transport undertakings, and to the abuse of a dominant position on the transport market. These provisions shall apply also to operations of providers of services ancillary to transport which have any of the objects or effects listed above'.

- (50) However, the UIC's argument cannot be accepted, for three reasons.

- (51) It should be noted, firstly, that the inapplicability of Council Regulation No 17 to transport was laid down in Regulation No 141 of 26 November 1962⁽³⁾, as last amended by Regulation (EEC) No 1002/67⁽⁴⁾, so as to take account of the distinctive features of transport.

- (52) The third recital of Regulation No 141 states in this respect: 'whereas the distinctive features of transport make it justifiable to exempt from the application of Regulation No 17 only agreements, decisions and concerted practices directly relating to the provision of transport services'.

- (53) The UIC decision to which this proceeding relates concerns the conditions under which travel agents

⁽¹⁾ Judgment of 1 October 1987, ECR 3801 [1987].

⁽²⁾ OJ No L 175, 23. 7. 1978, p. 1.

⁽³⁾ OJ No 124, 28. 11. 1962, p. 2751/62.

⁽⁴⁾ OJ No L 306, 16. 12. 1967, p. 1.

are appointed for the sale of tickets and the conditions under which those tickets are distributed. Clearly, this activity does not relate 'directly' to the provision of transport services.

- (54) Furthermore, in its aforesaid judgment of 1 October 1987 in Case 311/85, *VVR v Sociale Dienst*, the Court of Justice ruled with regard to the conditions under which travel agents may sell travel organized by tour operators that 'a travel agent of the kind referred to by the national court must be regarded as an independent agent who provides services on an entirely independent basis'.

Such activity of providing services on an entirely independent basis does not therefore concern the provision of transport, which is supplied exclusively by the principal.

- (55) In Council Directive 82/470/EEC of 29 June 1982 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in certain services incidental to transport and travel agencies and in storage and warehousing⁽¹⁾, the Council also drew a clear distinction between the two activities of provider of services incidental to transport and travel agent.
- (56) Under Article 2 of the directive, the activities of a person providing services incidental to transport include 'acting as an intermediary between contractors for various methods of transport and persons who dispatch or receive goods and who carry out various related activities'.
- (57) Under Article 3 of the directive, the activities of a person providing services incidental to transport correspond to titles such as 'commissionnaire de transport' and 'courtier de fret' in Belgium, France and Luxembourg, 'Spediteur' in Germany and 'freight forwarder' in the United Kingdom.
- (58) The title of 'travel agent' in Ireland and the United Kingdom corresponds to 'agent de voyages' in Belgium, France and Luxembourg and 'Reisebüro-Unternehmer' in Germany.
- (59) It must therefore be concluded that there can be no confusion between the activities of a travel agent and of a person providing services incidental to transport, and that the activities of travel agents constitute a provision of services on an indepen-

dent basis, which falls within the scope of Regulation No 17.

C. The concept of association of undertakings

- (60) The Community's railway companies are public undertakings entrusted with the provision and marketing of passenger and goods transport services. They operate on the various transport markets in competition with other public or private undertakings.

They are therefore undertakings within the meaning of Article 85 of the EEC Treaty.

- (61) Such undertakings set up the 'International Union of Railways' (UIC), which is an association having legal personality that allows the railway companies to cooperate in the technical and commercial areas.

The UIC is thus an association of undertakings within the meaning of Article 85 of the EEC Treaty.

D. The concept of decision by an association of undertakings

- (62) During the proceeding, the UIC asserted that UIC leaflet No 130 was merely a recommendation which did not prevent railway companies from appointing agents outside their territory. According to the UIC, such a recommendation did not constitute a decision by an association of undertakings within the meaning of Article 85 of the EEC Treaty.

- (63) It should be noted in this respect that the provisions of UIC leaflet No 130 were drawn up by the UIC's working bodies and adopted by the Passenger Committee before being sent to the member railways.

- (64) With regard to the rate of commission granted to agents, the Chairman of the UIC's Distribution Committee stated that 'the Distribution Committee has successfully proposed that the rate of commission granted to agents should be increased to 10 % as from 1 January 1990 ...'.

The UIC member railways were informed of this change by letter from the Chairman of the Distribution Committee dated 24 January 1990.

- (65) UIC leaflet No 130 comprises instructions drafted in mandatory terms. Such is the case with paragraph 1.1, which states that 'agencies shall be accredited by the main railway of the country in which they are situated'.

⁽¹⁾ OJ No L 213, 21. 7. 1982, p. 1.

(66) However, most of the provisions in the leaflet are not presented as being binding on the railways.

(67) Nevertheless, in Joined Cases 96 to 102, 104, 105, 108 and 110/82 IAZ v. Commission ⁽¹⁾, the Court of Justice ruled that 'a recommendation, even if it has no binding effect, cannot escape Article 85 (1) where compliance with the recommendation by the undertakings to which it is addressed has an appreciable influence on competition in the market in question'.

(68) The information provided by the railways regarding the conditions under which they decide to appoint travel agents shows that the provisions contained in UIC leaflet No 130 are very widely accepted and applied by the railways.

Thus, with regard to the rates of commission, it has been found that, within the Community, only the Italian railways grant a different rate from the other railways.

(69) It must therefore be concluded that UIC leaflet No 130 accurately reflects the UIC's desire to coordinate its members' conduct in accordance with its statutes and that, in accordance with the case-law of the Court of Justice ⁽²⁾, it constitutes a decision by an association of undertakings within the meaning of Article 85.

E. The restrictions of competition

(70) *Control of the appointment of travel agents by each national railway company*

Under the appointment conditions laid down by the UIC, an agency can be appointed only by the railway of the country in which it is situated.

However, the issuing of travel tickets constitutes a supply of services distinct from the transport provided against remuneration by the railways and the travel agencies.

The commission paid by a railway for the sale of a travel ticket is identical whether the sale is carried out by an agency or another railway acting as ticket distributor.

Competition therefore exists between agents, and between agents and the railways, for the issuing of tickets.

(71) Consumers derive benefit from the presence of travel agents entitled to sell rail tickets.

The availability of many different places where tickets are sold enables consumers to purchase them without having to go too far out of their way.

In addition, agents can provide other services, particularly as regards accommodation, enabling consumers to organize their trips in one operation.

Lastly, consumers may derive financial benefit from the presence of such travel agents.

(72) However, the position adopted within the UIC, namely that appointment may be granted only by the railway of the country in which the agency is situated, has the effect of limiting the number of appointed agents and thus of restricting competition between outlets for the sale of tickets, to the detriment of consumers.

(73) During the proceeding, the UIC's representatives stated that control of the appointment of agencies by each national railway was necessary under the current operation of international rail transport.

Each railway is responsible for the agencies which it accredited on its territory, in terms of accounting and as regards the training of agents and the general supervision of agencies.

It was claimed that the system established by the UIC was thus a system of general and mutual mandate between railways that was essential to the functioning of the market.

(74) That argument cannot be accepted. The UIC's representatives themselves acknowledged during the proceeding that certain railway companies already accredit directly a limited number of agencies outside their national territories. Control of the accreditation of agencies by each national railway cannot therefore be regarded as an essential means for the undertakings concerned to penetrate the market in question.

(75) It must therefore be concluded that the provision in the UIC leaflet relating to control of the appointment of travel agencies by each railway within its territory has the object and effect of restricting competition on the market for the distribution of rail tickets.

⁽¹⁾ Judgment of 8 November 1983, ECR 3369 [1983].

⁽²⁾ In particular IAZ v. Commission mentioned above and Case 45/85, Verband der Sachversicherer v. Commission ECR 447 [1987].

(76) *Definition of the conditions governing the granting of commissions*

Under the provisions of Article 3 of UIC leaflet No 130, it is recommended that each railway :

- grant an identical commission on sectional tickets and on its proportion of through tickets,
- grant on tickets purchased in stations by agencies a lower rate of commission than that granted on tickets issued by the agencies themselves.

Where the agencies purchase tickets in stations, the railways must grant a commission only if the contract does not allow the agency to draw up tickets itself.

(77) Investigation of the case has shown that these provisions are widely applied by the railway companies.

(78) Without such provisions, agencies could negotiate individually with each railway company the conditions governing the granting of commissions and could possibly obtain more advantageous terms.

(79) Furthermore, even if there were no individual negotiations between the railway company and each of the travel agencies, the conditions governing the granting of commissions laid down by each railway company could also be more advantageous for distributors if standard conditions were not laid down by the UIC.

(80) In both cases, the more advantageous conditions obtained by certain agencies would enable them to be in a more competitive position than other agencies and than the railway company in its capacity as a ticket distributor. The agencies could then pass on some of the advantages obtained to consumers.

(81) The abovementioned provisions of UIC leaflet No 130 aimed at ensuring standard conditions for the granting of commissions thus have the object and effect of restricting competition between ticket distributors.

(82) *Setting of a standard rate of commission*

It is established that the change in the rate of commission granted to agencies as from 1 January 1990 is the result of a decision adopted within the UIC in 1989.

Since that date, all the Community railway companies grant the same rate of 10 %, except for the Italian railways, which grant 9 %.

(83) The laying-down of a standard rate of commission for the remuneration of agencies prevents agencies from negotiating a more advantageous rate and thus obtaining a competitive advantage over other agencies and the national railway company.

This is because an agency that receives a higher commission is able to offer additional or higher-quality services and thus to compete with other ticket distributors to the benefit of consumers.

(84) The laying-down of a standard rate of commission within the UIC thus has the object and effect of appreciably restricting competition on the market for the distribution of rail tickets.

(85) During the proceeding, the UIC stated that the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 does not allow agents to pass on part of their commission to their customers and that consequently the setting of a standard rate of commission does not restrict competition.

(86) The Convention, whose signatories include the twelve Member States of the Community, aims to establish a uniform system of law applicable to the carriage of passengers, luggage and goods in international through traffic by rail between Member States, and to facilitate the application and development of this system'.

It includes two appendices which form an integral part of the Convention, including Appendix A which lays down 'uniform rules concerning the contract for international carriage of passengers and luggage by rail (CIV)'.

(87) Article 5 of the CIV rules provides as follows :

'§1. The international tariffs shall contain all the special conditions applicable to carriage, in particular the information necessary for calculating the fares and other charges and, where necessary, the conditions for conversion of currencies.

The conditions of international tariffs may not derogate from the Uniform Rules unless the latter expressly so provide.

§2. The international tariffs shall be applied to all users on the same conditions'.

(88) The UIC cites the provisions of Article 5 (2) of the CIV rules in support of its argument that agents may not pass on part of their commission to users.

(89) That interpretation cannot be accepted. Article 5 of the CIV rules applies only to tariffs for transport services.

However, the commission received by the travel agent constitutes remuneration for services rendered by the agent in respect of the sale of each ticket. The commission does not therefore form part of the tariff for the sale of the transport service, which is performed by the railway companies, and does not fall within the scope of Article 5 of the CIV rules.

(90) In any event, it should be noted that the applicability of the competition rules laid down in the EEC Treaty to the case in point is affirmed in Article 62 of the CIV rules, which stipulates that 'the provisions of the Uniform Rules shall not prevail over those provisions which certain States are obliged to adopt, in traffic among themselves, in pursuance of certain Treaties such as the Treaties relating to the European Coal and Steel Community and the European Economic Community'.

(91) *The requirement that travel agencies should sell travel tickets at the fares indicated by the railways*

Under Article 4 of the UIC model contract, agencies are required to make out and sell tickets at the official fares indicated in the tariffs.

Railway companies are not therefore free to decide whether to permit their accredited agencies to return all or part of their commission to their clients.

(92) Thus, such a decision, taken on a horizontal level, necessarily limits the freedom of the individual railway companies to negotiate the terms and conditions of the agency agreement, and can therefore limit the competitive conduct of the undertakings concerned.

(93) Contrary to the position adopted by the UIC during the proceeding, the provisions of the COTIF cannot, for the reasons set out in paragraphs 89 and 90 above, justify any behaviour inconsistent with Article 85 (1).

(94) *The requirement that agencies must not favour competing means of transport in their offers or advice to the public*

Travel agencies generally offer for sale tickets for a number of means of transport that are in competition with one another.

For a given journey, a means of transport competing with the railways may be able to offer better service in terms of quality or price.

Where this is the case, the abovementioned practice aims to prohibit travel agencies from recommending travellers to use such more advantageous means of transport.

(95) This provision thus has the object and effect of restricting competition between the various means of transport.

(96) During the proceeding, the UIC stated that this clause had been incorporated into the UIC leaflet in the 1950s and that it had fallen into disuse.

(97) However, it should be noted in this respect that the UIC leaflet has been amended 35 times since 1952 and that the provision has never been removed.

(98) Furthermore, in accordance with the case law of the Court of Justice (⁽¹⁾), for the purposes of Article 85 (1) it is unnecessary to take account of the actual effects of an agreement or decision of an association where its object is to prevent, restrict or distort competition.

(99) It must thus be concluded that the prohibition on agencies' favouring competing means of transport in their offers or advice to the public infringes the provisions of Article 85 (1) of the EEC Treaty.

F. Effect on trade between Member States

(100) The abovementioned provisions affecting competition may also affect trade between Member States in several respects. First of all, travel agents operating in one Member State may sell rail-based travel organized by tour operators established in other Member States.

Secondly, these agents may sell tickets to customers residing in other Member States. Thirdly, the travel in question is often to other Member States.

(¹) Notably Judgement of 30 January 1985 in Case 123/83, (BNIC v. Clair) ECR 391 [1985].

G. Article 85 (3)

- (101) The UIC never notified UIC leaflet No 130 to the Commission in order to seek application of the provisions of Article 85 (3). No decision may therefore be taken providing for exemption under that Article.
- (102) In its reply to the statement of objections, however, the UIC stated that, in its view, the conditions for exemption were met in the case of three objections:
- control of the appointment of agents by each national railway company,
 - the laying-down of the conditions governing the granting of commissions,
 - the setting of a standard rate of commission.
- The UIC bases its request on Article 5 of Regulation (EEC) No 1017/68.
- (103) This legal basis cannot be accepted for the reasons set out in paragraphs 49 to 58. Exemption could be granted, if the conditions were met, only under the provisions of Article 85 (3).
- (104) However, it has not been shown in respect of the three abovementioned objections that they contribute to improving the distribution of tickets and that consumers derive a fair share of the benefit.
- On the contrary, it may be seen that such practices prevent consumers from receiving part of the commission granted to agencies.
- (105) Nor has it been shown that the practices in question are indispensable to the attainment of the stated objective of improving distribution.
- (106) Lastly, it may be seen that the practices in question afford the railway companies the possibility of eliminating competition, notably as regards fares, between travel agencies in the sale of tickets.
- (107) Consequently, even if UIC leaflet No 130 had been notified, it could not have been exempted under Article 85 (3).

H. Article 15 (2) of Regulation No 17

- (108) Pursuant to Article 15 (2) of Regulation No 17, the Commission may impose on undertakings or association of undertakings fines of from ECU 1 000 to ECU 1 million, or a sum in excess thereof but not exceeding 10 % of the turnover in the preceding business year of each of the undertakings participating in the infringement where, either intentionally or negligently, they infringe Article 85 (1) of the Treaty. In fixing the amount of the fine, regard

must be had to the gravity and duration of the infringement. The Commission considers that, in this case, there are grounds for imposing a fine on the UIC.

- (109) In fixing the amount of the fine, the Commission takes the view that the gravity of the infringement is clear, since it has the object and effect of eliminating competition between all ticket distributors. Furthermore, the infringement has been committed over a long period, since UIC leaflet No 130 was drawn up in 1952.
- (110) During the proceeding, the UIC stated that it had acted in good faith in taking the view that the procedural regulation applicable to the case was Regulation (EEC) No 1017/68 and that consequently notification of the decision taken by the association of undertakings was not essential in order to qualify for exemption. The UIC also believed that the appropriate conditions were met for obtaining such exemption.
- (111) It should be noted in this respect that, already in 1987⁽¹⁾, the Court of Justice made it clear that a horizontal agreement or a horizontal decision by associations of undertakings such as that under consideration, which aims at collectively prohibiting the passing-on of part of the commission, is illegal. As from 1987, the UIC could not thus be unaware that the provisions of the UIC leaflet infringed or, at least, were liable to infringe the competition rules. However, it is clear that, between 1987 and the date on which the statement of objections was sent, the UIC did not take any steps to bring the UIC leaflet into line with Community law.
- (112) However, account should be taken of the UIC's expressed intention, after having received the statement of objections, of amending the UIC leaflet in question so as to bring it into line with Community law.

I. Article 3 of Regulation No 17

- (113) The UIC has already stated that it wishes to bring the documents which are the subject of this proceeding into line with Community competition law.
- (114) However, given the gravity of the infringements, the Commission considers it necessary to stipulate in this decision the requirement that the infringements must be terminated,

⁽¹⁾ Case 311/85, VVR v. Sociale Dienst : reference given above.

HAS ADOPTED THIS DECISION :

Article 1

The International Union of Railways (UIC) has infringed the provisions of Article 85 (1) of the EEC Treaty by adopting and circulating UIC leaflet No 130 on relations between railway companies and travel agents providing for :

- control of the appointment of agents by each national railway company,
- the joint laying-down of conditions governing the granting of commissions,
- the setting of a standard rate of commission,
- the requirement that agents must make out and sell tickets at the official fares indicated in the tariffs,
- the requirement that agents must not favour competing means of transport in their offers or advice to the public.

Article 2

The UIC shall bring to an end the infringements referred to in Article 1 within a period of twelve months of the date of notification of this Decision.

Article 3

A fine of ECU 1 000 000 (one million) is hereby imposed on the UIC in respect of the infringements referred to in Article 1.

The fine shall be paid within three months of the date of notification of this Decision to the following bank account : No 310-0933000-43, Banque Bruxelles Lambert, Agence Européenne, Rond Point Schuman 5, B-1040 Brussels.

On expiry of that period, interest shall automatically be payable at the rate charged by the European Monetary Cooperation Fund on its ecu operations on the first working day of the month in which this Decision was adopted, plus 3.5 percentage points, i.e. 13.75 %.

Should payment be made in the national currency of the Member State in which the bank nominated for payment is situated, the exchange rate applicable shall be that prevailing on the day preceding payment.

Article 4

This Decision is addressed to :

International Union of Railways,
14, rue Jean Rey,
F-75015 Paris

This Decision is enforceable according to Article 192 of the EEC Treaty.

Done at Brussels, 25 November 1992.

For the Commission

Leon BRITTAN

Vice-President