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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 82/93

of 19 January 1993

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,Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy⁽⁵⁾, and in particular Article 5 thereof,

Whereas the import levies on cereals, wheat and rye flour, and wheat groats and meal were fixed by Commission

Regulation (EEC) No 3873/92⁽⁶⁾ and subsequent amending Regulations;

Whereas, in order to make it possible for the levy arrangements to function normally, the representative market rate established during the reference period from 18 January 1993, as regards floating currencies, should be used to calculate the levies;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 3873/92 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 20 January 1993.

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

Done at Brussels, 19 January 1993.

For the Commission

René STEICHEN

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 387, 31. 12. 1992, p. 1.⁽⁶⁾ OJ No L 390, 31. 12. 1992, p. 118.

ANNEX

to the Commission Regulation of 19 January 1993 fixing the import levies on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)

CN code	Third countries ^(*)
0709 90 60	134,67 ^(?) ^(?)
0712 90 19	134,67 ^(?) ^(?)
1001 10 00	173,97 ⁽¹⁾ ^(?) ⁽¹⁰⁾
1001 90 91	139,45
1001 90 99	139,45 ⁽¹¹⁾
1002 00 00	157,03 ⁽⁶⁾
1003 00 10	124,22
1003 00 20	124,22
1003 00 80	124,22 ⁽¹¹⁾
1004 00 00	113,46
1005 10 90	134,67 ^(?) ^(?)
1005 90 00	134,67 ^(?) ^(?)
1007 00 90	134,67 ^(*)
1008 10 00	46,79 ⁽¹¹⁾
1008 20 00	78,62 ^(*)
1008 30 00	37,24 ^(?)
1008 90 10	(?)
1008 90 90	37,24
1101 00 00	207,99 ⁽⁸⁾ ⁽¹¹⁾
1102 10 00	232,60 ⁽⁸⁾
1103 11 30	282,14 ⁽⁸⁾ ⁽¹⁰⁾
1103 11 50	282,14 ⁽⁸⁾ ⁽¹⁰⁾
1103 11 90	223,64 ⁽⁸⁾

- (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 83/93**of 19 January 1993****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,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy ⁽⁵⁾, and in particular Article 5 thereof,

Whereas the premiums to be added to the levies on cereals and malt were fixed by Commission Regulation (EEC) No 3874/92 ⁽⁶⁾ and subsequent amending Regulations;

Whereas, in order to make it possible for the levy arrangements to function normally, the representative market rate established during the reference period from 18 January 1993, as regards floating currencies, should be used to calculate the levies;

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 20 January 1993.

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

Done at Brussels, 19 January 1993.

For the Commission

René STEICHEN

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 387, 31. 12. 1992, p. 1.

⁽⁶⁾ OJ No L 390, 31. 12. 1992, p. 121.

ANNEX

to the Commission Regulation of 19 January 1993 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
	1	2	3	4
0709 90 60	0	0	0	0,59
0712 90 19	0	0	0	0,59
1001 10 00	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 20	0	0	0	0
1003 00 80	0	0	0	0
1004 00 00	0	0	0	0
1005 10 90	0	0	0	0,59
1005 90 00	0	0	0	0,59
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
	1	2	3	4	5
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 84/93

of 19 January 1993

on the specific aid to be granted to producer groups in the raw tobacco sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2075/92 of 30 June 1992 on the common organization of the market in raw tobacco⁽¹⁾, and in particular Article 12 (3) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy⁽²⁾, and in particular Article 6 (2) thereof,

Whereas Article 12 of Regulation (EEC) No 2075/92 stipulates that specific aid equivalent to 10 % of the premium is to be granted where cultivation contracts are concluded between a first processor and a recognized group of producers and the deliveries covered by such contracts account for the entire output of the group members;

Whereas the requirements for the recognition of producer groups should be laid down in order that they may qualify for that specific aid;

Whereas to ensure compliance with the market structure, provision should be made that, except in certain special circumstances, a producer may be a member of one group only;

Whereas in line with the intentions of Article 12 of Regulation (EEC) No 2075/92 and in particular to prevent distortion of competition and monitoring difficulties, producer groups should be debarred from engaging in first processing; whereas a processor may, however, be a member of a group in his capacity as a tobacco producer;

Whereas to ensure uniformity of administrative procedures, rules should be laid down covering certain details regarding applications for recognition, its grant and withdrawal, and the monitoring of requirements in its regard;

Whereas to ensure that the specific aid is used effectively, it should be limited to certain purposes, in particular the grant of additional payments to producer members of a group;

Whereas in view of the specific nature of the aid, a procedure should be adopted for its payment which differs from that for the premium;

Whereas provision should be made that the premium, expressed in national currency, shall be identical for all producers who supply tobacco to processors during a certain period, using the conversion rate applicable at the beginning of the year following the harvest;

Whereas because of the time required for the provisions of this Regulation to be implemented in the Member States, special rules should be adopted in respect of the 1993 harvest;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. For the purposes of applying Article 12 of Regulation (EEC) No 2075/92, Member States shall recognize producer groups, at the request of the latter, on condition that they meet the conditions laid down in this Regulation.
2. Where a producer group consists wholly or partly of members who are themselves producer groups, each of those groups must meet the conditions laid down in this Regulation.
3. As from the 1994 harvest, producer groups may not carry out first processing of tobacco.
4. A tobacco producer may not belong to more than one group except where he cultivates more than one variety and the groups in his region of production are not recognized for all the variety groups concerned.

Article 2

1. Producer groups shall satisfy the following requirements:
 - (a) they shall be set up on the initiative of their members;
 - (b) they shall contribute by their activities to the attainment of the objectives of Article 39 of the Treaty;
 - (c) they shall be set up with the aim of adapting collectively the production of the producer members to meet the requirements of the market;

⁽¹⁾ OJ No L 215, 30. 7. 1992, p. 70.

⁽²⁾ OJ No L 387, 31. 12. 1992, p. 1.

- (d) they shall adopt, and shall ensure that their members apply, common rules for the production and the placing of their products on the market, in particular as regards product quality and the use of cultivation practices and shall purchase seed, fertilizers and other capital goods ;
- (e) their operation shall be regulated by articles of association according to which producer members shall be at least obliged :
- to market the entire production intended for marketing through the group,
 - to comply with common production rules ;
- (f) they shall, for each variety group covered by their activities,
- have at least 120 members holding between them cultivation certificates or quota statements for at least 200 tonnes, or
 - have at least 50 members holding between them cultivation certificates or quota statements for at least 2 500 tonnes.

However, in production areas remote from other production areas for the same variety group, a producer group may be recognized where it comprises at least two-thirds of the producers and accounts for at least two-thirds of the quantities shown in the cultivation certificates or quota certificates concerned.

The Member States shall determine the areas which meet the conditions referred to in the second subparagraph, taking into consideration economic and infrastructural criteria. They may lay down additional minimum conditions regarding the number of producers and the output concerned ;

- (g) their articles of association shall contain provisions to ensure that the members of the group who wish to withdraw from membership may do so :
- after they have been members of the group for a minimum of one year following its recognition, and
 - on condition that they notify the group in writing by 31 October at the latest of their withdrawal with effect from the following harvest.

These provisions shall apply without prejudice to national laws or regulations designed to protect the group or its creditors, in specified cases, against any financial consequences which might result from the withdrawal of a member or to preclude withdrawal of a member in the course of the financial year ;

- (h) both the form in which they are set up and the entire range of their activities shall preclude any discrimination which runs counter to the operation of the common market and the attainment of the general objectives of the Treaty and, in particular, any discrimination connected with the nationality or place of establishment :

- of producers or groups liable to become members of groups, or
 - of their economic partners ;
- (i) they shall have legal personality or sufficient legal capacity to exercise rights and be subject to obligations in accordance with national law ;
- (j) they shall keep separate accounts of activities in respect of which they are recognized, enabling the competent authority to make a full inspection of the use made by the group of the specific aid ;
- (k) they shall not hold a dominant position in the Community unless this is necessary for the pursuit of the objectives laid down in Article 39 of the Treaty ;
- (l) their articles of association shall in addition make it compulsory for their members to comply with the conditions laid down in subparagraphs (d) and (e) at the latest from the date :
- on which recognition takes effect, or
 - on which they become members if this is later than the date of recognition.

2. Marketing through the group within the meaning of paragraph 1 (e) shall cover at least the following operations :

- the conclusion by the group in its own name and on its behalf of cultivation contracts for the whole of the production of the members of the group,
- the supply of the whole of the production of the members of the group,
- the preparation of the product for delivery to the processors.

Article 3

1. The Member State in whose territory the producer group has its registered headquarters shall be competent to recognize producer groups.
2. The Member State :
 - shall draw up a draft granting recognition within two months of the date on which application for recognition is made, or shall reject the application,
 - shall forward the draft decision on recognition to the Commission which shall approve or reject it within two months. The Commission may approve the decision subject to conditions concerning the operation of the producer group.
3. The Member State shall determine the date on which recognition takes effect. This may not precede the date on which the group in fact begins to operate.

Article 4

1. Recognition of a producer group shall be withdrawn by the Member State concerned :

- (a) if the specific aid is used for purposes other than those laid down in Article 7;
- (b) if the conditions for recognition are no longer fulfilled;
- (c) if recognition is based on erroneous information;
- (d) if the group obtained recognition by improper means;
- (e) if the Commission decides that Article 85 (1) of the Treaty applies to the agreements, decisions and concerted practices.

2. Recognition shall be withdrawn by the Member State with effect from the date on which the conditions for recognition are no longer met.

Aid paid after that date shall be recovered, together with interest from the date of the payment of the aid to the date of its recovery. The interest rate to be applied shall be that in force for analogous recovery operations under national law.

3. In cases where recognition has been withdrawn because of serious infringements, the aid amount to be recovered shall be increased by 30 %.

In such cases, recognition may not be restored within 12 months of the date of withdrawal.

Article 5

1. Member States shall make regular inspections of groups to check that the conditions for recognition continue to be met and that the specific aid is being used in accordance with the provisions of Article 7.

2. Each recognized group shall update the information concerning recognition annually before 15 November and shall notify the Member State of any change made since the previous period.

Article 6

Where a Member State refuses or withdraws recognition of a group it shall inform the Commission accordingly within two months following the communication of its decision to the group and shall give its reasons for refusing or withdrawing recognition.

Article 7

1. The specific aid may be used by the producer groups for the following purposes only:

- the grant of an income supplement to members, adjusted in relation to the quality delivered, excluding the lowest quality classified by the group,
- the employment of technical staff to assist members in improving the quality of their production,
- the supply to members of certified seeds and seedlings and of other means of production contributing to the qualitative improvement of the product,
- the implementation of infrastructural measures for enhancing the value of products supplied by the members, in particular tobacco-grading facilities.

2. The expenditure referred to in the first indent of paragraph 1 shall be equivalent to not less than 75 % and not more than 90 % of the total amount of the specific aid. The group shall make no deduction for any reason whatsoever from the specific aid.

Article 8

1. The specific aid shall be paid to the producer group, at its request, in one instalment by the Member State in which the group is established, on the basis of the following:

- evidence that the group has received an amount equivalent to the premium paid by the processor in respect of the quantity concerned,
- evidence that the amount referred to in the first indent has been reimbursed to the processor pursuant to Article 12 of Commission Regulation (EEC) No 3478/92⁽¹⁾ or that the security guaranteeing it has been released pursuant to Article 157 (3) of that Regulation, and
- any additional documents considered necessary by the Member State.

2. If the specific aid is paid by a Member State other than that in which processing took place, the latter shall forward to the Member State responsible for the payment of the aid, at its request, the supporting evidence and documentation referred to in paragraph 1 which it has in its possession.

3. The agricultural conversion rate to be applied for the conversion of the specific aid into national currency shall be that applicable on 1 January of the year following the year of the harvest.

Article 9

For the 1993 harvest Member States may pay the specific aid to producer groups

- which do not have the minimum number of members provided for in Article 2 (1) (f),
- whose articles of association do not contain the provision referred to in Article 2 (1) (g),

on condition that those groups were recognized by the Member State before 1 July 1992 and that they produced tobacco for the 1992 harvest as part of the activities for which they are recognized.

Article 10

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

It shall apply with effect from the 1993 harvest.

⁽¹⁾ OJ No L 351, 2. 12. 1992, p. 17.

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

Done at Brussels, 19 January 1993.

For the Commission
René STEICHEN
Member of the Commission

COMMISSION REGULATION (EEC) No 85/93

of 19 January 1993

concerning control agencies in the tobacco sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2075/92 of 30 June 1992 laying down special measures in respect of the market in raw tobacco⁽¹⁾, and in particular Article 20 (8) thereof,

Whereas, under Article 20 (2) of Regulation (EEC) No 2075/92, each Member State producing more than a minimal quantity is to set up an agency for the purpose of carrying out certain checks and other duties in connection with the tobacco production aid scheme; whereas the agency must be in a position to carry out the tasks specified in that Regulation; whereas each agency must therefore possess the minimum powers required to discharge those tasks;

Whereas, in order to guarantee the correct and effective application of the rules in the sector, Article 20 (3) of Regulation (EEC) No 2075/92 specifies that the agency shall be given full powers by the Member State concerned to carry out its tasks; whereas to this end each Member State concerned must confer on the agency's inspectors powers to demand such information and make such verifications as are necessary for accomplishment of the agency's tasks;

Whereas the supervision of the application of Community rules requires the verification of the characteristics of tobacco; whereas it is therefore necessary to allow the inspectors to take samples of tobacco stored by persons subject to supervision;

Whereas in the interest of improving the efficacy of inspections provision should be made for control units operating within each agency;

Whereas the Member States concerned must take all measures necessary to safeguard the rights of persons subject to control whose interests may be affected thereby;

Whereas the agency will carry out its work in the framework of a work schedule and budget drawn up by the Member State concerned acting on a proposal from the agency and after consulting the Commission; whereas the minimum content of the schedule and size of the budget, and also the procedure to be followed for their establishment and possible adjustment, should therefore be laid down;

Whereas, under Article 20 (4), second subparagraph, of Regulation (EEC) No 2075/92, the Commission shall

regularly monitor the work of the agencies; whereas a procedure should consequently be laid down by which the Commission and the Member State concerned will be kept informed of the progress of such work;

Whereas, in order for the Commission to supervise the operation and the activities of the agencies properly it is advisable to provide for the possibility of the latter's being represented in the agencies and for the laying-down of detailed provisions for such participation;

Whereas the Community will contribute to the actual expenditure of the agencies; whereas procedures for this financing operation should therefore be laid down, together with procedures for any verification work in connection with it;

Whereas Article 20 (4), third subparagraph, of Regulation (EEC) No 2075/92 provides that the agency shall submit to the Member State and the Commission regular reports on the work which it has carried out; whereas time limits for the submission of these reports should be fixed;

Whereas it is appropriate to provide for special measures for 1993 because of the time necessary for the setting-up of control agencies in Member States which produce tobacco;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The control agencies referred to in Article 20 (2) of Regulation (EEC) No 2075/92 shall be set up by each Member State concerned no later than 30 April 1993.

2. In order to ensure the correct application of Community rules in the tobacco sector, the agencies shall, in accordance with the work programme referred to in Article 3, in particular:

- (a) carry out full checks on all deliveries of tobacco to firms undertaking first processing;
- (b) draw up the control certificate referred to in Article 12 of Commission Regulation (EEC) No 3478/92⁽²⁾;
- (c) carry out frequent and unannounced inspections of firms undertaking first processing;

⁽¹⁾ OJ No L 215, 30. 7. 1992, p. 70.

⁽²⁾ OJ No L 351, 2. 12. 1992, p. 17.

(d) propose where appropriate the application of any administrative or legal penalties as a result of these controls.

3. The Member State, acting either on its own initiative or at the request of the Commission, may require the agency to carry out:

(a) any other control required by Community rules in the sector;

(b) specific investigations in the sector.

4. The Member State shall take the necessary action to follow up the findings of the agency as soon as possible.

Article 2

1. Each agency shall be granted the legal powers required in order to carry out its duties in accordance with the law of the Member State.

2. Each agency shall, within the framework of the work schedule and budget referred to in Article 20 (4) of Regulation (EEC) No 2075/92, be given autonomy as regards the recruitment of staff and the planning of its work, and all expenditure arising therefrom.

3. The number of staff attached to the agency, 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 assigned to it to be carried out. More specifically, personnel responsible for controls shall have the necessary technical knowledge and experience to enable them to carry out the checks specified in paragraph 4, in particular as regards the assessment of agronomic data, technical checks on production and processing and the scrutiny of economic data and stock records and accounts.

4. The officials shall, for the purpose of carrying out the duties assigned to them in accordance with Article 20 (4) of Regulation (EEC) No 2075/92, be given appropriate powers by the Member State concerned to obtain any information or evidence and carry out any checks which may be necessary as part of the inspection of producers, producers' organizations, processors and any other persons covered by the rules of the sector, and in particular the right to take samples of tobacco held by natural or legal persons being inspected.

5. Each agency shall set up an internal audit unit which shall make unannounced checks on the work of the other units, and in particular ensure that control certificates are being issued properly.

6. Each Member State shall take whatever measures are necessary to safeguard the rights vested by its national legal order in those natural and legal persons who are subject to control.

7. Each Member State shall recognize the officials' findings as having conclusive force under its national legal order.

Article 3

1. From 1993 onwards the agency shall propose a work schedule and a budget estimate in respect of each year. The work schedule shall ensure that the natural and legal persons covered by the control arrangements afford a representative selection. The programme of controls shall be drawn up on the basis of a risk-analysis of the sectors and regions of production.

2. The work schedule shall include:

(a) an outline of the control work that the agency plans to carry out;

(b) a list of any other work to be carried out at the request of the Member State or the Commission pursuant to Article 1 (3);

(c) details of proposed staff-training;

(d) 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 and a timetable for the work.

3. The agency's budget shall include the following headings, each of which must be dealt with in a sufficiently detailed manner:

1. list of posts;

2. expenditure on staff;

3. administrative expenditure;

4. expenditure on individual projects;

5. spending on investment;

6. other expenditure;

7. income from the Member State concerned;

8. contribution by the Community, under Article 20 (5) of Regulation (EEC) No 2075/92;

9. other income.

4. The agency shall, for the purposes of drawing up the draft work schedule and budget estimate, take into account the frequency of checks required by Community legislation, the experience gained in previous years and, without prejudice to the responsibilities of the Member State concerned, any observations or comments made by the Commission before the draft is prepared.

Article 4

1. Not later than 15 August each year, the agency shall submit its draft work schedule and budget estimate to the Member State concerned. The latter shall, on the basis of the draft, draw up the work schedule and budget estimate and shall submit them to the Commission not later than 15 September each year.

The Commission may, within 30 days and without prejudice to the responsibilities of the Member State concerned, request the latter to introduce any change in the budget and the work schedule that the Commission considers advisable for the purposes of the satisfactory operation of Community provisions in the tobacco sector.

2. The agency's definitive work schedule and budget shall be adopted by the Member State concerned not later than 31 October each year and shall be forwarded to the Commission forthwith.

3. Subject to Commission approval and provided that the overall amount entered in the budget does not increase as a result, the Member State may, with a view to making the checks more effective, amend the agency's work schedule and budget during the year.

4. Should an exceptional situation arise in which there is a risk of fraud seriously endangering the proper operation of Community rules in the tobacco sector, the agency shall inform the Member State in question and the Commission. In such a case, the agency may modify its plan and the control work after having obtained the agreement of the Member State in question. That Member State shall inform the Commission without delay.

If, during a particular year, the agency is asked by the Member State or the Commission to carry out specific investigations, the work schedule and the budget shall be amended accordingly. The procedure laid down in paragraphs 1 and 2 shall apply *mutatis mutandis* to the introduction of such amendments.

Article 5

1. In order that Commission officials may, as laid down in the second subparagraph of Article 20 (4) of Regulation (EEC) No 2085/92, monitor the work carried out by the agency, the agency shall, not later than the fifteenth day of each month, submit to the Member State concerned and the Commission the work schedule for the following month. The agency shall, as soon as possible, also notify the Commission and the Member State concerned of any change in the implementation of the monthly work schedule.

2. The agency shall, not later than 30 days after the end of each quarter, submit to the Member State and 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 in respect of each budget chapter, and a statement of administrative or legal penalties proposed as a result of inspections carried out during that quarter.

3. Representatives of the Commission, of the Member State concerned and of the agency shall meet at least quarterly to consider the work carried out by the agency and the work which it intends to carry out in the future,

the results of that work and the general operation of the agency.

4. The Commission may take part in the deliberations of the body managing the agency. For that purpose the agency shall send the Commission by telex or fax, not later than 15 days before the date of each meeting of its supervisory or managing body, the date of that meeting, the agenda and any documents to be discussed there. The Commission representative may not vote.

Article 6

1. The Member State concerned shall, not later than 31 May each year, transmit to the Commission the revenue and expenditure account for the preceding year accompanied by a report from the governmental authority responsible for supervision of the agency.

2. Not later than six months after the date referred to in paragraph 1 the Commission shall take a decision on the amount representing the agency's actual expenditure that is to be granted to the producer Member States in respect of the year in question. The said amount, less the advance payments referred to in paragraph 4 and in Article 8 (3), shall be paid once it is established that the agency has performed the work assigned to it.

3. For the purpose of scrutiny of the revenue and expenditure account, Commission officials shall be entitled to have access to the agencies' financial records and supporting documents.

4. The amount representing the agency's operating expenditure during a year shall be agreed by the Commission and the Member State concerned on the basis of the agency's budget estimate. The Commission may, however, alter the monthly instalments in the light of the agency's rate of spending as calculated on the basis of the figures in the quarterly reports referred to in Article 5 (2).

Article 7

The agency shall send the reports referred to in the third subparagraph of Article 20 (4) of Regulation (EEC) No 2075/92 within thirty days of the end of each quarter.

Article 8

1. The draft work schedule and the budget estimate for 1993 shall be drawn up by the Member States concerned in accordance with Article 3 (2) and (3) and shall be forwarded to the Commission not later than 30 April 1993.

The draft work schedule shall include the agency's staff-recruitment plan for the year concerned.

The proposed activities of the agency, including control work, must be consonant with the recruitment plan and with the training programme scheduled.

Member States shall on the same occasion transmit to the Commission the proposed statute for the agency. This must include a staff recruitment procedure that provides sufficient guarantees that the aims set out in Article 2 (3) will be achieved.

Within 30 days the Commission may request the Member State, without prejudice to the responsibilities of the latter, to make any change in the budget or schedule which it considers appropriate and shall submit its comments, if any, on the statute.

2. The work schedule and budget for 1993 shall be adopted by the Member State concerned not later than 31 May 1993.

3. After receiving the 1993 draft work schedule and budget estimate the Commission may, on the basis of the latter and in order to facilitate the setting-up of the agency, advance to the Member States the amount representing the cost of setting up the agency.

Article 9

Until such time as the agency is in a position to perform all the duties and checks assigned to it, the Member States concerned shall carry out the checks laid down by Community rules in accordance with existing procedures.

Article 10

Member States shall inform the Commission of the measures taken in accordance with this Regulation.

Article 11

This Regulation shall enter into force on the seventh day following the day 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, 19 January 1993.

For the Commission

René STEICHEN

Member of the Commission

COMMISSION REGULATION (EEC) No 86/93

of 19 January 1993

on detailed rules for the application of Council Regulation (EEC) No 2077/92
concerning inter-branch organizations and agreements in the tobacco sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2077/92 of 30 June 1992 concerning inter-branch organizations and agreements in the tobacco sector⁽¹⁾, and in particular Article 12 thereof,

Whereas, in order to be sufficiently representative of the region it covers, an inter-branch organization must cover at least one-third of the quantities produced, processed or purchased by the member of each of the branches; whereas to avoid imbalances between regions it must, if it operates in a number of regions, meet this requirement in all of them;

Whereas it should be specified that trade in tobacco covers, in addition to the business of tobacco merchants, direct purchase of baled tobacco by its final users;

Whereas the information that inter-branch organizations must provide to the Commission, when it is responsible for their recognition, should be specified;

Whereas withdrawal of recognition must in general be made effective from the time at which the requirements for recognition ceased to be met; whereas it should, however, be made possible for this retroactive effect to be restricted as the circumstances warrant;

Whereas it should be specified that the minimum degree of representation of inter-branch organizations operating inter-regionally must be the same as that laid down for regional inter-branch organizations;

Whereas subscriptions imposed on non-members under Articles 9 (7) or (10 (1) of Regulation (EEC) No 2077/92 must be determined on a sound and verifiable basis;

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

HAS ADOPTED THIS REGULATION:

Article 1

An inter-branch organization shall be considered representative at regional level for the purposes of Article 3 (1)

(b) of Regulation (EEC) No 2077/92 if it accounts for at least one-third of the quantities produced, processed or purchased by the members of each of the branches it covers who are engaged in the production or first processing of, or trading in, the tobacco or groups of tobacco varieties covered by the organization's activities.

If an organization is inter-regional or Community-wide in scope, it must meet these requirements in each of the regions in question.

Trade in tobacco shall include the manufacture of tobacco products.

Article 2

Pursuant to Article 4 of Regulation (EEC) No 2077/92 applications for recognition made by inter-branch organizations carrying out their activities throughout, or in part of, the territories of several Member States or throughout the Community shall be addressed to the Commission and accompanied by documentation showing

- that they pursue a number of the activities listed in Article 3 of that Regulation,
- the geographical scope of their activities,
- that they have been established under the legislation of a Member State or under Community law,
- that they meet the representation requirements indicated in Article 1.

Inter-branch organizations shall transmit to the Commission all other documentation needed for determining the scope of their activities.

Article 3

Withdrawal of recognition pursuant to Articles 3 (3) or 4 (3) of Regulation (EEC) No 2077/92 shall be effective from the time at which the requirements for recognition cease to be met.

The decision to withdraw recognition may, however, be made of restrictive application depending on the grounds for withdrawal and the acts that have occurred.

⁽¹⁾ OJ No L 215, 30. 7. 1992, p. 80.

Article 4

For the purposes of application of the second subparagraph of Article 8 (1) of Regulation (EEC) No 2077/92, where a proposed extension is of inter-regional scope the inter-branch organizations concerned must represent, in each of the regions and for each of the branches in question, at least two-thirds of the production and/or trade in question.

Article 5

Where an inter-branch organization requests that individuals or groups not belonging to it be required under Articles 9 (7) or 10 (1) of Regulation (EEC) No 2077/92 to

pay subscriptions, the organization shall provide the Member State or the Commission, as appropriate, with all information needed to determine the subscription amount to be paid. The Member State or the Commission may carry out whatever inspection of the organization it considers necessary.

Article 6

This Regulation shall enter into force on the seventh 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, 19 January 1993.

For the Commission
René STEICHEN
Member of the Commission

COMMISSION REGULATION (EEC) No 87/93

of 19 January 1993

derogating from Regulations (EEC) No 1423/92 and (EEC) No 3115/92 concerning the minimum purchase price for lemons and oranges delivered for processing and the amount of the financial compensation after processing of such products applicable in Spain until the end of the 1992/93 marketing year

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1035/77 of 17 May 1977 laying down special measures to encourage the marketing of products processed from lemons⁽¹⁾, as last amended by Regulation (EEC) No 1199/90⁽²⁾, and in particular Article 3 thereof,

Having regard to Council Regulation (EEC) No 2601/69 of 18 December 1969 laying down special measures to encourage the processing of mandarins, satsumas, clementines and oranges⁽³⁾, as last amended by Regulation (EEC) No 3848/89⁽⁴⁾, and in particular Article 2 (3) thereof,

Whereas Commission Regulations (EEC) No 1423/92⁽⁵⁾ and (EEC) No 3115/92⁽⁶⁾ fix, for the 1992/93 marketing year, the minimum purchase price for lemons and oranges delivered for processing and the amount of the financial compensation after processing of such products;

Whereas Council Regulation (EEC) No 3816/92 of 28 December 1992, in abolishing in the fruit and vegetables sector the compensation mechanism for trade between Spain and Portugal and the other Member States as well as associated measures⁽⁷⁾, establishes a common basic price and buying-in price applicable in Spain as from 1 January 1993; whereas the minimum price and the financial compensation fixed by Regulations (EEC) No 1423/92 and (EEC) No 3115/92 should be adjusted accordingly; whereas it is necessary to adjust in the light of this new situation contracts concluded before 1 January 1993 but not yet carried out at 31 December 1992 and to derogate, up to the end of the 1992/93 marketing year, from the provisions of Articles 13 and 20 of Commission Regulation (EEC) No 1562/85 of 7 June 1985 laying down detailed rules for the application of measures to

encourage the processing of oranges and the marketing of products processed from lemons⁽⁸⁾, as last amended by Regulation (EEC) No 2643/91⁽⁹⁾;

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

HAS ADOPTED THIS REGULATION:

Article 1

As from 1 January 1993,

- the minimum price fixed in Article 1 and the financial compensation fixed in Article 2 of Regulation (EEC) No 1423/92, and the
- minimum price fixed in Article 1 and the financial compensation fixed in Article 2 of Regulation (EEC) No 3115/92

applicable in Member States other than Spain and Portugal shall apply in Spain.

Article 2

1. The competent authorities appointed by the Member States concerned shall ensure that the minimum price specified in contracts concluded before 1 January 1993 but not yet carried out at 31 December 1992 be adjusted in accordance with the provisions of Article 1.

2. Applications for financial compensation, as referred to in Article 13 (1) of Regulation (EEC) No 1562/85, and notifications by the Member States, as provided for in Article 20 of that Regulation, must differentiate between quantities delivered for processing before 1 January 1993 and quantities delivered after that date.

Article 3

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

It shall apply with effect from 1 January 1993.

⁽¹⁾ OJ No L 125, 19. 5. 1977, p. 3.

⁽²⁾ OJ No L 119, 11. 5. 1990, p. 61.

⁽³⁾ OJ No L 324, 27. 12. 1969, p. 21.

⁽⁴⁾ OJ No L 374, 22. 12. 1989, p. 6.

⁽⁵⁾ OJ No L 148, 29. 5. 1992, p. 21.

⁽⁶⁾ OJ No L 312, 29. 10. 1992, p. 18.

⁽⁷⁾ OJ No L 387, 31. 12. 1992, p. 10.

⁽⁸⁾ OJ No L 152, 11. 5. 1985, p. 5.

⁽⁹⁾ OJ No L 247, 5. 9. 1991, p. 21.

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

Done at Brussels, 19 January 1993.

For the Commission
René STEICHEN
Member of the Commission

COMMISSION REGULATION (EEC) No 88/93

of 19 January 1993

introducing a countervailing charge on fresh lemons originating in Cyprus

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 Article 25a (1) of Regulation (EEC) No 1035/72 provides that, if the entry price of a product imported from a non-member country is alternatively above and below the reference price for five to seven consecutive market days a countervailing charge is introduced in respect of that non-member country, save in exceptional cases; whereas that charge is introduced when three entry prices fall below the reference price and one of those entry prices is at least ECU 0,6 below the reference price; whereas that charge is equal to the difference between the reference price and the last available entry price by at least ECU 0,6 below the reference price;

Whereas Commission Regulation (EEC) No 1413/92 of 27 May 1992 fixing for the 1992/93 marketing year the reference prices for fresh lemons ⁽³⁾ fixed the reference price for products of class I for the period of November 1992 until April 1993 at ECU 47,15 per 100 kilograms net;

Whereas the entry price for a given exporting country is equal to the lowest representative prices recorded for at least 30 % of the quantities from the exporting country concerned which are marketed on all representative markets for which prices are available less the duties and the charges indicated in Article 24 (3) of Regulation (EEC) No 1035/72; whereas the meaning of representative price is defined in Article 24 (2) of Regulation (EEC) No 1035/72;

Whereas, in accordance with Article 3 (1) of Commission Regulation (EEC) No 2118/74 ⁽⁴⁾, as last amended by

Regulation (EEC) No 3811/85 ⁽⁵⁾, the prices to be taken into consideration must be recorded on the representative markets or, in certain circumstances, on other markets;

Whereas for fresh lemons originating in Cyprus the entry prices calculated in this way have for six consecutive market days been alternatively above and below the reference price; whereas three of these entry prices are at least ECU 0,6 below the reference prices; whereas a countervailing charge should therefore be introduced for these fresh lemons;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92 ⁽⁶⁾ are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 3819/92 ⁽⁷⁾,

HAS ADOPTED THIS REGULATION:

Article 1

A countervailing charge of ECU 7,53 per 100 kilograms net is applied to fresh lemons (CN code ex 0805 30 10) originating in Cyprus.

Article 2

This Regulation shall enter into force on 21 January 1993.

Subject to the provisions of the second subparagraph of Article 26 (2) of Regulation (EEC) No 1035/72, this Regulation shall be applicable until 26 January 1993.

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽²⁾ OJ No L 180, 1. 7. 1992, p. 23.

⁽³⁾ OJ No L 146, 28. 5. 1992, p. 71.

⁽⁴⁾ OJ No L 220, 10. 8. 1974, p. 20.

⁽⁵⁾ OJ No L 368, 31. 12. 1985, p. 1.

⁽⁶⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁷⁾ OJ No L 387, 31. 12. 1992, p. 17.

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

Done at Brussels, 19 January 1993.

For the Commission
René STEICHEN
Member of the Commission

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 23 December 1992

establishing that the exploitation of geographical areas for the purpose of exploring for or extracting oil or gas does not constitute in France an activity defined in Article 2 (2) (b) (i) of Council Directive 90/531/EEC and that entities carrying on such an activity are not to be considered in France as operating under special or exclusive rights within the meaning of Article 2 (3) (b) of the Directive

(Only the French text is authentic)

(93/18/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

a decision ensures that entities observe the principles of non-discrimination and competitive procurement in awarding contracts and communicates to the Commission information relating to the award of such contracts ;

Having regard to the Treaty establishing the European Economic Community,

Whereas, by letter dated 10 April 1992, France requested the Commission to provide that exploitation of geographical areas for the purpose of exploring for or extracting oil or gas should not be considered in France to be an activity as defined in Article 2 (2) (b) (i) of Directive 90/531/EEC and that entities carrying on such an activity are not to be considered in France as operating under special or exclusive rights within the meaning of Article 2 (3) (b) of the Directive ; whereas that the request did not cover the exploitation of geographical areas for the purpose of exploring for or extracting coal or other solid fuels ;

Having regard to Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors ⁽¹⁾, and in particular pursuant to Articles 3 (4) and 32 (4) to (7) thereof,

Whereas that request was accompanied by a copy of the legislative and regulatory provisions in force and a statement of how the five criteria listed in Article 3 (1) could be satisfied with respect to those provisions ;

Whereas, pursuant to Article 3 of Directive 90/531/EEC, Member States may request the Commission to provide that exploitation of geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels is not to be considered to be an activity defined in Article 2 (2) (b) (i) of the Directive and that the entities carrying out that activity are not to be considered as operating under special or exclusive rights within the meaning of Article 2 (3) (b) by virtue of doing so, provided that a number of precise conditions are satisfied with respect to the relevant national provisions concerning such activities and that any Member State requesting such

Whereas France supplied additional information on compliance with Article 3 (1) and (2) of the Directive in a letter dated 20 July 1992 ;

⁽¹⁾ OJ No L 297, 29. 10. 1990, p. 1.

Whereas, as regards compliance with the conditions laid down in Article 3 (1) of the Directive, the Commission has carried out a detailed analysis of the rules in force in France (the Mining Code, as consolidated by Law No 55-720 of 26 May 1955 and as last amended by Decree No 80-204 of 11 March 1980 on mining rights; Decree No 81/-374 of 15 April 1981 approving the standard specifications for oil or gas production concessions; and the Ministerial Order of 11 March 1980 laying down the conditions under which applications for mining concessions and their annexes are to be drawn up), which was communicated in full to the French authorities by letter dated 30 July 1992 and the main findings of which are set out below:

- the provisions of the Mining Code (Articles 7 *et seq.*, the first paragraph of Article 26 and the first paragraph of Article 54) and its implementing provisions satisfy the requirements of Article 3 (1) (a) relating to freedom of access,
- Article 25 of the Mining Code, Article 3 of Decree No 80-204 and Article 2 of the Ministerial Order of 11 March 1980 refer to the need for sufficient technical and financial capacity but do not define what constitutes such capacity or indicate how it can be demonstrated; the requirement laid down in Article 3 (1) (b) of the Directive that technical and financial capacity must be established in advance is not therefore satisfied with respect to the legislative or regulatory provisions currently in force in France,
- the requirements laid down in Article 3 (1) (c) of the Directive relating to the prior establishment and publication of the criteria for assessing the way in which it is intended to carry out the exploration or extraction are not satisfied by the legislative or regulatory provisions currently in force in France, since only Article 3 of Decree No 80-204 refers to the criteria used, and even then in very general and summary terms,
- the requirements laid down in Article 3 (1) (d) of the Directive relating to the prior establishment and communication of the conditions for carrying out exploration or extraction are not satisfied by the legislative or regulatory provisions in force in so far as only a few of those conditions are indicated, but not defined, in Articles 30-II and 51-II of the Mining Code and in so far as some of them are not only based on discretionary assessment by the competent authorities but are also incompatible with the principles enshrined in the Treaty; these conditions are, in particular, those providing for possible supervision of

companies and the possibility of imposing restrictions on the use of products,

- none of the general provisions examined lays down any obligation as referred to in Article 3 (1) (e) of the Directive to provide information on sources of procurement;

Whereas, in response to the comments addressed to them, the French authorities agreed in a letter dated 24 September 1992 to make the necessary adjustments and have submitted to the Commission the text of the amendments they propose to make to the legislative and regulatory provisions in force; whereas these adjustments, the details of which are set out in the Annex hereto, are aimed initially at defining the concepts of technical and financial capacity and establishing the way in which such capacity is to be demonstrated as well as laying down the criteria for selecting applications for authorization referred to in Decree No 80-204; whereas they are also intended to delete the incompatible provisions (Articles 30 and 51 of the Mining Code; Decree No 81-374 in full, with the compatible provisions thereof being into another Decree, No 80-330 of 7 May 1980, on the administrative supervision of mines);

Whereas, by a notice published in the *Official Journal of the European Communities*⁽¹⁾, the Commission invited interested parties to comment on French rules and practices; whereas no reply alleging discrimination in the treatment of requests for authorization to carry out exploration or extraction has been received by the Commission;

Whereas the generally applicable provisions in force in France do not comprise any measure that is likely to satisfy the requirements of Article 3 (2) of the Directive;

Whereas, in their letter of 24 September 1992, the French authorities offered to insert into the text of the law which is to transpose Directive 90/531/EEC into French law an article referring to the principles of non-discrimination and competitive procurement, in particular as regards the information made available to enterprises, and communication to the Commission, and providing that these obligations will be defined in a decree the text of which has been communicated for the purposes of an opinion; whereas the text of this draft decree comprised errors or anomalies that were notified by letter of 8 October 1992 to the French authorities, which transmitted a revised and compatible draft on 20 October 1992;

⁽¹⁾ OJ No C 186, 23. 7. 1992, p. 10.

Whereas the provisions of that draft lay down in particular the obligations to be fulfilled by entities holding exploration or extraction permits granted prior to 1 January 1993 with regard to non-discrimination, competitive procurement and the transmission to the Commission of information on the award of contracts, in accordance with Article 3 (3) of the Directive ;

Whereas the amendments to be made to the Mining Code and to its implementing provisions in order to comply with Article 3 (1) of Directive 90/351/EEC have to pass through the legislative process and cannot therefore be adopted by 1 January 1993, the date when the Directive is due to enter into force ; whereas the French authorities have nevertheless undertaken to strive to complete the process as quickly as possible ;

Whereas Law No 92-1282 of 11 December 1992 transposes Directive 90/531/EEC into French law ; whereas the draft decree implementing Article 3 of that Law and establishing the arrangements for the award of supply and works contracts by entities holding permits to explore for a extract liquid or gaseous hydrocarbons has been transmitted to the Council of State prior to adoption ; whereas, pending the completion of this procedure, the provisions of that decree were incorporated in a joint order dated 15 December 1992, issued by the Minister for Industry and Foreign Trade and the Minister for Energy ; whereas, therefore, pending the forthcoming adoption of the definitive text, action has been taken to ensure that Article 3 (2) of the Directive will be effectively applied from 1 January 1993 ;

Whereas compliance with the principles of non-discrimination and competitive procurement by entities carrying out exploration or extraction, in particular as regards the information they make available to enterprises concerning their intentions with respect to the award of contracts, and with the obligation to transmit to the Commission information on the award of such contracts, as provided for in Article 3 (2) of Directive 90/531/EEC, corresponds to the very aim pursued by the Directive ; whereas, since such compliance with those conditions is guaranteed as from 1 January 1993 by the provisions of a binding legal instrument, the benefit of the arrangements introduced by Article 3 of the Directive can be authorized on a temporary basis until the amendments have been made in full to the national provisions so as to make them consistent with Article 3 (1) ;

Whereas, in accordance with Article 32 (4) to (7) of Directive 90/531/EEC, the Advisory Committee for Public Contracts met on 25 November 1992 to deliver its opinion on this Decision,

HAS ADOPTED THIS DECISION :

Article 1

From 1 January 1993 and for not more than one year, France is authorized to consider that the exploitation of geographical areas for the purpose of exploring for or extracting oil or gas is not considered as an activity defined in Article 2 (2) (b) (i) of Directive 90/531/EEC and entities carrying on such an activity shall not be considered in France as operating under special or exclusive rights within the meaning of Article 2 (3) (b) of the Directive.

Article 2

Pending adoption of all the legislative, regulatory or administrative provisions required to give effect to Article 3 (1) of the Directive, France shall observe the principles of non-discrimination, transparency and competitive procurement, which warrant this authorization.

Article 3

This Decision shall be reviewed on the basis of an examination of all the laws, regulations and administrative provisions enacted in France for the purpose of applying Article 3 of Directive 90/531/EEC.

To that end, all such provisions adopted by France shall be notified to the Commission immediately upon their adoption and not later than 1 October 1993.

Article 4

This Decision shall expire on 31 December 1993 and may not be renewed.

Article 5

This Decision is addressed to the French Republic.

Done at Brussels, 23 December 1992.

For the Commission

Martin BANGEMANN

Vice-President

ANNEX

Amendments proposed by France to its legislative, regulatory or administrative provisions relating to Article 3 (1) of Directive 90/531/EEC

I. Article 3 (1) (b)

To define the concepts of technical and financial capacity, provisions will be inserted into the Mining Code along the lines of Articles 22 and 23 of Directive 77/62/EEC of 21 December 1976 coordinating procedures for the award of public supply contracts ⁽¹⁾ and Articles 25 and 26 of Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts ⁽²⁾.

These provisions will consist of the following:

1. The following paragraph is to be added to Article 9 of the Mining Code:

'An exclusive exploration licence shall not be granted to any person who does not possess the requisite technical and financial capacity for successfully carrying out the exploration work. The criteria for assessing such capacity shall be laid down by decree of the Council of State.'

2. The first paragraph of Article 25 of the Mining Code is to be worded as follows:

'A mining concession shall not be granted to any person who does not possess the requisite technical and financial capacity for successfully carrying out the extraction work. The criteria for assessing such capacity shall be laid down by decree of the Council of State.'

3. The following two Articles are to be inserted in Decree No 80-204 of 11 March 1980:

Article A: 'To demonstrate his technical capacity, the applicant shall submit to the administration:

- (a) the particulars, diplomas and professional qualifications of the enterprise's main managerial staff, and in particular the persons responsible for organizing and supervising the exploration or production work concerned;
- (b) a list of the exploration or production activities in which the enterprise has been involved over the preceding three years, together with a brief description of the most important work;
- (c) a description of the technical means to be employed to carry out the exploration or production work concerned.

These certificates and documents shall be annexed to the application referred to in Articles 4 or 9 below.

The administrative authority may request further details or clarification from the applicant.'

Article B: 'To demonstrate his financial capacity, the applicant shall submit to the administration:

- (a) appropriate bankers' statements;
- (b) the enterprise's three most recent balance sheets and profit-and-loss accounts.

These certificates and documents shall be annexed to the application referred to in Articles 4 or 9 below.

The administrative authority may request further details or clarification from the applicant.

If, for any duly substantiated reason, the applicant is unable to supply the documents or certificates requested, he may be allowed to prove his financial capacity by any other appropriate document.'

II. Article 3 (1) (c)

To define explicitly the different criteria used by the French authorities, the Mining Code will be amended as follows:

1. the following paragraph is to be added to Article 9 of the Mining code:

'The administrative authority shall assess the grounds and considerations whereby preference is to be granted to the different applicants in accordance with criteria laid down by decree of the Council of State.';

2. the following paragraph is to be inserted in Article 25 of the Mining Code:

'The administrative authority shall assess the grounds and considerations whereby preference is to be granted to the different applicants for concessions in accordance with criteria laid down by decree of the Council of State.';

⁽¹⁾ OJ No L 13, 15. 1. 1977, p. 1.

⁽²⁾ OJ No L 185, 16. 8. 1971, p. 5.

3. the following Article is to be added to Decree No 80-204 of 11 March 1980 :

'Pursuant to Articles 9 and 25 of the Mining Code, the administrative authority shall assess the grounds and considerations whereby preference is to be granted to the different applicants for mining rights on the basis of :

- (a) the applicants' financial and technical capacity ;
- (b) the efficiency and sense of responsibility demonstrated by applicants in connection with other authorizations ;
- (c) the level of financial commitments to the work ;
- (d) the technical merit of the work programmes submitted ;
- (e) the calibre of the prior studies carried out to prepare the work programme ;
- (f) proximity to any other area already explored or exploited by the applicant.'

Given the importance of the work programme for the purpose of applying these criteria, its content will be defined precisely enough to enable any interested entity to submit a valid application.

To that end, the following Articles are to be added to the Order of 11 March 1980 :

Article A : 'The work programme annexed to the application for an exploration licence shall include :

- (a) a technical description of the work which the application plans to carry out during the initial period of validity of the licence with a view to surveying and exploiting the area concerned ;
- (b) a description of the technical means to be employed to carry out the work concerned ;
- (c) the phasing of the work during the initial period of validity of the licence ;
- (d) the minimum financial commitment the applicant undertakes to make to the work ;
- (e) the prior studies carried out to prepare the work programme ;
- (f) an impact statement explaining how the general work programme meets environmental protection requirements'.

Article B : 'The work programme annexed to the applications for a concession shall include :

- (a) a technical description of the work necessary for exploiting the concession applied for ;
- (b) a description of the technical means to be employed to carry out the work concerned ;
- (c) the financial commitment which the applicant plans to make to the work ;
- (d) the date on which exploitation of the concession is planned to begin ;
- (e) the forecasts for production resulting from the planned exploitation work ;
- (f) the prior studies carried out to prepare the work programme ;
- (g) an impact statement explaining how the general work programme meets environmental protection requirements'.

III. Article 3 (1) (d)

To repeal all provisions that could be applied in a discretionary manner, the following amendments will be made to the Mining Code and related provisions :

1. deletion of Articles 30 and 51 of the Mining Code (oil or gas) ;
2. deletion of the reference to specifications in Article 25 of the Mining Code ;
3. repeal of Decree No 81-374 of 15 April 1981 laying down standard specifications for oil or gas concessions ;
4. insertion into Decree No 80-330 of 7 May 1989 on administrative supervision of Articles 4, 5, 6 and 7 (1) of the standard specifications laid down by Decree No 81-374 of 15 April 1981.

CORRIGENDA

Corrigendum to Commission Regulation (EEC) No 3807/92 of 23 December 1992 amending Regulations (EEC) No 2182/77, (EEC) No 985/81 and (EEC) No 2848/89 relating to beef following the replacement of Regulation (EEC) No 569/88 by Regulation (EEC) No 3002/92

(Official Journal of the European Communities No L 384 of 30 December 1992)

On page 33 in Article 3:

for: 'Regulation (EEC) No 2182/87 is hereby amended as follows':,

read: 'Regulation (EEC) No 2182/77 is hereby amended as follows':.
