

English edition

## Legislation

### Contents

#### I Acts whose publication is obligatory

Commission Regulation (EC) No 2256/97 of 13 November 1997 altering the export refunds on white sugar and raw sugar exported in the natural state .....	1
Commission Regulation (EC) No 2257/97 of 13 November 1997 fixing the representative prices and the additional import duties for molasses in the sugar sector .....	3
Commission Regulation (EC) No 2258/97 of 13 November 1997 fixing the maximum export refund for white sugar for the 15th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1408/97 .....	5
Commission Regulation (EC) No 2259/97 of 13 November 1997 establishing the standard import values for determining the entry price of certain fruit and vegetables .....	6
<b>* Commission Regulation (EC) No 2260/97 of 13 November 1997 derogating from Regulation (EEC) No 2454/93 in respect of the definition of the concept of originating products used for the purposes of the scheme of generalized preferences to take account of the special situation of Bangladesh regarding certain exports of textiles to the Community .....</b>	<b>8</b>
Commission Regulation (EC) No 2261/97 of 13 November 1997 suspending advance fixing of export refunds on certain milk products exported in the form of goods not covered by Annex II to the Treaty .....	17
Commission Regulation (EC) No 2262/97 of 13 November 1997 amending representative prices and additional duties for the import of certain products in the sugar sector .....	18
Commission Regulation (EC) No 2263/97 of 13 November 1997 fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 1339/97 .....	20

Commission Regulation (EC) No 2264/97 of 13 November 1997 fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 1883/97 .....	21
Commission Regulation (EC) No 2265/97 of 13 November 1997 concerning tenders notified in response to the invitation to tender for the export of barley issued in Regulation (EC) No 1337/97 .....	22
Commission Regulation (EC) No 2266/97 of 13 November 1997 fixing the maximum export refund on rye in connection with the invitation to tender issued in Regulation (EC) No 1338/97 .....	23
Commission Regulation (EC) No 2267/97 of 13 November 1997 concerning tenders notified in response to the invitation to tender for the export of oats issued in Regulation (EC) No 1773/97 .....	24

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II *Acts whose publication is not obligatory*

**Commission**

97/762/EC:

- \* **Commission Decision of 9 July 1997 on measures taken by Portugal to assist EPAC — Empresa Para a Agroalimentação e Cereais, SA** ..... 25

---

**Corrigenda**

- \* **Corrigendum to the second Council Directive 89/646/EEC of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC (OJ L 386 of 30. 12. 1989)** ..... 34
- \* **Corrigendum to Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ L 228 of 11. 8. 1992)** ..... 34
- \* **Corrigendum to Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive) (OJ L 360 of 9. 12. 1992)** ..... 34

## I

*(Acts whose publication is obligatory)*

**COMMISSION REGULATION (EC) No 2256/97  
of 13 November 1997  
altering the export refunds on white sugar and raw sugar exported in the natural  
state**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European 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 <sup>(1)</sup>, as last amended by Regulation (EC) No 1599/96 <sup>(2)</sup>, and in particular the second subparagraph of Article 19 (4) thereof,

Whereas the refunds on white sugar and raw sugar exported in the natural state were fixed by Commission Regulation (EC) No 2202/97 <sup>(3)</sup>;

Whereas it follows from applying the detailed rules contained in Regulation (EC) No 2202/97 to the informa-

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

HAS ADOPTED THIS REGULATION:

*Article 1*

The export refunds on the products listed in Article 1 (1) (a) of Regulation (EEC) No 1785/81, undenatured and exported in the natural state, as fixed in the Annex to Regulation (EC) No 2202/97 are hereby altered to the amounts shown in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 14 November 1997.

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

Done at Brussels, 13 November 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 177, 1. 7. 1981, p. 4.

<sup>(2)</sup> OJ L 206, 16. 8. 1996, p. 43.

<sup>(3)</sup> OJ L 303, 6. 11. 1997, p. 7.

## ANNEX

to the Commission Regulation of 13 November 1997 altering the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Amount of refund
	— ECU/100 kg —
1701 11 90 9100	37,31 <sup>(1)</sup>
1701 11 90 9910	33,22 <sup>(1)</sup>
1701 11 90 9950	<sup>(2)</sup>
1701 12 90 9100	37,31 <sup>(1)</sup>
1701 12 90 9910	33,22 <sup>(1)</sup>
1701 12 90 9950	<sup>(2)</sup>
	— ECU/1 % of sucrose × 100 kg —
1701 91 00 9000	0,4056
	— ECU/100 kg —
1701 99 10 9100	40,56
1701 99 10 9910	39,79
1701 99 10 9950	39,79
	— ECU/1 % of sucrose × 100 kg —
1701 99 90 9100	0,4056

<sup>(1)</sup> Applicable to raw sugar with a yield of 92 %; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 17a (4) of Regulation (EEC) No 1785/81.

<sup>(2)</sup> Fixing suspended by Commission Regulation (EEC) No 2689/85 (OJ L 255, 26. 9. 1985, p. 12), as amended by Regulation (EEC) No 3251/85 (OJ L 309, 21. 11. 1985, p. 14).

## COMMISSION REGULATION (EC) No 2257/97

of 13 November 1997

## fixing the representative prices and the additional import duties for molasses in the sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the market in sugar<sup>(1)</sup>, as last amended by Regulation (EC) No 1599/96<sup>(2)</sup>,

Having regard to Commission Regulation (EC) No 1422/95 of 23 June 1995 laying down detailed rules of application for imports of molasses in the sugar sector and amending Regulation (EEC) No 785/68<sup>(3)</sup>, and in particular Articles 1 (2) and 3 (1) thereof,

Whereas Regulation (EC) No 1422/95 stipulates that the cif import price for molasses, hereinafter referred to as the 'representative price', should be set in accordance with Commission Regulation (EEC) No 785/68<sup>(4)</sup>; whereas that price should be fixed for the standard quality defined in Article 1 of the above Regulation;

Whereas the representative price for molasses is calculated at the frontier crossing point into the Community, in this case Amsterdam; whereas that price must be based on the most favourable purchasing opportunities on the world market established on the basis of the quotations or prices on that market adjusted for any deviations from the standard quality; whereas the standard quality for molasses is defined in Regulation (EEC) No 785/68;

Whereas, when the most favourable purchasing opportunities on the world market are being established, account must be taken of all available information on offers on the world market, on the prices recorded on important third-country markets and on sales concluded in international trade of which the Commission is aware, either directly or through the Member States; whereas, under Article 7 of Regulation (EEC) No 785/68, the Commission may for this purpose take an average of several prices as a basis, provided that this average is representative of actual market trends;

Whereas the information must be disregarded if the goods concerned are not of sound and fair marketable quality or if the price quoted in the offer relates only to a small quantity that is not representative of the market; whereas offer prices which can be regarded as not rep-

resentative of actual market trends must also be disregarded;

Whereas, if information on molasses of the standard quality is to be comparable, prices must, depending on the quality of the molasses offered, be increased or reduced in the light of the results achieved by applying Article 6 of Regulation (EEC) No 785/68;

Whereas a representative price may be left unchanged by way of exception for a limited period if the offer price which served as a basis for the previous calculation of the representative price is not available to the Commission and if the offer prices which are available and which appear not to be sufficiently representative of actual market trends would entail sudden and considerable changes in the representative price;

Whereas where there is a difference between the trigger price for the product in question and the representative price, additional import duties should be fixed under the conditions set out in Article 3 of Regulation (EC) No 1422/95; whereas should the import duties be suspended pursuant to Article 5 of Regulation (EC) No 1422/95, specific amounts for these duties should be fixed;

Whereas application of these provisions will have the effect of fixing the representative prices and the additional import duties for the products in question as set out in the Annex to this Regulation;

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

HAS ADOPTED THIS REGULATION:

*Article 1*

The representative prices and the additional duties applying to imports of the products referred to in Article 1 of Regulation (EC) No 1422/95 are fixed in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 14 November 1997.

<sup>(1)</sup> OJ L 177, 1. 7. 1981, p. 4.

<sup>(2)</sup> OJ L 206, 16. 8. 1996, p. 43.

<sup>(3)</sup> OJ L 141, 24. 6. 1995, p. 12.

<sup>(4)</sup> OJ L 145, 27. 6. 1968, p. 22.

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

Done at Brussels, 13 November 1997.

*For the Commission*  
 Franz FISCHLER  
 Member of the Commission

ANNEX

**fixing the representative prices and additional import duties applying to imports of molasses in the sugar sector**

CN code	Amount of the representative price in ECU per 100 kg net of the product in question	Amount of the additional duty in ECU per 100 kg net of the product in question	Amount of the duty to be applied to imports in ECU per 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 <sup>(2)</sup>
1703 10 00 <sup>(1)</sup>	7,98	—	0,23
1703 90 00 <sup>(1)</sup>	11,00	—	0,00

<sup>(1)</sup> For the standard quality as defined in Article 1 of amended Regulation (EEC) No 785/68.

<sup>(2)</sup> This amount replaces, in accordance with Article 5 of Regulation (EC) No 1422/95, the rate of the Common Customs Tariff duty fixed for these products.

COMMISSION REGULATION (EC) No 2258/97  
of 13 November 1997

fixing the maximum export refund for white sugar for the 15th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1408/97

THE COMMISSION OF THE EUROPEAN COMMUNITIES,  
Having regard to the Treaty establishing the European 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<sup>(1)</sup>, as last amended by Regulation (EC) No 1599/96<sup>(2)</sup>, and in particular the second subparagraph of Article 17 (5) (b) thereof,

Whereas Commission Regulation (EC) No 1408/97 of 22 July 1997 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar<sup>(3)</sup>, requires partial invitations to tender to be issued for the export of this sugar;

Whereas, pursuant to Article 9 (1) of Regulation (EC) No 1408/97 a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question;

Whereas, following an examination of the tenders submitted in response to the 15th partial invitation to

tender, the provisions set out in Article 1 should be adopted;

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

HAS ADOPTED THIS REGULATION:

*Article 1*

For the 15th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1408/97 the maximum amount of the export refund is fixed at ECU 42,890 per 100 kilograms.

*Article 2*

This Regulation shall enter into force on 14 November 1997.

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

Done at Brussels, 13 November 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 177, 1. 7. 1981, p. 4.

<sup>(2)</sup> OJ L 206, 16. 8. 1996, p. 43.

<sup>(3)</sup> OJ L 194, 23. 7. 1997, p. 16.

**COMMISSION REGULATION (EC) No 2259/97**  
**of 13 November 1997**  
**establishing the standard import values for determining the entry price of**  
**certain fruit and vegetables**

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

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables<sup>(1)</sup>, as last amended by Regulation (EC) No 2375/96<sup>(2)</sup>, and in particular Article 4 (1) 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<sup>(3)</sup>, as last amended by Regulation (EC) No 150/95<sup>(4)</sup>, and in particular Article 3 (3) thereof,

Whereas Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third

countries, in respect of the products and periods stipulated in the Annex thereto;

Whereas, in compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1*

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 14 November 1997.

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

Done at Brussels, 13 November 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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<sup>(1)</sup> OJ L 337, 24. 12. 1994, p. 66.

<sup>(2)</sup> OJ L 325, 14. 12. 1996, p. 5.

<sup>(3)</sup> OJ L 387, 31. 12. 1992, p. 1.

<sup>(4)</sup> OJ L 22, 31. 1. 1995, p. 1.

## ANNEX

to the Commission Regulation of 13 November 1997 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

CN code	Third country code <sup>(1)</sup>	Standard import value
0702 00 45	204	48,6
	999	48,6
0709 90 79	052	117,8
	999	117,8
0805 20 31	204	96,6
	999	96,6
0805 20 33, 0805 20 35, 0805 20 37, 0805 20 39	052	55,6
	464	206,7
	999	131,1
	052	76,8
0805 30 40	999	76,8
	052	125,8
0806 10 50	400	247,6
	999	186,7
	052	53,6
	060	44,0
	064	45,9
0808 10 92, 0808 10 94, 0808 10 98	400	80,5
	404	79,9
	512	39,3
	528	51,2
	800	114,7
	999	63,6
	052	81,5
	064	77,4
0808 20 67	400	69,1
	999	76,0

(<sup>1</sup>) Country nomenclature as fixed by Commission Regulation (EC) No 68/96 (OJ L 14, 19. 1. 1996, p. 6). Code '999' stands for 'of other origin'.

**COMMISSION REGULATION (EC) No 2260/97**  
**of 13 November 1997**

**derogating from Regulation (EEC) No 2454/93 in respect of the definition of the concept of originating products used for the purposes of the scheme of generalized preferences to take account of the special situation of Bangladesh regarding certain exports of textiles to the Community**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code<sup>(1)</sup>, as last amended by Regulation (EC) No 1427/97<sup>(2)</sup>, and in particular Article 76 thereof,

Whereas, by Council Regulation (EC) No 3281/94 of 19 December 1994 applying a four year scheme of generalized tariff preferences (1995 to 1998) in respect of certain industrial products originating in developing countries<sup>(3)</sup>, as last amended by Commission Regulation (EC) No 998/97<sup>(4)</sup>, the Community gave such preferences to Bangladesh;

Whereas Articles 67 to 97 of Regulation (EEC) No 2454/93 establish the definition of the concept of originating products to be used for the purposes of generalized tariff preferences; whereas Article 76 of that Regulation provides, however, for derogations to those provisions in favour of least-developed GSP-beneficiary countries which submit an appropriate request to that effect to the Community;

Whereas the Government of Bangladesh has applied for such a derogation in respect of certain textile products; whereas at the Community's request Bangladesh has provided the requisite additional economic information;

Whereas the request submitted by Bangladesh satisfies the requirements of Article 76; whereas in particular the introduction of quantitative conditions (on an annual basis) reflecting the Community market's capacity to absorb the Bangladeshi products, Bangladesh's export capacity and actual recorded trade flows, is such as to prevent injury to the corresponding branches of Community industry;

Whereas in order to encourage regional cooperation among beneficiary countries it is desirable to provide that

the raw materials to be used in Bangladesh in pursuance of this derogation should originate in countries belonging to the Association of South-East Asian Nations (Asean) (except Myanmar), the South Asian Association for Regional Cooperation (Saarc) or the Lomé Convention;

Whereas provision should be made for the transfer of quantities between product categories in accordance with and up to the limits in Annex VIII to Council Regulation (EEC) No 3030/93 of 12 October 1993 on common rules for imports of certain textile products from third countries<sup>(5)</sup>, as last amended by Commission Regulation (EC) No 1445/97<sup>(6)</sup>;

Whereas the derogation may not in any case apply beyond 31 December 1998, when the current scheme of generalized tariff preferences for industrial products expires;

Whereas, as the result of undertakings entered into with the Bangladesh authorities, the provisions should be made applicable as from 15 October 1997;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. By way of derogation from Articles 67 to 97 to Regulation (EEC) No 2454/93, products listed in the Annex to this Regulation which are manufactured in Bangladesh from woven fabric (woven items) or yarn (knitted items) imported into that country and originating in a country belonging to the Association of South-East Asian Nations (Asean) (except Myanmar), the South Asian Association for Regional Cooperation (Saarc) or the Lomé Convention shall be deemed to originate in Bangladesh in accordance with the arrangements set out below.

2. For the purposes of paragraph 1, products shall be regarded as originating in Asean or Saarc when they are obtained in these countries according to the rules of

<sup>(1)</sup> OJ L 253, 11. 10. 1993, p. 1.

<sup>(2)</sup> OJ L 196, 24. 7. 1997, p. 31.

<sup>(3)</sup> OJ L 348, 31. 12. 1994, p. 1.

<sup>(4)</sup> OJ L 144, 4. 6. 1997, p. 13.

<sup>(5)</sup> OJ L 275, 8. 11. 1993, p. 1.

<sup>(6)</sup> OJ L 198, 25. 7. 1997, p. 1.

origin provided for in Regulation (EEC) No 2454/93, or as originating in the beneficiary countries of the Lomé Convention when they are obtained in those countries according to the rules of origin provided in Protocol I to the Fourth ACP-EEC Convention<sup>(1)</sup>.

3. The competent authorities of Bangladesh shall undertake to take all of the necessary measures to ensure compliance with the provisions of paragraph 2.

#### *Article 2*

The derogation provided for in Article 1 shall apply to products, imported into the Community from Bangladesh during the period 15 October 1997 to 31 December 1998, up to the annual quantities listed in the Annex against each product.

#### *Article 3*

The quantities referred to in the Annex shall be managed by the Commission, which shall take any appropriate administrative measures to ensure that they are managed efficiently.

Where an importer presents a declaration for release for free circulation in a Member State, applying to take advantage of the provisions of this Regulation, and the declaration is accepted by the customs authorities, the Member State concerned shall notify the Commission and draw an amount corresponding to its requirements.

Requests for drawings indicating the date on which the declarations were accepted, shall be sent to the Commission without delay.

Drawings shall be granted by the Commission by reference to the date on which the customs authorities of the Member State concerned accepted the declaration for release for free circulation, to the extent that the available balance so permits.

If a Member State does not use the amount drawn it shall return it as soon as possible to the corresponding quantity.

If the amounts requested are greater than the available balance of the quantity in question, the balance shall be allocated among applicants, *pro rata*. The Commission shall inform the Member States of the drawings made.

Each Member State shall ensure that importers of the products in question have equal and continuous access to the quantities for as long as the balance of the relevant quantity so permits.

#### *Article 4*

Quantities may be transferred in accordance with the provisions and up to the limits set out in Annex VIII to Regulation (EEC) No 3030/93, in the version as amended by Commission Regulation (EC) No 2231/96<sup>(2)</sup>.

#### *Article 5*

The following shall be entered in box 4 of certificates of origin Form A issued pursuant to this Regulation:

‘Derogation — Regulation (EC) No 2260/97’.

#### *Article 6*

In case of doubt, the Member States may demand a copy of the document certifying the origin of the materials used in Bangladesh under this derogation. Such a demand may be made at the time of entry into free circulation of the goods benefiting from this Regulation, or within the framework of the administrative cooperation for which provision is made in Article 94 of Regulation (EEC) No 2454/93.

#### *Article 7*

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 15 October 1997.

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

Done at Brussels, 13 November 1997.

*For the Commission*

Mario MONTI

*Member of the Commission*

<sup>(1)</sup> OJ L 229, 17. 8. 1991, p. 1.

<sup>(2)</sup> OJ L 307, 28. 11. 1996, p. 1.

## ANNEX

Order No	Textile category	CN code	Description of goods	Quantity (1. 1 - 31. 12)
09.8151	4	6105 10 00 6105 20 10 6105 20 90 6105 90 10 6109 10 00 6109 90 10 6109 90 30 6110 20 10 6110 30 10	Shirts, T-shirts, lightweight fine-knit roll-, polo- or turtle-necked jumpers and pullovers (other than of wool or fine animal hair), undervests and the like, knitted or crocheted	67 612 982 pieces
09.8152	5	6101 10 90 6101 20 90 6101 30 90 6102 10 90 6102 20 90 6102 30 90 6110 10 10 6110 10 31 6110 10 35 6110 10 38 6110 10 91 6110 10 95 6110 10 98 6110 20 91 6110 20 99 6110 30 91 6110 30 99	Jerseys, pullovers, slipovers, waistcoats, twinsets, cardigans, bed-jackets and jumpers (other than jackets and blazers), anoraks, wind-cheaters, waister jackets and the like, knitted or crocheted	16 542 888 pieces
09.8153	6	6203 41 10 6203 41 90 6203 42 31 6203 42 33 6203 42 35 6203 42 90 6203 43 19 6203 43 90 6203 49 19 6203 49 50 6204 61 10 6204 62 31 6204 62 33 6204 62 39 6204 63 18 6204 69 18 6211 32 42 6211 33 42 6211 42 42 6211 43 42	Men's or boys' woven breeches, shorts other than swimwear and trousers (including slacks); women's or girls' woven trousers and slacks, of wool, of cotton or of man-made fibres; lower parts of track suits with lining, other than category 16 or 29, of cotton or of man-made fibres	15 849 467 pieces
09.8154	7	6106 10 00 6106 20 00 6106 90 10 6206 20 00 6206 30 00 6206 40 00	Women's or girls' blouses, shirts and shirt-blouses, whether or not knitted or crocheted, of wool, of cotton or of man-made fibres	14 719 672 pieces
09.8155	8	6205 10 00 6205 20 00 6205 30 00	Men's or boys' shirts, other than knitted or crocheted, of wool, of cotton or of man-made fibres	39 948 918 pieces

Order No	Textile category	CN code	Description of goods	Quantity (l. 1 - 31. 12)
09.8156	10	6111 10 10 6111 20 10 6111 30 10 ex 6111 90 00 6116 10 20 6116 10 80 6116 91 00 6116 92 00 6116 93 00 6116 99 00	Gloves, mittens and mitts, knitted or crocheted	30 492 pairs
09.8157	12	6115 12 00 6115 19 10 6115 19 90 6115 20 11 6115 20 90 6115 91 00 6115 92 00 6115 93 10 6115 93 30 6115 93 99 6115 99 00	Panty-house and tights, stockings, understockings, socks, ankle-socks, sockettes and the like, knitted or crocheted, other than for babies, including stockings for varicose veins, other than products of category 70	5 748 133 pairs
09.8158	13	6107 11 00 6107 12 00 6107 19 00 6108 21 00 6108 22 00 6108 29 00	Men's or boys' underpants and briefs, women's or girls' knickers and briefs, knitted or crocheted, of wool, of cotton or of man-made fibres	5 407 314 pieces
09.8159	14	6201 11 00 ex 6201 12 10 ex 6201 12 90 ex 6201 13 10 ex 6201 13 90 6210 20 00	Men's or boys' woven overcoats, raincoats and other coats, cloaks and capes, of wool, of cotton or of man-made fibres (other than parkas of category 21)	908 223 pieces
09.8160	15	6202 11 00 ex 6202 12 10 ex 6202 12 90 ex 6202 13 10 ex 6202 13 90 6204 31 00 6204 32 90 6204 33 90 6204 39 19 6210 30 00	Women's or girls' woven overcoats, raincoats and other coats, cloaks and capes; jackets and blazers, of wool, of cotton or of man-made fibres (other than parkas of category 21)	494 861 pieces
09.8161	16	6203 11 00 6203 12 00 6203 19 10 6203 19 30 6203 21 00 6203 22 80 6203 23 80 6203 29 18 6211 32 31 6211 33 31	Men's or boys' suits and ensembles, other than knitted or crocheted, of wool, of cotton or of man-made fibres, excluding ski suits; men's or boys' track suits with lining, with an outer shell of a single identical fabric, of cotton or of man-made fibres	260 657 pieces
09.8162	17	6203 31 00 6203 32 90 6203 33 90 6203 39 19	Men's or boys' jackets and blazers, other than knitted or crocheted, of wool, of cotton or of man-made fibres	427 335 pieces

Order No	Textile category	CN code	Description of goods	Quantity (1. 1 - 31. 12)
09.8163	18	6207 11 00 6207 19 00 6207 21 00 6207 22 00 6207 29 00 6207 91 10 6207 91 90 6207 92 00 6207 99 00  6208 11 00 6208 19 10 6208 19 90 6208 21 00 6208 22 00 6208 29 00 6208 91 11 6208 91 19 6208 91 90 6208 92 10 6208 92 90 6208 99 00	Men's or boys' singlets and other vests, underpants, briefs, nightshirts, pyjamas, bathrobes, dressing-gowns and similar articles, other than knitted or crocheted  Women's or girls' singlets and other vests, slips, petticoats, briefs, panties, nightdresses, pyjamas, négligés, bathrobes, dressing-gowns and similar articles, other than knitted or crocheted	383,9 tonnes
09.8164	21	ex 6201 12 10 ex 6201 12 90 ex 6201 13 10 ex 6201 13 90 6201 91 00 6201 92 00 6201 93 00 ex 6202 12 10 ex 6202 12 90 ex 6202 13 10 ex 6202 13 90 6202 91 00 6202 92 00 6202 93 00 6211 32 41 6211 33 41 6211 42 41 6211 43 41	Parkas; anoraks, wind-cheaters, waister jackets and the like, other than knitted or crocheted, of wool, of cotton or of man-made fibres; upper parts of track suits with lining, other than category 16 or 29, of cotton or of man-made fibres	10 320 967 pieces
09.8165	24	6107 21 00 6107 22 00 6107 29 00 6107 91 10 6107 91 90 6107 92 00 ex 6107 99 00  6108 31 10 6108 31 90 6108 32 11 6108 32 19 6108 32 90 6108 39 00 6108 91 10 6108 91 90 6108 92 00 6108 99 10	Men's or boys' nightshirts, pyjamas, bathrobes, dressing-gowns and similar articles, knitted or crocheted  Women's or girls' nightdresses, pyjamas, négligés, bathrobes, dressing-gowns and similar articles, knitted or crocheted	1 719 799 pieces
09.8166	26	6104 41 00 6104 42 00 6104 43 00 6104 44 00 6204 41 00 6204 42 00 6204 43 00 6204 44 00	Women's or girls' dresses, of wool, of cotton or of man-made fibres	1 219 178 pieces

Order No	Textile category	CN code	Description of goods	Quantity (1. 1 - 31. 12)
09.8167	27	6104 51 00 6104 52 00 6104 53 00 6104 59 00 6204 51 00 6204 52 00 6204 53 00 6204 59 10	Women's or girls' skirts, including divided skirts	377 418 pieces
09.8168	28	6103 41 10 6103 41 90 6103 42 10 6103 42 90 6103 43 10 6103 43 90 6103 49 10 6103 49 91 6104 61 10 6104 61 90 6104 62 10 6104 62 90 6104 63 10 6104 63 90 6104 69 10 6104 69 91	Trousers, bib-and-brace overalls, breeches and shorts (other than swimwear), knitted or crocheted, of wool, of cotton or of man-made fibres	2 148 927 pieces
09.8169	29	6204 11 00 6204 12 00 6204 13 00 6204 19 10 6204 21 00 6204 22 80 6204 23 80 6204 29 18 6211 42 31 6211 43 31	Women's or girls' suits and ensembles, other than knitted or crocheted, of wool, of cotton or of man-made fibres, excluding ski suits; women's or girls' track suits with lining, with an outer shell of an identical fabric, of cotton or of man-made fibres	143 484 pieces
09.8170	31	6212 10 00	Brassières, woven, knitted or crocheted	819 409 pieces
09.8171	68	6111 10 90 6111 20 90 6111 30 90 ex 6111 90 00 ex 6209 10 00 ex 6209 20 00 ex 6209 30 00 ex 6209 90 00	Babies' garments and clothing accessories, excluding babies' gloves, mittens and mitts of categories 10 and 87, and babies' stockings, socks and sockettes, other than knitted or crocheted, of category 88	302,5 tonnes
09.8172	69	6108 11 10 6108 11 90 6108 19 10 6108 19 90	Women's or girls' slips and petticoats, knitted or crocheted	2 266 pieces
09.8173	72	6112 31 10 6112 31 90 6112 39 10 6112 39 90 6112 41 10 6112 41 90 6112 49 10 6112 49 90 6211 11 00 6211 12 00	Swimwear, of wool, of cotton or of man-made fibres	225 027 pieces
09.8174	73	6112 11 00 6112 12 00 6112 19 00	Tracksuits, of knitted or crocheted fabric, of wool, of cotton or of man-made fibres	408 696 pieces

Order No	Textile category	CN code	Description of goods	Quantity (1. 1 - 31. 12)
09.8175	74	6104 11 00 6104 12 00 6104 13 00 ex 6104 19 00 6104 21 00 6104 22 00 6104 23 00 ex 6104 29 00	Women's or girls' knitted or crocheted suits and ensembles, of wool, of cotton or of man-made fibres, excluding ski suits	303 280 pieces
09.8176	75	6103 11 00 6103 12 00 6103 19 00 6103 21 00 6103 22 00 6103 23 00 6103 29 00	Men's or boys' knitted or crocheted suits and ensembles, of wool, of cotton or of man-made fibres, excluding ski suits	546 853 pieces
09.8177	76	6203 22 10 6203 23 10 6203 29 11 6203 32 10 6203 33 10 6203 39 11 6203 42 11 6203 42 51 6203 43 11 6203 43 31 6203 49 11 6203 49 31  6204 22 10 6204 23 10 6204 29 11 6204 32 10 6204 33 10 6204 39 11 6204 62 11 6204 62 51 6204 63 11 6204 63 31 6204 69 11 6204 69 31 6211 32 10 6211 33 10 6211 42 10 6211 43 10	Men's or boys' industrial or occupational clothing, other than knitted or crocheted  Women's or girls' aprons, smock-overalls and other industrial or occupational clothing, other than knitted or crocheted	3,3 tonnes
09.8178	78	6203 41 30 6203 42 59 6203 43 39 6203 49 39 6204 61 80 6204 61 90 6204 62 59 6204 62 90 6204 63 39 6204 63 90 6204 69 39 6204 69 50 6210 40 00 6210 50 00 6211 31 00 6211 32 90 6211 33 90 6211 41 00 6211 42 90 6211 43 90	Garments, other than knitted or crocheted, excluding garments of categories 6, 7, 8, 14, 15, 16, 17, 18, 21, 26, 27, 29, 68, 72, 76 and 77	885,5 tonnes

Order No	Textile category	CN code	Description of goods	Quantity (1. 1 - 31. 12)
09.8179	83	6101 10 10 6101 20 10 6101 30 10 6102 10 10 6102 20 10 6102 30 10 6103 31 00 6103 32 00 6103 33 00 ex 6103 39 00 6104 31 00 6104 32 00 6104 33 00 ex 6104 39 00 6112 20 00 6113 00 90 6114 10 00 6114 20 00 6114 30 00	Overcoats, jackets, blazers and other garments, including ski suits, knitted or crocheted, excluding garments of categories 4, 5, 7, 13, 24, 26, 27, 28, 68, 69, 72, 73, 74 and 75	349,8 tonnes
09.8180	84	6214 20 00 6214 30 00 6214 40 00 6214 90 10	Shawls, scarves, mufflers, mantillas, veils and the like, other than knitted or crocheted, of wool, of cotton or of man-made fibres	1,1 tonnes
09.8181	86	6212 20 00 6212 30 00 6212 90 00	Corsets, corset-belts, suspender-belts, braces, suspenders, garters and the like, and parts thereof, whether or not knitted or crocheted	8 350 pieces
09.8182	156	6106 90 30 ex 6110 90 90	Women's or girls' blouses or pullovers, knitted or crocheted of silk or of silk-waste	22 tonnes
09.8183	157	6101 90 10 6101 90 90 6102 90 10 6102 90 90 ex 6103 90 00 6103 49 99 ex 6104 19 00 ex 6104 29 00 ex 6104 39 00 6104 49 00 6104 69 99 6105 90 90 6106 90 50 6106 90 90 ex 6107 99 00 6108 99 90 6109 90 90 6110 90 10 ex 6110 90 90 ex 6111 90 00 6114 90 00	Garments, knitted or crocheted, other than those of categories 1 to 123 and of category 156	18,7 tonnes
09.8184	159	6204 49 10 6206 10 00  6214 10 00  6215 10 00	Dresses, blouses and shirt-blouses, not knitted or crocheted, of silk or of silk-waste  Shawls, scarves, mufflers, mantillas, veils and the like, not knitted or crocheted, of silk or of silk-waste  Ties, bow-ties and cravats, of silk or of silk-waste	18,7 tonnes

Order No	Textile category	CN code	Description of goods	Quantity (1. 1 - 31. 12)
09.8185	161	6201 19 00 6201 99 00 6202 19 00 6202 99 00 6203 19 90 6203 29 90 6203 39 90 6203 49 90 6204 19 90 6204 29 90 6204 39 90 6204 49 90 6204 59 90 6204 69 90 6205 90 10 6205 90 90 6206 90 10 6206 90 90 ex 6211 20 00 6211 39 00 6211 49 00	Garments, not knitted or crocheted, other than those of categories 1 to 123 and of category 159	3,3 tonnes

**COMMISSION REGULATION (EC) No 2261/97****of 13 November 1997****suspending advance fixing of export refunds on certain milk products exported  
in the form of goods not covered by Annex II to the Treaty**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1222/94 of 31 May 1994 laying down general rules for granting export refunds on certain agricultural products exported in the form of goods not covered by Annex II to the Treaty, and the criteria for fixing the amount of such refunds<sup>(1)</sup>, as last amended by Regulation (EC) No 1909/97<sup>(2)</sup>, and in particular the second subparagraph of Article 5 (3) thereof,

Whereas the second subparagraph of Article 5 (3) of Regulation (EC) No 1222/94 makes provision for advance fixing of the refund to be suspended for basic products exported in the form of certain goods;

Whereas the situation on certain markets may make it necessary for the refunds to be adjusted; whereas in order to prevent applications for advance fixing of refunds for

speculative purposes, the abovementioned advance fixing should be suspended until this adjustment comes into force;

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

HAS ADOPTED THIS REGULATION:

*Article 1*

Advance fixing of export refunds on milk powder, in granules or other solid forms, not containing added sugar or other sweetening matter, of a fat content, by weight, not exceeding 1,5 % (PG 2) exported in the form of goods listed in the Annex to Regulation (EEC) No 804/68, is suspended until 30 November 1997.

*Article 2*

This Regulation shall enter into force on 15 November 1997.

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

Done at Brussels, 13 November 1997.

*For the Commission*

Martin BANGEMANN

*Member of the Commission*

<sup>(1)</sup> OJ L 136, 31. 5. 1994, p. 5.

<sup>(2)</sup> OJ L 268, 1. 10. 1997, p. 20.

**COMMISSION REGULATION (EC) No 2262/97**

of 13 November 1997

**amending representative prices and additional duties for the import of certain products in the sugar sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European 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 <sup>(1)</sup>, as last amended by Regulation (EC) No 1599/96 <sup>(2)</sup>,

Having regard to Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses <sup>(3)</sup>, as last amended by Regulation (EC) No 1143/97 <sup>(4)</sup>, and in particular the second subparagraph of Article 1 (2), and Article 3 (1) thereof,

Whereas the amounts of the representative prices and additional duties applicable to the import of white sugar, raw sugar and certain syrups are fixed by Commission Regulation (EC) No 1222/97 <sup>(5)</sup>, as last amended by Regulation (EC) No 2226/97 <sup>(6)</sup>;

Whereas it follows from applying the general and detailed fixing rules contained in Regulation (EC) No 1423/95 to the information known to the Commission that the representative prices and additional duties at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

*Article 1*

The representative prices and additional duties on imports of the products referred to in Article 1 of Regulation (EC) No 1423/95 shall be as set out in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 14 November 1997.

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

Done at Brussels, 13 November 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 177, 1. 7. 1981, p. 4.

<sup>(2)</sup> OJ L 206, 16. 8. 1996, p. 43.

<sup>(3)</sup> OJ L 141, 24. 6. 1995, p. 16.

<sup>(4)</sup> OJ L 165, 24. 6. 1997, p. 11.

<sup>(5)</sup> OJ L 173, 1. 7. 1997, p. 3.

<sup>(6)</sup> OJ L 305, 8. 11. 1997, p. 28.

## ANNEX

to the Commission Regulation of 13 November 1997 amending representative prices and the amounts of additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99

(ECU)

CN code	Amount of representative prices per 100 kg net of product concerned	Amount of additional duty per 100 kg net of product concerned
1701 11 10 <sup>(1)</sup>	25,06	3,77
1701 11 90 <sup>(1)</sup>	25,06	9,00
1701 12 10 <sup>(1)</sup>	25,06	3,63
1701 12 90 <sup>(1)</sup>	25,06	8,57
1701 91 00 <sup>(2)</sup>	26,21	12,13
1701 99 10 <sup>(2)</sup>	26,21	7,61
1701 99 90 <sup>(2)</sup>	26,21	7,61
1702 90 99 <sup>(3)</sup>	0,26	0,39

<sup>(1)</sup> For the standard quality as defined in Article 1 of amended Council Regulation (EEC) No 431/68 (OJ L 89, 10. 4. 1968, p. 3).

<sup>(2)</sup> For the standard quality as defined in Article 1 of Council Regulation (EEC) No 793/72 (OJ L 94, 21. 4. 1972, p. 1).

<sup>(3)</sup> By 1 % sucrose content.

**COMMISSION REGULATION (EC) No 2263/97**

of 13 November 1997

**fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 1339/97**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals<sup>(1)</sup>, as last amended by Regulation (EC) No 923/96<sup>(2)</sup>,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals<sup>(3)</sup>, as last amended by Regulation (EC) No 2052/97<sup>(4)</sup>, and in particular Article 7 thereof,

Whereas an invitation to tender for the refund and/or the tax for the export of common wheat to all third countries except Ceuta, Melilla and certain ACP States was opened pursuant to Commission Regulation (EC) No 1339/97<sup>(5)</sup>, as amended by Regulation (EC) No 1884/97<sup>(6)</sup>;

Whereas Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No

1501/95; whereas in that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund, as well as to any tenderer whose bid relates to an export tax;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1;

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*

For tenders notified from 7 November to 13 November 1997, pursuant to the invitation to tender issued in amended Regulation (EC) No 1339/97, the maximum refund on exportation of common wheat shall be ECU 13,43 per tonne.

*Article 2*

This Regulation shall enter into force on 14 November 1997.

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

Done at Brussels, 13 November 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 181, 1. 7. 1992, p. 21.

<sup>(2)</sup> OJ L 126, 24. 5. 1996, p. 37.

<sup>(3)</sup> OJ L 147, 30. 6. 1995, p. 7.

<sup>(4)</sup> OJ L 287, 21. 10. 1997, p. 14.

<sup>(5)</sup> OJ L 184, 12. 7. 1997, p. 7.

<sup>(6)</sup> OJ L 265, 27. 9. 1997, p. 73.

**COMMISSION REGULATION (EC) No 2264/97**  
**of 13 November 1997**

**fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 1883/97**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals<sup>(1)</sup>, as last amended by Regulation (EC) No 923/96<sup>(2)</sup>,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals<sup>(3)</sup>, as last amended by Regulation (EC) No 2052/97<sup>(4)</sup>, and in particular Article 7 thereof,

Whereas an invitation to tender for the refund and/or the tax for the export of common wheat to Ceuta, Melilla and certain ACP States was opened pursuant to Commission Regulation (EC) No 1883/97<sup>(5)</sup>;

Whereas Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No

1501/95; whereas in that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund, as well as to any tenderer whose bid relates to an export tax;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1;

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*

For tenders notified from 7 November to 13 November 1997, pursuant to the invitation to tender issued in Regulation (EC) No 1883/97, the maximum refund on exportation of common wheat shall be ECU 14,00 per tonne.

*Article 2*

This Regulation shall enter into force on 14 November 1997.

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

Done at Brussels, 13 November 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 181, 1. 7. 1992, p. 21.

<sup>(2)</sup> OJ L 126, 24. 5. 1996, p. 37.

<sup>(3)</sup> OJ L 147, 30. 6. 1995, p. 7.

<sup>(4)</sup> OJ L 287, 21. 10. 1997, p. 14.

<sup>(5)</sup> OJ L 265, 27. 9. 1997, p. 69.

**COMMISSION REGULATION (EC) No 2265/97**  
**of 13 November 1997**  
**concerning tenders notified in response to the invitation to tender for the export**  
**of barley issued in Regulation (EC) No 1337/97**

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

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals <sup>(1)</sup>, as last amended by Regulation (EC) No 923/96 <sup>(2)</sup>,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals <sup>(3)</sup>, as last amended by Regulation (EC) No 2052/97 <sup>(4)</sup>, and in particular Article 7 thereof,

Whereas an invitation to tender for the refund and or the tax for the export of barley to all third countries was opened pursuant to Commission Regulation (EC) No 1337/97 <sup>(5)</sup>;

Whereas Article 7 of Regulation (EC) No 1501/95, allows the Commission to decide, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No

1766/92 and on the basis of the tenders notified, to make no award;

Whereas on the basis of the criteria laid down in Article 1 of Regulation (EC) No 1501/95 a maximum refund or a minimum tax should not be fixed;

Whereas the Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

*Article 1*

No action shall be taken on the tenders notified from 7 November to 13 November 1997 in response to the invitation to tender for the refund or the tax for the export of barley issued in Regulation (EC) No 1337/97.

*Article 2*

This Regulation shall enter into force on 14 November 1997.

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

Done at Brussels, 13 November 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 181, 1. 7. 1992, p. 21.

<sup>(2)</sup> OJ L 126, 24. 5. 1996, p. 37.

<sup>(3)</sup> OJ L 147, 30. 6. 1995, p. 7.

<sup>(4)</sup> OJ L 287, 21. 10. 1997, p. 14.

<sup>(5)</sup> OJ L 184, 12. 7. 1997, p. 1.

**COMMISSION REGULATION (EC) No 2266/97****of 13 November 1997****fixing the maximum export refund on rye in connection with the invitation to tender issued in Regulation (EC) No 1338/97**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals<sup>(1)</sup>, as last amended by Regulation (EC) No 923/96<sup>(2)</sup>,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals<sup>(3)</sup>, as last amended by Regulation (EC) No 2052/97<sup>(4)</sup>, and in particular Article 7 thereof,

Whereas an invitation to tender for the refund and/or the tax for the export of rye to all third countries was opened pursuant to Commission Regulation (EC) No 1338/97<sup>(5)</sup>;

Whereas Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No 1501/95; whereas in that case a contract is awarded to any

tenderer whose bid is equal to or lower than the maximum refund, as well as to any tenderer whose bid relates to an export tax;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1;

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*

For tenders notified from 7 to 13 November 1997, pursuant to the invitation to tender issued in Regulation (EC) No 1338/97, the maximum refund on exportation of rye shall be ECU 27,90 per tonne.

*Article 2*

This Regulation shall enter into force on 14 November 1997.

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

Done at Brussels, 13 November 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 181, 1. 7. 1992, p. 21.

<sup>(2)</sup> OJ L 126, 24. 5. 1996, p. 37.

<sup>(3)</sup> OJ L 147, 30. 6. 1995, p. 7.

<sup>(4)</sup> OJ L 287, 21. 10. 1997, p. 14.

<sup>(5)</sup> OJ L 184, 12. 7. 1997, p. 4.

**COMMISSION REGULATION (EC) No 2267/97**  
**of 13 November 1997**

**concerning tenders notified in response to the invitation to tender for the export  
of oats issued in Regulation (EC) No 1773/97**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals<sup>(1)</sup>, as last amended by Regulation (EC) No 923/96<sup>(2)</sup>,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals<sup>(3)</sup>, as last amended by Regulation (EC) No 2052/97<sup>(4)</sup>, and in particular Article 7 thereof,

Whereas an invitation to tender for the refund for the export of oats was opened pursuant to Commission Regulation (EC) No 1773/97<sup>(5)</sup>, as amended by Regulation (EC) No 2133/97<sup>(6)</sup>;

Whereas Article 7 of Regulation (EC) No 1501/95, allows the Commission to decide, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No

1766/92 and on the basis of the tenders notified, to make no award;

Whereas on the basis of the criteria laid down in Article 1 of Regulation (EC) No 1501/95 a maximum refund should not be fixed;

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*

No action shall be taken on the tenders notified from 7 November to 13 November 1997 in response to the invitation to tender for the refund for the export of oats issued in Regulation (EC) No 1773/97.

*Article 2*

This Regulation shall enter into force on 14 November 1997.

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

Done at Brussels, 13 November 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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<sup>(1)</sup> OJ L 181, 1. 7. 1992, p. 21.

<sup>(2)</sup> OJ L 126, 24. 5. 1996, p. 37.

<sup>(3)</sup> OJ L 147, 30. 6. 1995, p. 7.

<sup>(4)</sup> OJ L 287, 21. 10. 1997, p. 14.

<sup>(5)</sup> OJ L 250, 13. 9. 1997, p. 1.

<sup>(6)</sup> OJ L 296, 30. 10. 1997, p. 29.

## II

*(Acts whose publication is not obligatory)*

## COMMISSION

## COMMISSION DECISION

of 9 July 1997

on measures taken by Portugal to assist EPAC — Empresa Para a Agroalimentação e Cereais, SA

(Only the Portuguese text is authentic)

(97/762/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 93 (2) thereof,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals<sup>(1)</sup>, as last amended by Regulation (EC) No 923/96<sup>(2)</sup>, and in particular Article 19 thereof,

Having given notice to the parties concerned to submit their comments<sup>(3)</sup> in accordance with the first subparagraph of Article 93 (2),

Whereas:

## I

- (1) On 15 October 1996 the Commission received a complaint about a possible State aid to the public-sector undertaking Empresa Para a Agroalimentação e Cereais, SA (EPAC) in the form of a State guarantee of Esc 30 billion, accompanied by a supplementary loan of Esc 20 billion on special terms.

Having received no notification under Article 93 (3) of the Treaty from the Portuguese authorities, the Commission sent them a letter on 31 October 1996 asking them whether this aid had been granted. If

so, the Commission also asked them to notify it so that it could be examined pursuant to Articles 92 and 93 of the Treaty.

In a letter dated 26 November 1996, registered on 29 November 1996, the Portuguese Permanent Representative to the European Union confirmed the existence of a State guarantee for EPAC. However, the Commission received no notification of the aid under Article 93 (3) of the Treaty. Consequently, the aid was entered in the register of non-notified aid under No NN 13/97.

- (2) Before the accession of Portugal to the European Community, the marketing of cereals in Portugal was covered by a public monopoly. EPAC (at that time Empresa Pública de Abastecimento de Cereais) was the public-sector undertaking responsible for managing the market. This public monopoly was gradually dismantled after accession, and EPAC, which was made into a limited company with public capital became one of a number of operators in the cereals market, which was liberalized in 1991.

By joint decision of the Secretary of State for the Treasury and Finance and the Secretary of State for Food Production of 26 July 1996, the board of directors of EPAC was authorized to negotiate the terms of a loan on market conditions up to a total of Esc 50 billion, Esc 30 billion of which would be covered by a State guarantee for a maximum of seven years.

<sup>(1)</sup> OJ L 181, 1. 7. 1992, p. 21.

<sup>(2)</sup> OJ L 126, 24. 5. 1996, p. 37.

<sup>(3)</sup> OJ C 140, 7. 5. 1997, p. 16.

By Finance Ministry Decision No 430/96-XIII of 30 September 1996<sup>(1)</sup>, the abovementioned guarantee was granted in connection with a loan obtained by EPAC from a group of banks. The loan was equal to EPAC's total debt, which amounted to Esc 48,7 billion on 30 June 1996.

The purpose of the loan is to restructure EPAC's short-term bank debt into medium-term bank debt. The period set is seven years at an interest rate equal to six-month Lisbor for the guaranteed amount and six-month Lisbor +1,2 % for the remainder. Payments will be made six-monthly in advance as follows: for the amount not guaranteed, in 10 instalments of Esc 1,87 billion, from the fifth half-year onwards; the guaranteed amount will be paid off after repayment of the amount not guaranteed, within seven years at the latest.

- (3) On 28 January 1997 the complainant asked the Commission to adopt urgent temporary measures to have the State guarantee granted to EPAC suspended. The request was submitted following Commission Regulation (EC) No 145/97 of 27 January 1997 opening an invitation to tender for the reduction in the duty on maize imported into Portugal from third countries<sup>(2)</sup> and the notice of that invitation to tender<sup>(3)</sup>. The latter states that the reduction in the import duty applies to 350 000 tonnes of maize.

## II

- (4) By letter SG(97) D/1550 of 27 February 1997 addressed to the Portuguese authorities, the Commission decided to open the procedure under Article 93 (2) of the Treaty in respect of the aid granted to EPAC.

In that letter the Commission stated its view that the guarantee by the State did not comply with the Commission letter to the Member States (SG(89) D/4328) of 5 April 1989 stating that guarantees were subject to specific obligations. Furthermore, it said that the interest rates on the loans, which were considerably lower than the reference rates, included an aid element since an undertaking in financial difficulties such as EPAC could not under normal market conditions obtain loans on more favourable conditions than those available to operators in a balanced financial situation. The Commission took into consideration the fact that the mechanism for consolidating the EPAC debt

seemed to constitute an aid with substantial knock-on advantages to another undertaking (Silopor). Finally, the Commission gave its opinion that the State guarantee granted to EPAC did not meet the conditions necessary to be compatible with the common market in the light of Community criteria for restructuring aid for undertakings in difficulty.

In conclusion, the Commission informed the Portuguese authorities that it did not consider the aid to be such as to facilitate any development of either the sector or the region concerned, and that it seemed to be an operating aid, contrary to the Commission's constant practice in applying Articles 92, 93 and 94 of the Treaty. It also expressed the view that the measures concerned would lead directly to an improvement in the conditions of production and marketing of products of the undertaking *vis-à-vis* other operators in the Community not benefiting from comparable aid. The aid concerned therefore fell, the Commission said, within the scope of application of Article 92 (1) of the Treaty without being eligible, on the basis of the information available to the Commission, for any of the derogations provided for in Article 92 (2) and (3).

As part of this procedure, the Commission gave the Portuguese Government notice to submit its comments. It also gave the other Member States and other interested parties notice to submit their comments.

- (5) In the same letter the Commission asked the Portuguese Government to take all measures necessary to suspend with immediate effect the guarantee granted to EPAC for any new business activity by that company on the cereal market. The Portuguese Government was given 15 days from the notification contained in that letter to inform the Commission what measures it had taken to comply with that request. The Portuguese authorities were informed that, pursuant to the Commission letter to the Member States No SG(91) D/4577 of 4 March 1991 concerning detailed rules for notifying aid and rules of procedure concerning aid implemented in contravention of Article 93 (3) pursuant to the judgment of the Court of Justice of 14 February 1990 in Case C-301/87 (*Boussac*) *French Republic v. Commission*<sup>(4)</sup>, the Commission reserved the right to adopt a provisional decision requiring the Member State to suspend immediately the aid in question for future operations.

<sup>(1)</sup> Published in the Portuguese Official Journal, Series II, No 237, 12. 10. 1996.

<sup>(2)</sup> OJ L 25, 28. 1. 1997, p. 17.

<sup>(3)</sup> OJ C 27, 28. 1. 1997, p. 12.

<sup>(4)</sup> [1990] ECR I-307.

In a letter of 27 March 1997 the Portuguese Government argued that there had been no intervention by the State administration in the negotiation of the loans granted to EPAC by the banks to finance commercial operations and provided more specific information on some of those loans. The Portuguese Government did not refer to any measure taken to comply with the demand to suspend the effect of the State guarantee.

On 30 April 1997 the Commission adopted Decision 97/433/EC<sup>(1)</sup> which required Portugal to suspend with immediate effect the grant of the State guarantee to the undertaking EPAC provided for by Finance Ministry Decision No 430/96-XIII of 30 September 1996, granted in contravention of Article 93 (3), and to notify the Commission within 15 days of the measures it had taken to comply with that Decision. That Commission Decision was addressed to Portugal in letter No SG(97) D/3395 of 30 April 1997.

### III

- (6) In a letter of 8 April 1997 the Portuguese Government submitted its comments on the measures described above to the Commission.

EPAC — Empresa Para a Agroalimentação e Cereais, SA — is a limited company with exclusively public capital, created in 1991. It had its origin in EPAC — Empresa Pública de Abastecimento de Cereais (Public cereal supply undertaking) — which was created in 1977 following the merger of 19 institutions associated with the protection and development of cereal production and trade. Between 1977 and 1985, EPAC functioned as a public intervention agency. During the first years of Portugal's integration into the Community, EPAC continued to perform these functions in the context of gradual liberalization of the cereals market (1986-1989) and State support for the direct marketing of domestically produced cereals (1987-1990). Account must also be taken of the creation of Silopor — Empresa de Silos Portuários, SA (1987) — as well as the complete liberalization of trade in domestically produced cereals in June 1991.

In this context, when analysing the current situation of EPAC, account must be taken of constraints on the undertaking arising from its history, in particular:

- (a) EPAC's asset situation is unbalanced, with an excess of fixed assets and insufficient own capital for financing current activity. Since it used to be a public intervention agency, EPAC

had to maintain a large storage, calibration and drying infrastructure permanently available and ready for use, this infrastructure being dispersed over the entire national territory.

Maintaining this network of facilities entailed heavy annual investment and up-keep costs as well as constantly available staff on a scale appropriate to its large size. Since 1991 it has become clear that those costs, combined with the natural reduction in the undertaking's share of the market, are preventing the undertaking from becoming profitable and reaching a competitive level of activity.

- (b) There is obvious overstaffing as a result of the need to operate hundreds of local facilities all over the national territory as well as the fact that EPAC has acquired a considerable number of officials from some of the corporate and State organizations which preceded it.

When EPAC was first formed, it had 2 027 employees. Furthermore, their average age was very high and their level of qualification very low. In 1988, in the context of market liberalization, the undertaking created a pension fund and introduced an early retirement system for workers over 55. Between 1990 and 1993, the undertaking terminated the contracts of active workers and began payment of 169 retirement supplements.

- (c) Account must be taken of the creation of Silopor, a company with exclusively public capital, formed by Decree-Law No 293-A/86 of 12 September 1986 through the transfer of EPAC assets, debt and capital.

The port silos and all the equipment, installations and material associated with them, which previously belonged to EPAC, were transferred to Silopor. The debt burden on financing specifically committed to the construction of the silos was also transferred to Silopor. This financing was considerably lower than the total cost of the work carried out, since most of the funds necessary for this investment had their origin in the roll-over re-financing of credit operations for the import of cereals, with the additional debt incurred being attributed to EPAC's liabilities. Furthermore, all the initial capital stock of Silopor (Esc 3,5 billion) was transferred from EPAC's capital stock.

The value of Silopor's debt to EPAC was established at Esc 7,596 billion in 1989. At that time it was also concluded that Silopor was not capable of paying off this debt from its own funds and that it was essential for EPAC to charge interest to Silopor in respect of delays in repayment of the debt.

<sup>(1)</sup> OJ L 186, 16. 7. 1997, p. 25.

Silopor proved to be incapable of repaying its debt because of the imbalance in its capital structure which was not corrected in time. On 30 June 1996 the total value of interest debited by EPAC to Silopor was Esc 21,5 billion. In February 1997, when it was last valued, the total value of the initial debt plus interest was Esc 31,22 billion.

- (d) Apart from these historical factors of a structural nature, the Portuguese Government also stresses that during the period of adjustment of the undertaking to the conditions required by liberalization, the Portuguese State supported the construction of silos by cooperatives in order to render viable their attempt to expand their activity to the sphere of cereal marketing.

In May/June 1995, faced with the restriction of access to new credit, EPAC decided, the Portuguese Government says, to channel its scarce financial resources towards its clients in the agricultural sector. According to the Portuguese authorities, the vulnerability of this sector is a recognized fact, and interruption of the undertaking's activity at the beginning of the cereal marketing year would have caused disruption which is difficult to imagine. According to the Portuguese authorities, the position of the undertaking, combined with its interventionist tradition nearly paralysed the marketing of products for industry, which accounts for a substantial part of the undertaking's turnover.

According to the Portuguese Government, that course of action was also the reason for the lack of financial resources leading to the difficulties caused by the loss of business opportunities by the undertaking.

- (7) The Portuguese Government states that the level of debt and the financial charges to be paid became so high that EPAC could no longer shoulder the burden from its own resources. From April 1996 EPAC stopped paying most of its financial commitments. Faced with the possibility of an undertaking wholly owned by the Portuguese State being unable to honour its commitments, the State decided to take an exceptional and temporary measure to deal with the problem pending an overall solution.

According to the Portuguese Government, that measure temporarily alleviated some of the effects of the situation resulting from the past but did

nothing to provide a long-term solution to the undertaking's problems regarding the cash flow needed for current trading operations and investment in restructuring the enterprise and paying severance pay to workers. To finance its current trading activity, the undertaking had to take on loans from banks on market terms.

- (8) Given the inadequacy of the plan presented by the old EPAC administration for making the undertaking viable and financially sound, the new administration (which came into office on 25 November 1996) developed, according to the Portuguese authorities, the measures necessary to solve the current problems: excessive size, high operating costs, lack of efficiency in trading circuits and processes. According to the same authorities, both the staff cuts (66 contracts terminated in January and February) and reductions in operating costs currently underway give grounds for expecting improvement in 1997.

Finally, the Portuguese Government indicated that the privatization of EPAC and Silopor is planned for the 1998-99 privatization programme approved by the Portuguese Government on 26 March 1997. Financial restructuring will begin at the end of the first half of 1997. Following restructuring, the State guarantee will be cancelled.

- (9) In a letter of 21 May 1997 the Portuguese Government sent the Commission its response to Commission Decision No 97/433/EC requiring Portugal to suspend the guarantee granted to EPAC immediately. In its answer the Portuguese Government, in addition to questions concerning the suspension of the guarantee, made the following comments:

- (a) The guarantee concerned covers obligations taken on by EPAC and arising from the loan-restructuring contract concluded with the creditor banking consortium. The financial contribution results exclusively from that contract, to which the State was not party.

The State is itself responsible for the need for the loan concerned, whose effect is not to give the undertaking an advantage over others but to alleviate the damage caused to the undertaking by the State on its own initiative in setting up Silopor.

The Portuguese authorities indicate that the conditions of the operation guaranteed are appropriate, in a normal market context, to the size of EPAC, its status as an undertaking wholly owned by the State, the volume of the Silopor debt to EPAC and the nature of the operation.

- (b) According to the Portuguese authorities, the guarantee granted to EPAC does not constitute financial operating aid to the undertaking and has not therefore distorted the conditions of competition. It was only a means of dealing with a situation arising from the undertaking's history with the purpose of putting EPAC in the situation in which it would be if its main debtor, Silopor, had paid a publicly recognized debt. Furthermore, the guarantee covers only that part of the EPAC debt which is a result of action taken by the State on its own responsibility.
- (c) According to the Portuguese authorities it has not been demonstrated how and to what extent granting the State guarantee to EPAC would affect trade between Member States, which is an essential condition for applying the law on competition.
- (d) As to the absence of measures taken to suspend the effect of the State guarantee, the Portuguese authorities claim that the financing of the undertaking's current business has not benefited from the operation underwritten by the State guarantee. The State has neither taken part nor will take part in the negotiation of the bank loans contracted by EPAC from financial institutions as part of its routine business.
- (10) The Commission has received no comments from other Member States or interested parties.

#### IV

- (11) Article 19 of Regulation (EEC) No 1766/92 lays down that Articles 92, 93 and 94 of the Treaty apply to the production of and trade in the products listed in Article 1 thereof save as otherwise provided in that Regulation.

Under Article 92 (1) of the Treaty, aid granted by a Member State or through State resources in any form which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the common market in so far as it affects trade between Member States.

The Portuguese Government argues in its letter of 21 May 1997 that it has not been demonstrated

how the State guarantee to EPAC affects trade between Member States, which is an essential condition for the application of Community competition law.

Community cereal production is 173,9 million tonnes. Portuguese cereal production is 1,52 million tonnes. Trade between the rest of the Community and Portugal is considerable, since Portugal is not self-sufficient in cereals and imports more cereals from other Member States every year than it produces itself (1,83 million tonnes) and exports 32 530 tonnes to those Member States. In 1996 <sup>(1)</sup> the monetary value of Portugal's exports to those Member States was around ECU 5,8 million and that of its imports from them, ECU 310 million.

The measures in question are therefore likely to affect trade in cereals between the Member States since trade is affected where one operator active in intra- or extra-Community trade receives aid which gives it an advantage over others. The measures concerned in fact have a direct and immediate effect on the primary costs of the undertaking which enjoyed an economic advantage over other undertakings in the sector which have not had access, either in Portugal or in the other Member States, to comparable aid. This aid therefore distorts or threatens to distort competition.

In the light of the foregoing, the aid in question is to be considered to be State aid according to the criteria specified in Article 92 (1) of the Treaty.

#### V

- (12) Article 92 (1) of the Treaty lays down that aid meeting the criteria it specifies is in principle incompatible with the common market.

The derogations provided for in Article 92 (2) clearly do not apply to the aid in question. Nor have they been invoked by the Portuguese Government.

For derogations under Article 92 (3), it is provided that State aid must have objectives that are in the interest of the Community and not only of particular sectors of the national economy. Those derogations (which must be very strictly interpreted) may be allowed only in cases where the Commission can establish that the aid is necessary to

<sup>(1)</sup> Source Eurostat.

achieve one of the objectives provided for in those rules. If such derogations were to be allowed without this condition being fulfilled, it would in effect allow measures affecting trade between Member States and distorting competition without justification in terms of the common interest and, as a corollary, would confer undue advantages as regards operators in other Member States.

In the case in question, there is no evidence of any such Community interest being served. The Portuguese Government has not furnished, nor has the Commission found, any justification for a claim that the aid concerned meets the conditions required for the application of any of the derogations provided for in Article 92 (3) of the Treaty.

The measure does not promote the execution of an important project of common European interest within the meaning of Article 92 (3) (b) since, through the effect it may have on trade, it goes against the common interest.

Nor is it for the purposes of remedying a serious disturbance in the economy of the Member State concerned within the meaning of the same provision.

(13) The Commission wishes to make the following points in response to the arguments advanced by the Portuguese Government:

(a) The description of the history of EPAC and the resulting negative effects on the undertaking's activity, in particular its unbalanced asset situation, the obvious overstaffing, the creation of Silopor and other factors, is relevant as an explanation of EPAC's difficult financial situation and the reasons for it. Nevertheless, it is not such as to modify the Commission's position regarding the opening of the procedure under Article 93 (2) of the Treaty.

(b) When it opened that procedure, the Commission analysed the conformity of the aid granted to EPAC with reference to the content of the communication 'Community guidelines on State aid for rescuing and restructuring firms in difficulty' (1). That communication lays down

rules regarding the conformity of rescue and restructuring aid.

The Commission considered that the criteria relating to aid for rescuing undertakings, intended simply to ensure the continuing activity of the undertaking over a short period pending an assessment of the prospects for its viability, did not apply in this case, since the Portuguese authorities had mentioned the existence of a plan for restoring the economic viability and financial health of EPAC. It therefore considered the aid in the light of the criteria applicable to restructuring aid.

On the basis of the information sent by the Portuguese Government, the Commission now notes that the Government considers that the plan (which has not been sent to the Commission) for restoring the economic viability and financial health of EPAC is inadequate to solve its current problems. As the Portuguese Government stresses, the level of indebtedness and the financial commitments arising therefrom have become so high that it has become impossible for EPAC to continue to meet its obligations from its own resources. The State guarantee was therefore an exceptional and temporary measure to allow the undertaking to continue its business activity until a definitive solution could be found. On the basis of that information, the Commission has to consider the aid in terms of rescue aid to an undertaking in difficulty within the meaning of the above provisions.

In any case, the Commission stresses that the State aid to EPAC does not fulfil the criteria laid down in the communication for it to be considered rescue aid compatible with the common market. Rescue aid must:

- consist of liquidity help in the form of loan guarantees or loans bearing normal commercial interest rates,
- be restricted to the amount needed to keep a firm in business (for example, covering wage and salary costs and routine supplies),
- be paid only for the time needed (generally not exceeding six months) to devise the necessary and feasible recovery plan,
- be warranted on the grounds of serious social difficulties and have no undue adverse effects on the industrial situation in other Member States.

(1) OJ C 368, 23. 12. 1994, p. 12.

All the evidence indicates that the State aid to EPAC does not fulfil these criteria. The interest rates on the loans obtained by EPAC are low thanks to the guarantee and the planned duration of the credit operation is seven years (greatly exceeding the established general rule of six months). Furthermore, it is difficult to argue that a State guarantee on such a large scale is the amount strictly necessary for keeping the firm in business. Finally, no serious social situation requiring the undertaking to be kept in business such as to justify granting the aid has been cited by the Portuguese Government or found by the Commission.

In the light of the foregoing, the abovementioned Community criteria for restructuring aid for undertakings in difficulty do not apply in this case.

- (c) The Portuguese Government considers that the creation of Silopor and the debt not paid by this undertaking to EPAC constitute factors with their roots in the past affecting EPAC's current financial situation. It also argues that the guarantee is not operating aid but a way of putting right a situation created in the past and alleviating the damage done to EPAC by the initiative of the State; it stresses that the guarantee covers only that part of the EPAC debt which is the result of the creation of Silopor.

The Commission cannot accept those arguments which, in its view, take account only the effects of the aid on EPAC and not the effects on Silopor. The Commission had already indicated when it opened the procedure provided for under Article 93 (2) of the Treaty that the mechanism for consolidating the EPAC debt appeared to constitute an aid with major beneficial effect for Silopor. The Portuguese Government has now indicated that Silopor, because of the imbalance in its capital situation, is not able to pay its debt to EPAC or the interest on that debt which, when last valued, was some ESC 31,2 billion.

The Commission can therefore conclude that the State guarantee for EPAC also constitutes State aid to Silopor, the undertaking created directly from EPAC. The Portuguese State, the only shareholder in both undertakings, by providing a State guarantee for EPAC is enabling the latter not to demand payment of the debt owed to it, so that in effect the guarantee is in-

direct aid to Silopor. Furthermore, to deal with the financial difficulties of EPAC, due in part to the non-payment of debt by Silopor, the Portuguese State is standing in for Silopor and guaranteeing the amount owed.

- (d) The Portuguese Government argues that the conditions of the bank operation guaranteed by the State are appropriate in a normal market context to the size of EPAC, its status as an entirely State-owned enterprise, the volume of debt and the nature of the operation.

The Commission cannot accept those arguments. Commission policy in calculating the element of aid in State guarantees takes account of the difference between the rate which a borrower would pay on the free market and the rate actually obtained with the help of the guarantee, minus any premium paid for the guarantee<sup>(1)</sup>. The Community reference rate on the date the loan was granted was 12,51 %, which in the case in question may be considered a minimum rate, since EPAC's financial difficulties would have prevented it from obtaining a loan on more favourable terms than operators in a balanced financial situation. Furthermore, the interest rates on the loans are indexed to the six-month Lisbor rate for the guaranteed part of the loan and the six-month Lisbor rate + 1,2 % for the non-guaranteed part of the loan. The six-month Lisbor rate on the date when the loan was granted was 6,75 %<sup>(2)</sup>. The premium for the guarantee is 0,2 % per year. The aid element therefore corresponds to at least the difference between the Community reference rate and the rates actually applied, reduced where appropriate by the premium for the guarantee.

- (e) In its letter No SG (89) D/4328 of 5 April 1989, the Commission specified that only State guarantees the mobilization of which is made subject by contract to specific obligations — which may go as far as a compulsory declaration of bankruptcy by the beneficiary undertaking, or an analogous procedure — will be considered compatible with the common market. When it opened the procedure under

<sup>(1)</sup> See Commission Communication concerning the application of Articles 92 and 93 of the Treaty and Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector (OJ C 307, 13. 11. 1993, p. 3) and Commission notice on the *de minimis* rule for State aid (OJ C 68, 6. 3. 1996, p. 9).

<sup>(2)</sup> Bank of Portugal Statistical Bulletin, January 1997.

Article 93 (2) of the Treaty, the Commission stated that in its view the State guarantee in question did not comply with this minimum criterion. The Commission notes that the Portuguese Government has not contested this statement.

As regards the derogations provided for in Article 92 (3) (a) and (c) for aid to promote the economic development of certain regions or economic activities, the Commission has concluded, on the basis of the foregoing analysis and in the light of the relevant Community rules, that the aid in question, because of its nature as operating aid, cannot promote the sustainable improvement of conditions in the sector or the region concerned<sup>(1)</sup>.

Therefore this aid may not benefit from any of the derogations provided for in Article 92 (3) of the Treaty.

- (14) The aid concerned is therefore incompatible with the common market.

## VI

- (15) Portugal failed to fulfil its obligation under Article 93 (3) of the Treaty, first, by failing to notify the measures taken to assist EPAC referred to in section I above at the planning stage and, secondly, by implementing the aid when the Commission had not been able to state its position on it. Consequently, the measures have been illegal under Community law since they were implemented because they were introduced in contravention of Article 93 (3) of the Treaty. Those failings have led to a particularly serious situation since the aid concerned is, intrinsically and for the reasons explained above, incompatible with the common market under Article 92 of the Treaty. The measures are by their nature particularly likely to have a direct and immediate harmful effect on the market in cereals.

In this respect it should be noted that in the light of the imperative nature of the procedure referred to in Article 93 (3) of the Treaty, whose direct effect has been recognized by the Court of Justice in (among others) its judgments in Case 77/72, *Carnima Capolongo v. Azienda Agricola Maya*<sup>(2)</sup> and Case 354/90, *Fédération National du Commerce extérieur des produits alimentaires and others v. France*<sup>(3)</sup>, the illegality of the aid concerned cannot be remedied retroactively.

<sup>(1)</sup> Judgment of the Court of First Instance in Case T-459/93 *Siemens v. Commission of the European Communities* [1995] ECR II-1675.

<sup>(2)</sup> [1973] ECR 611.

<sup>(3)</sup> [1991] ECR 5505.

Furthermore, where aid is incompatible with the common market, the Commission may use the possibility envisaged by the judgment of the Court of Justice in Case 70/72, *Commission v. Federal Republic of Germany*<sup>(4)</sup>, confirmed by its judgments in Case 310/85, *Denzel v. Commission*<sup>(5)</sup> and Case C-5/89, *Commission v. Federal Republic of Germany*<sup>(6)</sup>, and require the Member State to recover from the beneficiaries all aid illegally granted.

In the light of the foregoing, the aid granted by the Portuguese Government to EPAC must be repaid.

Since the aid concerned is in the form of a State guarantee which has the effect of reducing the interest rate, the financial advantage unduly obtained is represented by the difference between the market financial cost of bank loans (represented by the reference rate) and the financial cost actually paid by EPAC in the financial operation (taking account of the cost of the guarantee). Since the interest rate is indexed to the six-month Lisbor rate and the interest is payable every six months, this difference should be calculated on a six-monthly basis.

The reimbursement must be made in accordance with the procedures and provisions of Portuguese legislation, with interest payable from the date that the illegal aid in question was granted<sup>(7)</sup>. The interest rate to be applied is the reference rate used to calculate subsidy equivalents in the context of regional aid<sup>(8)</sup>.

This decision is without prejudice to any conclusions the Commission may draw with regard to the financing of the common agricultural policy by the European Agricultural Guidance and Guarantee Fund (EAGGF),

HAS ADOPTED THIS DECISION:

### *Article 1*

The aid granted by the Portuguese Government to EPAC is illegal since it was granted in contravention of the procedural rules referred to in Article 93 (3) of the Treaty. Furthermore, it is incompatible with the common market pursuant to Article 92 (1) of the Treaty and does not meet the conditions for derogations provided for in Article 92 (2) and (3) of the Treaty.

<sup>(4)</sup> [1973] ECR 813.

<sup>(5)</sup> [1987] ECR 901.

<sup>(6)</sup> [1990] ECR I-3437.

<sup>(7)</sup> Commission letter to the Member States SG (91) D/4577, 4. 3. 1991.

<sup>(8)</sup> OJ C 232, 10. 8. 1996, p. 10.

*Article 2*

1. Portugal must cancel the aid referred to in Article 1 within 15 days of the date of notification of this Decision.
2. Within two months of the date of notification of this Decision, Portugal shall take the measures necessary to recover the aid referred to in Article 1.
3. Recovery of the aid shall be carried out in accordance with the procedures laid down in Portuguese legislation, with interest due from the date on which the aid was paid. The interest rate to be applied must be the reference rate used to calculate subsidy equivalents in the context of regional aid.

*Article 3*

1. Portugal shall keep the Commission regularly informed of the measures it adopts to meet the require-

ments of this Decision. Its first communication shall be made not later than one month from the notification of this Decision.

2. Not later than two months after the expiry of the period provided for in Article 2 (2), Portugal shall send the Commission information to enable it to verify without any additional investigation that the obligation to recover the aid has been met.

*Article 4*

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 9 July 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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## CORRIGENDA

**Corrigendum to the second Council Directive 89/646/EEC of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC**

*(Official Journal of the European Communities L 386 of 30 December 1989)*

Page 6, Article 11 (1), first subparagraph, line 2:

*for:* '... who proposes to acquire, ...',

*read:* '... who proposes to hold, ...'.

Page 6, Article 11 (2), line 7:

*for:* '... who proposes to acquire ...',

*read:* '... who proposes to hold ...'.

## ANNEX

The words 'from the public' shall be deleted from point 1.

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**Corrigendum to Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive)**

*(Official Journal of the European Communities L 228 of 11 August 1992)*

Page 10, Article 15 (1), line 2:

*for:* 'who proposes to acquire, ...',

*read:* 'who proposes to hold, ...'.

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**Corrigendum to Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive)**

*(Official Journal of the European Communities L 360 of 9 December 1992)*

Page 9, Article 14 (1), line 2:

*for:* '... who proposes to acquire, ...',

*read:* '... who proposes to hold, ...'.

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