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Legislation

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[1] Text with EEA relevance

(Continued overleaf)

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

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Commission

EN

[1] Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 557/1999

of 15 March 1999

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 [1], as last amended by Regulation (EC) No 1498/98 [2], and in particular Article 4 (1) 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 16 March 1999.

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

Done at Brussels, 15 March 1999.

For the Commission
Franz FISCHLER
Member of the Commission

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[1] OJ L 337, 24. 12. 1994, p. 66.
[2] OJ L 198, 15. 7. 1998, p. 4.

ANNEX

to the Commission Regulation of 15 March 1999 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	052	72,0
	204	31,8
	624	108,7
	999	70,8
0707 00 05	068	130,2
	999	130,2
0709 10 00	220	148,0
	999	148,0
0709 90 70	052	112,0
	204	154,8
	999	133,4
0805 10 10, 0805 10 30, 0805 10 50	052	39,4
	204	47,3
	212	48,3
	600	41,3
	624	53,8
	999	46,0
0805 30 10	052	54,9
	600	56,5
	999	55,7
0808 10 20, 0808 10 50, 0808 10 90	039	103,9
	064	56,2
	388	121,9
	400	82,1
	404	74,5
	508	83,8
	512	88,8
	528	101,2
	720	82,1
	999	88,3
0808 20 50	052	138,6
	388	69,8
	400	49,7
	512	62,1
	528	71,2
	624	70,7
	999	77,0

(1) Country nomenclature as fixed by Commission Regulation (EC) No 2317/97 (OJ L 321, 22. 11. 1997, p. 19). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 558/1999
of 15 March 1999
on the supply of milk products as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security [1], and in particular Article 24(1)(b) thereof,

Whereas the abovementioned Regulation lays down the list of countries and organisations eligible for Community aid and specifies the general criteria on the transport of food aid beyond the fob stage;

Whereas, following the taking of a number of decisions on the allocation of food aid, the Commission has allocated milk powder to certain beneficiaries;

Whereas it is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EC) No 2519/97 of 16 December 1997 laying down general rules for the mobilisation of products to be supplied pursuant to Council Regulation (EC) No 1292/96 as Community food aid [2]; whereas it is necessary to specify the time limits and conditions of supply to determine the resultant costs,

HAS ADOPTED THIS REGULATION:

Article 1

Milk products shall be mobilised in the Community, as Community food aid for supply to the recipient listed in the Annex, in accordance with Regulation (EC) No 2519/97 and under the conditions set out in the Annex.

The tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

Article 2

This Regulation shall enter into force on the 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, 15 March 1999.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 166, 5. 7. 1996, p. 1.
[2] OJ L 346, 17. 12. 1997, p. 23.

ANNEX

LOT A

1. **Action Nos:** 775/96 (A1); 451/97 (A2); 453/97 (A3); 454/97 (A4); 455/97 (A5); 460/97 (A6)
2. **Beneficiary** ([2]): Euronaid, PO Box 12, NL-2501 CA Den Haag, Nederland
   tel.: (31 70) 330 57 57; fax: 364 17 01; telex: 30960 EURON NL
3. **Beneficiary's representative:** to be designated by the recipient
4. **Country of destination:** A1: Mali; A2: Pakistan; A3: Niger; A4: Zimbabwe; A5: Zambia; A6: Madagascar
5. **Product to be mobilised:** vitaminised skimmed-milk powder
6. **Total quantity (tonnes net):** 330
7. **Number of lots:** 1 in 6 parts (A1: 30 t; A2: 180 t; A3: 45 t; A4: 30 t; A5: 15 t; A6: 30 t)
8. **Characteristics and quality of the product** ([3]) ([5]): see OJ C 114, 29.4.1991, p. 1 (I.B(1))
9. **Packaging** ([7]): see OJ C 267, 13.9.1996, p. 1 (6.3.A and B(2))
10. **Labelling or marking** ([6]): see OJ C 114, 29.4.1991, p. 1 (I.B(3))
    — Language to be used for the marking: A1 + A3 + A6: French; A2 + A4 + A5: English
    — Supplementary marking: —
11. **Method of mobilisation of the product:** the Community market
    The manufacture of the skimmed-milk powder, and the incorporation of vitamins, must be carried out after the award of the tender
12. **Specified delivery stage:** free at port of shipment
13. **Alternative delivery stage:** —
14. (a) **Port of shipment:** —
    (b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:** —
    — port or warehouse of transit: —
    — overland transport route: —
17. **Period or deadline of supply at the specified stage:**
    — first deadline: 19.4 to 9.5.1999
    — second deadline: 3 to 23.5.1999
18. **Period or deadline of supply at the alternative stage:**
    — first deadline: —
    — second deadline: —
19. **Deadline for the submission of tenders (12 noon, Brussels time):**
    — first deadline: 30.3.1999
    — second deadline: 13.4.1999
20. **Amount of tendering guarantee:** EUR 20/t
21. **Address for submission of tenders and tendering guarantees** ([1]):
    Bureau de l'aide alimentaire, Attn Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel
    telex: 25670 AGREC B; fax: (32 2) 296 70 03 / 296 70 04 (exclusively)
22. **Export refund** ([4]): refund applicable on 10.3.1999, fixed by Commission Regulation (EC) No 312/1999 (OJ L 38, 12.2.1999, p. 15)

Notes:

(1) Supplementary information: André Debongnie (tel. (32 2) 295 14 65)
Torben Vestergaard (tel. (32 2) 299 30 50).

(2) The supplier shall contact the beneficiary or its representative as soon as possible to establish which consignment documents are required.

(3) The supplier shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.

(4) Commission Regulation (EC) No 259/98 (OJ L 25, 31.1.1998, p. 39), is applicable as regards the export refund. The date referred to in Article 2 of the said Regulation is that referred to in point 22 of this Annex.

The supplier's attention is drawn to the last subparagraph of Article 4(1) of the above Regulation. The photocopy of the export licence shall be sent as soon as the export declaration has been accepted (fax (32 2) 296 20 05).

(5) The supplier shall supply to the beneficiary or its representative, on delivery, the following documents:

— health certificate issued by an official entity stating that the product was processed under excellent sanitary conditions which are supervised by qualified technical personnel. The certificate must state the temperature and duration of the pasteurisation, the temperature and duration in the spray-drying-tower and the expiry date for consumption,

— veterinary certificate issued by an official entity stating that the area of production of raw milk had not registered foot-and-mouth disease nor any other notifiable infectious/contagious disease during the 12 months prior to the processing.

(6) Notwithstanding OJ C 114 of 29.4.1991, point I.A(3)(c) is replaced by the following: 'the words "European Community"'.

(7) Shipment to take place in 20-foot containers, condition FCL/FCL (each containing maximum 15 tonnes net).

The supplier shall be responsible for the cost of making the container available in the stack position at the container terminal at the port of shipment. The beneficiary shall be responsible for all subsequent loading costs, including the cost of moving the containers from the container terminal.

The supplier has to submit to the beneficiary's agent a complete packing list of each container, specifying the number of bags belonging to each action number as specified in the invitation to tender.

The supplier has to seal each container with a numbered locktainer (Oneseal, Sysko, Locktainer 180 or a similar high-security seal) the number of which is to be provided to the beneficiary's representative.

COMMISSION REGULATION (EC) No 559/1999
of 15 March 1999
on the supply of split peas as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security [1], and in particular Article 24(1)(b) thereof,

Whereas the abovementioned Regulation lays down the list of countries and organisations eligible for Community aid and specifies the general criteria on the transport of food aid beyond the fob stage;

Whereas, following the taking of a number of decisions on the allocation of food aid, the Commission has allocated split peas to certain beneficiaries;

Whereas it is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EC) No 2519/97 of 16 December 1997 laying down general rules for the mobilisation of products to be supplied under Council Regulation (EC) No 1292/96 as Community food aid [2]; whereas it is necessary to specify the time limits and conditions of supply to determine the resultant costs;

Whereas, in order to ensure that the supplies are carried out, provision should be made for tenderers to be able to mobilise either green split peas or yellow split peas,

HAS ADOPTED THIS REGULATION:

Article 1

Split peas shall be mobilised in the Community, as Community food aid for supply to the recipients listed in the Annex, in accordance with Regulation (EC) No 2519/97, and under the conditions set out in the Annex.

Tenders shall cover either green split peas or yellow split peas. Tenders shall be rejected unless they specify the type of peas to which they relate.

The tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

Article 2

This Regulation shall enter into force on the 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, 15 March 1999.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 166, 5. 7. 1996, p. 1.
[2] OJ L 346, 17. 12. 1997, p. 23.

ANNEX

LOTS A and B

1. **Action Nos:** 464/97 (A); 470/97 (B)
2. **Beneficiary** ([2]): Euronaid PO Box 12, NL-2501 CA Den Haag, Nederland
   tel.: (31 70) 33 05 757; fax: 36 41 701; telex: 30960 EURON NL
3. **Beneficiary's representative:** to be designated by the recipient
4. **Country of destination:** Haiti
5. **Product to be mobilised** ([8]): split peas
6. **Total quantity (tonnes net):** 720
7. **Number of lots:** 2 (A: 360 t; B: 360 t)
8. **Characteristics and quality of the product** ([3]) ([4]) ([7]): —
9. **Packaging** ([5]) ([9]): see OJ C 267, 13.9.1996, p. 1 (2.1.A(1)(a), (2)(a) and B(4)) or (4.0 A 1.c, 2.c and B.4)
10. **Labelling or marking** ([6]): see OJ C 114, 29.4.1991, p. 1 (IV.A(3))
    — Language to be used for the markings: French
    — Supplementary markings: —
11. **Method of mobilisation of the product:** the Community market
    The product must originate from the Community
12. **Specified delivery stage:** free at port of shipment
13. **Alternative delivery stage:** —
14. (a) **Port of shipment:** —
    (b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:** —
    — port or warehouse of transit: —
    — overland transport route: —
17. **Period or deadline of supply at the specified stage:**
    — first deadline: A: 19.4 to 9.5.1999; B: 17.5 to 6.6.1999
    — second deadline: A: 3 to 23.5.1999; B: 31.5 to 20.6.1999
18. **Period or deadline of supply at the alternative stage:**
    — first deadline: —
    — second deadline: —
19. **Deadline for the submission of tenders (12 noon, Brussels time):**
    — first deadline: 30.3.1999
    — second deadline: 13.4.1999
20. **Amount of tendering guarantee:** EUR 5 t
21. **Address for submission of tenders and tendering guarantees** ([1]):
    Bureau de l'aide alimentaire, Attn Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel
    telex: 25670 AGREC B; fax (32 2) 296 70 03/296 70 04 (exclusively)
22. **Export refund:** —

Notes:

([1]) Supplementary information: André Debongnie (tel. (32 2) 295 14 65),
Torben Vestergaard (tel. (32 2) 299 30 50).

([2]) The supplier shall contact the beneficiary or its representative as soon as possible to establish which consignment documents are required.

([3]) The supplier shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.

([4]) The supplier shall supply to the beneficiary or its representative, on delivery, the following document:

— phytosanitary certificate.

([5]) Since the goods may be rebagged, the supplier must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.

([6]) Notwithstanding OJ C 114 of 29.4.1991, point IV.A(3)(c) is replaced by the following: 'the words "European Community"' and point IV.A(3)(b) by the following: 'Split peas'.

([7]) Tenders shall be rejected unless they specify the type of peas to which they relate.

([8]) Yellow or green peas *(Pisum sativum)* for human consumption of the most recent crop. The peas must not have been coloured artificially. The split peas must be steam-treated for at least two minutes or have been fumigated (*) and meet the following requirements:

— moisture: maximum 15 %,

— foreign matters: maximum 0,1 %,

— broken split peas: maximum 10 % (pea fragments passing through a sieve of circular mesh of 5 mm diameter),

— percentage of discoloured seeds or of different colour: maximum 1,5 % (yellow peas), maximum 15 % (green peas),

— cooking time: maximum 45 minutes (after soaking for 12 hours) or maximum 60 minutes (without soaking).

([9]) Shipment to take place in 20-foot containers, condition FCL/FCL.

The supplier shall be responsible for the cost of making the container available in the stack position at the container terminal at the port of shipment. The beneficiary shall be responsible for all subsequent loading costs, including the cost of moving the containers from the container terminal.

The supplier has to submit to the recipient's agent a complete packing list of each container, specifying the number of bags belonging to each action number as specified in the invitation to tender.

The supplier has to seal each container with a numbered locktainer (Oneseal, Sysko, Locktainer 180 or a similar high-security seal), the number of which is to be provided to the beneficiary's representative.

(*) The successful tender shall supply to the beneficiary or its representative, on delivery a fumigation certificate.

COMMISSION REGULATION (EC) No 560/1999
of 15 March 1999
on the supply of cereals as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security [1], and in particular Article 24(1)(b) thereof,

Whereas the abovementioned Regulation lays down the list of countries and organisations eligible for Community aid and specifies the general criteria on the transport of food aid beyond the fob stage;

Whereas, following the taking of a number of decisions on the allocation of food aid, the Commission has allocated cereals to certain beneficiaries;

Whereas it is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EC) No 2519/97 of 16 December 1997 laying down general rules for the mobilisation of products to be supplied under Council Regulation (EC) No 1292/96 as Community food aid [2]; whereas it is necessary to specify the time limits and conditions of supply to determine the resultant costs,

HAS ADOPTED THIS REGULATION:

Article 1

Cereals shall be mobilised in the Community, as Community food aid for supply to the recipient listed in the Annex, in accordance with Regulation (EC) No 2519/97 and under the conditions set out in the Annex.

The tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

Article 2

This Regulation shall enter into force on the 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, 15 March 1999.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 166, 5. 7. 1996, p. 1.
[2] OJ L 346, 17. 12. 1997, p. 23.

ANNEX

LOT A

1. **Action Nos:** 461/97 (A1); 472/97 (A2)
2. **Beneficiary** ([2]): Euronaid, PO Box 12, NL-2501 CA Den Haag, Nederland
   tel. (31-70) 330 57 57; fax 364 17 01; telex 30960 EURON NL
3. **Beneficiary's representative:** to be designated by the recipient
4. **Country of destination:** A1: Madagascar; A2: Haiti
5. **Product to be mobilised:** common wheat flour
6. **Total quantity (tonnes net):** 300
7. **Number of lots:** 1 in 2 parts (A1: 40 t; A2: 260 t)
8. **Characteristics and quality of the product** ([3]) ([5]): see OJ C 114, 29.4.1991, p. 1 (II.B.(1)(a))
9. **Packaging** ([7]) ([8]): see OJ C 267, 13.9.1996, p. 1 (2.2.A 1.d., 2.d and B.4)
10. **Labelling or marking** ([6]): see OJ C 114, 29.4.1991, p. 1 (II.B.(3))
    — Language to be used for the markings: French
    — Supplementary markings: —
11. **Method of mobilisation of the product:** the Community market
12. **Specified delivery stage:** free at port of shipment
13. **Alternative delivery stage:** —
14. (a) **Port of shipment:** —
    (b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:** —
    — port or warehouse of transit: —
    — overland transport route: —
17. **Period or deadline of supply at the specified stage:**
    — first deadline: 19.4 to 9.5.1999
    — second deadline: 3 to 23.5.1999
18. **Period or deadline of supply at the alternative stage:**
    — first deadline: —
    — second deadline: —
19. **Deadline for the submission of tenders (12 noon, Brussels time):**
    — first deadline: 30.3.1999
    — second deadline: 13.4.1999
20. **Amount of tendering guarantee:** EUR 5/t
21. **Address for submission of tenders and tendering guarantees** ([1]):
    Bureau de l'aide alimentaire, Attn Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel
    telex 25670 AGREC B; fax (32-2) 296 70 03 / 296 70 04 (exclusively)
22. **Export refund** ([4]): refund applicable on 26.3.1999, fixed by Commission Regulation (EC) No 429/1999 (OJ L 52, 27.2.1999, p. 16)

LOTS B, C

1. **Action Nos:** 468/97 (B); 471/97 (C)
2. **Beneficiary** ([2]): Euronaid, PO Box 12, NL-2501 CA Den Haag, Nederland
   tel. (31-70) 33 05 757; fax 36 41 701; telex 30960 EURON NL
3. **Beneficiary's representative:** to be designated by the recipient
4. **Country of destination:** Haiti
5. **Product to be mobilised:** milled rice (product code 1006 30 92 9900, 1006 30 94 9900, 1006 30 96 9900, 1006 30 98 9900)
6. **Total quantity (tonnes net):** 1 120
7. **Number of lots:** 2 (B: 560 t; C: 560 t)
8. **Characteristics and quality of the product** ([3]) ([5]): see OJ C 114, 29.4.1991, p. 1 (II.A.(1)(f))
9. **Packaging** ([7]) ([8]): see OJ C 267, 13.9.1996, p. 1 (1.0 A1.c, 2.c and B.6)
10. **Labelling or marking** ([6]): see OJ C 114, 29.4.1991, p. 1 (II.A.(3))
    — Language to be used for the markings: French
    — Supplementary markings: —
11. **Method of mobilization of the product:** the Community market
12. **Specified delivery stage:** free at port of shipment
13. **Alternative delivery stage:** —
14. (a) **Port of shipment:** —
    (b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:** —
    — port or warehouse of transit: —
    — overland transport route: —
17. **Period or deadline of supply at the specified stage:**
    — first deadline: B: 19.4 to 9.5.1999; C: 17.5 to 6.6.1999
    — second deadline: B: 3 to 23.5.1999; C: 31.5 to 20.6.1999
18. **Period or deadline of supply at the alternative stage:**
    — first deadline: —
    — second deadline: —
19. **Deadline for the submission of tenders (12 noon, Brussels time):**
    — first deadline: 30.3.1999
    — second deadline: 13.4.1999
20. **Amount of tendering guarantee:** EUR 5/t
21. **Address for submission of tenders and tendering guarantees** ([1]):
    Bureau de l'aide alimentaire, Attn. Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel
    telex: 25670 AGREC B; fax: (32-2) 296 70 03 / 296 70 04 (exclusively)
22. **Export refund** ([4]): refund applicable on 26.3.1999, fixed by Commission Regulation (EC) No 429/1999 (OJ L 52, 27.2.1999, p. 16)

Notes:

(1) Supplementary information: André Debongnie (tel. (32-2) 295 14 65),
Torben Vestergaard (tel. (32-2) 299 30 50).

(2) The supplier shall contact the beneficiary or its representative as soon as possible to establish which consignment documents are required.

(3) The supplier shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.

(4) Commission Regulation (EC) No 259/98 (OJ L 25, 31.1.1998, p. 39), is applicable as regards the export refund. The date referred to in Article 2 of the said Regulation is that indicated in point 22 of this Annex.

The supplier's attention is drawn to the last subparagraph of Article 4(1) of the above Regulation. The photocopy of the export licence shall be sent as soon as the export declaration has been accepted (fax 32 2) 296 20 05)).

(5) The supplier shall supply to the beneficiary or its representative, on delivery, the following document:

— phytosanitary certificate.

— fumigation certificate (cereals/cereals derivatives are to be fumigated prior to shipment by way of magnesium phosphide (min 2 g/m^3)for a minimum period of five days between the application of the fumigant and the venting process. The appropriate certification must be made available at the time of shipment).

(6) Notwithstanding OJ C 114 of 29.4.1991, point II.A(3)(c) or II.B(3)(c) is replaced by the following: 'the words "European Community"'.

(7) Since the goods may be rebagged, the supplier must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.

(8) Shipment to take place in 20-foot containers, condition FCL/FCL.

The supplier shall be responsible for the cost of making the container available in the stack position at the container terminal at the port of shipment. The beneficiary shall be responsible for all subsequent loading costs, including the cost of moving the containers from the container terminal.

The supplier has to submit to the beneficiary's agent a complete packing list of each container, specifying the number of bags belonging to each action number as specified in the invitation to tender.

The supplier has to seal each container with a numbered locktainer (Oneseal, Sysko, Locktainer 180 or a similar high-security seal) the number of which is to be provided to the beneficiary's representative.

COMMISSION REGULATION (EC) No 561/1999

of 15 March 1999

on the opening of a standing invitation to tender for the sale of olive oil held by the Spanish intervention agency

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1638/98 of 20 July 1998 amending Regulation No 136/66/EEC on the establishment of a common organisation of the market in oils and fats [1], and in particular Article 3(1) thereof,

Whereas Article 2 of Council Regulation (EEC) No 2754/78 [2], as amended by Regulation (EEC) No 2203/90 [3], lays down that the sale of olive oil held by intervention agencies must be by tender;

Whereas, in accordance with Article 12(1) of Council Regulation No 136/66/EEC [4], as last amended by Regulation (EC) No 1638/98, in force until 31 October 1998, the Spanish intervention agency currently holds certain quantities of olive oil;

Whereas Commission Regulation (EEC) No 2960/77 [5], as last amended by Regulation (EEC) No 3818/85 [6], lays down the conditions for the sale by tender on the Community market and for export of olive oil; whereas the situation on the market in olive oil currently favours the sale of some of the oil in question;

Whereas the present situation on the market in virgin olive oils not directly edible is one of reduced supply compared to demand; whereas, in order to provide the greatest possible number of operators with a minimum supply to meet their immediate needs, it should be laid down that each operator may only submit tenders for a maximum quantity;

Whereas special rules must be laid down to ensure that the operators are properly carried out and monitored;

Whereas to that end the Member States must provide for all additional measures compatible with the provisions in force to ensure that the operation takes place smoothly and that the Commission is kept informed;

Whereas the monitoring arrangements should accordingly be supplemented by allowing a reference sample to be taken;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The Spanish intervention agency, the Fondo Español de Garantía Agraria, hereinafter referred to as 'FEGA', shall open an invitation to tender in accordance with this Regulation and Regulation (EEC) No 2960/77, for the sale on the Community market of the following quantities of olive oil:

— 20 000 t of ordinary virgin olive oil,

— 55 000 t of lampante virgin olive oil.

Five invitations shall be opened, each of which shall be for approximately one fifth of the above quantities plus any quantities unsold under the previous invitation.

2. Notwithstanding Article 5(2) of Regulation (EEC) No 2960/77, where the quantity of oil in a container exceeds 500 t, FEGA shall be authorised to divide that quantity into several lots.

Article 2

The invitation to tender shall be published on 23 March 1999.

Details of the lots of oil offered for sale and of the places where they are stored shall be displayed at the central office of FEGA, calle Beneficencia, 8, E—28004 Madrid.

[1] OJ L 210, 28. 7. 1998, p. 32.
[2] OJ L 331, 28. 11. 1978, p. 13.
[3] OJ L 201, 31. 7. 1990, p. 5.
[4] OJ 172, 30. 9. 1966, p. 3025/66.
[5] OJ L 348, 30. 12. 1977, p. 46.
[6] OJ L 368, 31. 12. 1985, p. 20.

A copy of the invitation to tender shall be sent forthwith to the Commission.

Article 3

Tenders must reach FEGA at calle Beneficencia, 8, E—28004 Madrid no later that 2 p.m. (local time) on:

— 7 April 1999,

— 5 May 1999,

— 9 June 1999,

— 7 July 1999,

— 21 July 1999.

Tenders shall be admissible only if they are submitted by a natural or legal person engaged in activity in olive oil and recorded as such in a public register of a Member State on 31 December 1998.

Moreover, no tenderer may submit a tender for more than 500 t of ordinary virgin olive oil or 1 000 t of lampante virgin olive oil.

Article 4

1. With regard to lampante virgin olive oil, tenders shall be submitted for an oil of 3° acidity.

2. Where the oil awarded has a different degree of acidity to that for which the tender was made, the price to be paid shall be equal to the price tendered, increased or reduced in accordance with the scale below:

— up to 3° acidity:

increase of EUR 0,32 for each tenth of a degree of acidity below 3°,

— more than 3° acidity:

reduction of EUR 0,32 for each tenth of a degree of acidity above 3°.

Article 5

Not later than two days after the expiry of the time limit laid down for the submission of tenders, FEGA shall send the Commission a list, without names, stating the highest tender received for each lot put up for sale.

Article 6

The minimum selling price per 100 kg of oil shall be fixed, in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC, on the basis of the tenders received, not later than the 10th working day after the expiry of each deadline for the submission of tenders. The decision fixing the minimum selling price shall be notified immediately to the Member State concerned.

Article 7

Without prejudice to Article 10 of this Regulation, FEGA shall sell the oil not later than the fifth working day after the date of notification of the decision referred to in Article 6. FEGA shall send the storage agencies a list of the lots remaining unsold.

Article 8

The security referred to in Article 7 of Regulation (EEC) No 2960/77 shall be EUR 18/100 kg.

Article 9

The storage charge referred to in Article 15 of Regulation (EEC) No 2960/77 shall be EUR 3/100 kg.

Article 10

Notwithstanding Article 11(1) and (2) of Regulation (EEC) No 2960/77, before the lot awarded is removed, the intervention agency, the successful tenderer and the storage agency shall take a reference sample and test it in accordance with Article 2(4) and (5) of Commission Regulation (EEC) No 3472/85 [1].

The intervention agency shall have the final result of the tests on this sample not later than the 30th working day following the notification of the decision referred to in Article 6.

(a) If the final result of the tests on the sample indicate a difference between the quality of the olive oil to be removed and the quality of the oil as described in the invitation to tender, but that the oil is still olive oil as referred to in point 1 of the Annex to Regulation No 136/66/EEC, the following provisions shall apply:

(i) the intervention agency shall, that same day, inform the Commission thereof in accordance with Annex I, as well as the storer and the successful tenderer;

(ii) the successful tenderer may:

— either agree to take over the lot with its quality as established,

— or refuse to take over the lot in question, notwithstanding the declaration made in accordance with Article 7(6)(b) of Regulation (EEC) No 2960/77. In that case, the successful tenderer shall, that same day, inform the intervention agency and the Commission thereof in accordance with Annex II.

Once these formalities have been completed, the successful tenderer shall be immediately released from all his obligations relating to the lot in question, including those relating to the securities.

[1] OJ L 333, 11. 12. 1985, p. 5.

(b) If the final result of the tests on the sample indicate that the oil is of a different quality to that referred to in point 1 of the Annex to Regulation No 136/66/EEC:

— the intervention agency shall, that same day, inform the Commission thereof in accordance with Annex I, as well as the storer and the successful tenderer,

— the successful tenderer shall give official notice, that same day, to the intervention agency that he cannot take over the lot in question, and shall inform the Commission thereof, that same day, in accordance with Annexes I and II.

Once these formalities have been completed, the successful tenderer shall be immediately released from all his obligations relating to the lot in question, including those relating to the securities.

Notwithstanding the second paragraph of Article 13 of Regulation (EEC) No 2960/77, the whole of the lot awarded shall be removed by the 70th day following the notification referred to in Article 6.

Article 11

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

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

Done at Brussels, 15 March 1999.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

The only numbers to be used in Brussels are (DG VI/C/4, for the attention of Mr Gazagnes):

— fax (32-2) 296 60 09 or (32-2) 296 60 08

ANNEX II

Communication of refusal of lots under the invitation to tender for the sale of ..... t of olive oil held by the Spanish intervention agency

— Name of successful tenderer:

— Date of award of contract:

— Date of refusal of the lot by successful tenderer:

Lot No	Quantity/t	Address of warehouse	Reason for refusal to take over

COMMISSION REGULATION (EC) No 562/1999

of 15 March 1999

altering the corrective amount applicable to the refund on cereals

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 [1], as last amended by Commission Regulation (EC) No 923/96 [2], and in particular Article 13 (8) thereof,

Whereas the corrective amount applicable to the refund on cereals was fixed by Commission Regulation (EC) No 484/1999 [3];

Whereas, on the basis of today's cif prices and cif forward delivery prices, taking foreseeable developments on the market into account, the corrective amount at present applicable to the refund on cereals should be altered;

Whereas the corrective amount must be fixed according to the same procedure as the refund; whereas it may be altered in the period between fixings,

HAS ADOPTED THIS REGULATION:

Article 1

The corrective amount referred to in Article 1 (1) (a), (b) and (c) of Regulation (EEC) No 1766/92 which is applicable to the export refunds fixed in advance in respect of the products referred to, except for malt, is hereby altered to the amounts set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 16 March 1999.

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

Done at Brussels, 15 March 1999.

For the Commission
Karel VAN MIERT
Member of the Commission

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[1] OJ L 181, 1. 7. 1992, p. 21.
[2] OJ L 126, 24. 5. 1996, p. 37.
[3] OJ L 57, 5. 3. 1999, p. 16.

ANNEX

to the Commission Regulation of 15 March 1999 altering the corrective amount applicable to the refund on cereals

(EUR / t)

Product code	Destination (1)	Current 3	1st period 4	2nd period 5	3rd period 6	4th period 7	5th period 8	6th period 9
1001 10 00 9200	—	—	—	—	—	—	—	—
1001 10 00 9400	01	0	−1,00	−2,00	−2,00	0	—	—
1001 90 91 9000	—	—	—	—	—	—	—	—
1001 90 99 9000	01	0	0	0	0	−10,00	—	—
1002 00 00 9000	01	0	0	0	0	−10,00	—	—
1003 00 10 9000	—	—	—	—	—	—	—	—
1003 00 90 9000	03	0	−25,00	−25,00	−35,00	−35,00	—	—
	02	0	0	0	−10,00	−10,00	—	—
1004 00 00 9200	—	—	—	—	—	—	—	—
1004 00 00 9400	01	0	0	0	0	−10,00	—	—
1005 10 90 9000	—	—	—	—	—	—	—	—
1005 90 00 9000	04	0	0	0	0	0	—	—
	02	0	−1,00	−2,00	−3,00	−4,00	—	—
1007 00 90 9000	—	—	—	—	—	—	—	—
1008 20 00 9000	—	—	—	—	—	—	—	—
1101 00 11 9000	—	—	—	—	—	—	—	—
1101 00 15 9100	01	0	0	0	0	0	—	—
1101 00 15 9130	01	0	0	0	0	0	—	—
1101 00 15 9150	01	0	0	0	0	0	—	—
1101 00 15 9170	01	0	0	0	0	0	—	—
1101 00 15 9180	01	0	0	0	0	0	—	—
1101 00 15 9190	—	—	—	—	—	—	—	—
1101 00 90 9000	—	—	—	—	—	—	—	—
1102 10 00 9500	01	0	0	0	0	0	—	—
1102 10 00 9700	—	—	—	—	—	—	—	—
1102 10 00 9900	—	—	—	—	—	—	—	—
1103 11 10 9200	01	0	0	0	−10,00	0	—	—
1103 11 10 9400	01	0	0	0	−10,00	0	—	—
1103 11 10 9900	—	—	—	—	—	—	—	—
1103 11 90 9200	01	0	0	0	0	0	—	—
1103 11 90 9800	—	—	—	—	—	—	—	—

(1) The destinations are identified as follows:
01 all third countries
02 other third countries
03 United States of America, Canada and Mexico
04 Switzerland, Liechtenstein.

NB: The zones are those defined in amended Commission Regulation (EEC) No 2145/92 (OJ L 214, 30. 7. 1992, p. 20).

COMMISSION REGULATION (EC) No 563/1999
of 15 March 1999
fixing the import duties in the cereals sector

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 [1], as last amended by Commission Regulation (EC) No 923/96 [2],

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector [3], as last amended by Regulation (EC) No 2519/98 [4], and in particular Article 2 (1) thereof,

Whereas Article 10 of Regulation (EEC) No 1766/92 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation; whereas, however, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by 55 %, minus the cif import price applicable to the consignment in question; however, that duty may not exceed the rate of duty in the Common Customs Tariff;

Whereas, pursuant to Article 10 (3) of Regulation (EEC) No 1766/92, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market;

Whereas Regulation (EC) No 1249/96 lays down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector;

Whereas the import duties are applicable until new duties are fixed and enter into force; whereas they also remain in force in cases where no quotation is available for the reference exchange referred to in Annex II to Regulation (EC) No 1249/96 during the two weeks preceding the next periodical fixing;

Whereas, in order to allow the import duty system to function normally, the representative market rates recorded during a reference period should be used for calculating the duties;

Whereas application of Regulation (EC) No 1249/96 results in import duties being fixed as set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the cereals sector referred to in Article 10 (2) of Regulation (EEC) No 1766/92 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 16 March 1999.

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

Done at Brussels, 15 March 1999.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 181, 1. 7. 1992, p. 21.
[2] OJ L 126, 24. 5. 1996, p. 37.
[3] OJ L 161, 29. 6. 1996, p. 125.
[4] OJ L 315, 25. 11. 1998, p. 7.

ANNEX I

Import duties for the products covered by Article 10(2) of Regulation (EEC) No 1766/92

CN code	Description	Import duty by land inland waterway or sea from Mediterranean, the Black Sea or Baltic Sea ports (EUR/tonne)	Import duty by air or by sea from other ports (2) (EUR/tonne)
1001 10 00	Durum wheat high quality	52,10	42,10
	medium quality (1)	62,10	52,10
1001 90 91	Common wheat seed	50,13	40,13
1001 90 99	Common high quality wheat other than for sowing (3)	50,13	40,13
	medium quality	83,80	73,80
	low quality	103,05	93,05
1002 00 00	Rye	96,13	86,13
1003 00 10	Barley, seed	96,13	86,13
1003 00 90	Barley, other (3)	96,13	86,13
1005 10 90	Maize seed other than hybrid	100,78	90,78
1005 90 00	Maize other than seed (3)	100,78	90,78
1007 00 90	Grain sorghum other than hybrids for sowing	96,13	86,13

(1) In the case of durum wheat not meeting the minimum quality requirements for durum wheat of medium quality, referred to in Annex I to Regulation (EC) No 1249/96, the duty applicable is that fixed for low-quality common wheat.

(2) For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2(4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:

— EUR 3 per tonne, where the port of unloading is on the Mediterranean Sea, or

— EUR 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic Coasts of the Iberian Peninsula.

(3) The importer may benefit from a flat-rate reduction of EUR 14 or 8 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating duties

(period from 1 March 1999 to 12 March 1999)

1. Averages over the two-week period preceding the day of fixing:

Exchange quotations	Minneapolis	Kansas-City	Chicago	Chicago	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2. 14 %	HRW2. 11,5 %	SRW2	YC3	HAD2	Medium quality (*)	US barley 2
Quotation (EUR/t)	112,57	97,10	86,96	77,01	138,69 (**)	128,69 (**)	94,67 (**)
Gulf premium (EUR/t)	28,09	9,89	0,78	13,00	—	—	—
Great Lakes premium (EUR/t)	—	—	—	—	—	—	—

(*) A discount of EUR 10/t (Article 4(1) of Regulation (EC) No 1249/96).
(**) Fob Gulf.

2. Freight/cost: Gulf of Mexico — Rotterdam: EUR 11,70/t; Great Lakes — Rotterdam: EUR 22,70/t.

3. Subsidy within the meaning of the third paragraph of Article 4(2) of Regulation (EC) No 1249/96: EUR 0,00/t (HRW2)
EUR 0,00/t (SRW2).

COMMISSION DIRECTIVE 1999/10/EC

of 8 March 1999

providing for derogations from the provisions of Article 7 of Council Directive 79/112/EEC as regards the labelling of foodstuffs

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs ([1]), as last amended by European Parliament and Council Directive 97/4/EC ([2]), and in particular Article 7(3)(d) and (4) thereof,

Whereas Article 7(2)(a) and (b) of Directive 79/112/EEC provide that the quantity of an ingredient is to be stated on the labelling of a foodstuff where the ingredient concerned appears in the name under which the foodstuff is sold or is emphasised on the labelling;

Whereas, on the one hand, Commission Directive 94/54/EC ([3]), as amended by Council Directive 96/21/EC ([4]), requires the particulars 'with sweetener(s)' or 'with sugar(s) and sweetener(s)' to be indicated on the labelling of products containing such ingredients; whereas those particulars must accompany the name under which the product is sold;

Whereas the indication of those particulars required by Directive 94/54/EC has the effect of making it obligatory to indicate the quantity of this ingredient or these ingredients in accordance with Article 7(2)(a) and/or (b) of Directive 79/112/EEC;

Whereas, however, indication of the quantity of sweeteners is unlikely to govern the consumer's choice when purchasing the product;

Whereas, on the other hand, the inclusion of particulars relating to the addition of vitamins and minerals has the effect of making nutrition labelling obligatory in accordance with Council Directive 90/496/EEC ([5]);

Whereas such particulars are regarded as an integral part of the name under which the product is sold or as emphasising an ingredient within the meaning of Article 7(2)(a) and/or (b) of Directive 79/112/EEC, thereby making the indication of the quantity of vitamins and minerals compulsory;

Whereas duplicated information of this kind is not useful to consumers and could even mislead them, inasmuch as quantity is indicated as a percentage under Article 7(4) of Directive 79/112/EEC and in mg on nutrition labelling;

Whereas under these circumstances, it is necessary to provide for further exceptions to the rule of indicating the quantities of ingredients;

Whereas Article 7(4) of Directive 79/112/EEC states that the quantity indicated, expressed as a percentage, must correspond to the quantity of the ingredient or ingredients at the time of its/their use; whereas that paragraph nevertheless provides for derogations from that principle;

Whereas, furthermore, the composition of certain foodstuffs is appreciably changed by cooking or other processes causing dehydration of their ingredients;

Whereas a derogation from the method for calculating the quantity of ingredients laid down by Article 7(4) of Directive 79/112/EEC is necessary for these products in order to better reflect the true composition of the foodstuff and thereby avoid misleading the consumer;

Whereas Article 6(5)(a) of Directive 79/112/EEC applies the same principle to the order of ingredients in the list of ingredients;

Whereas Article 6 nevertheless provides for derogations for certain foods or ingredients; whereas, for the sake of consistency, the same derogations should be provided for the method of calculating quantity;

Whereas, in accordance with the principles of subsidiarity and proportionality as set out in Article 3b of the Treaty, the objectives of the proposed action to ensure the effective implementation of the principle of quantitative indication of ingredients cannot be sufficiently achieved by the Member States to the extent that the basic rules are included in Community legislation; whereas this Directive is limited to the minimum required to achieve those objectives and does not go beyond what is necessary to that end;

([1]) OJ L 33, 8. 2. 1979, p. 1.
([2]) OJ L 43, 14. 2. 1997, p. 21.
([3]) OJ L 300, 23. 11. 1994, p. 14.
([4]) OJ L 88, 5. 4. 1996, p. 5.
([5]) OJ L 276, 6. 10. 1990, p. 40.

Whereas the measures provided for in this Directive are in accordance with the opinion of the Standing Committee on foodstuffs,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Article 7(2)(a) and (b) of Directive 79/112/EEC shall not apply in cases where the wording 'with sweetener(s)' or 'with sugar(s) and sweetener(s)' accompanies the name under which a foodstuff is sold, as provided for under Directive 94/54/EC.

2. Article 7(2)(a) and (b) of Directive 79/112/EEC shall not apply to particulars relating to the addition of vitamins and minerals, in cases where those substances are subject to nutrition labelling.

Article 2

1. By way of derogation from the principle established in Article 7(4) of Directive 79/112/EEC, the provisions of paragraphs 2 and 3 of this Article shall apply to the indication of quantities of ingredients.

2. For foodstuffs which have lost moisture following heat treatment or other treatment, the quantity shall correspond to the quantity of the ingredient or ingredients used, related to the finished product. The quantity shall be expressed as a percentage.

However, when the quantity of an ingredient or the total quantity of all the ingredients expressed on the labelling exceeds 100 %, the percentage shall be replaced by the weight of the ingredient(s) used to prepare 100 g of finished product.

3. The quantity of volatile ingredients shall be indicated on the basis of their proportion by weight in the finished product.

The quantity of ingredients used in concentrated or dehydrated form and reconstituted during manufacture may be indicated on the basis of their proportion by weight as recorded before their concentration or dehydration.

In the case of concentrated or dehydrated foods which are intended to be reconstituted by the addition of water, the quantity of the ingredients may be indicated on the basis of their proportion by weight in the reconstituted product.

Article 3

Member States shall, where necessary, adopt the necessary laws, regulations and administrative provisions by 31 August 1999 at the latest so as to:

— allow trade in products complying with this Directive by 1 September 1999 at the latest,

— prohibit trade in products not complying with this Directive from 14 February 2000 at the latest. However, products placed on the market or labelled before that date which do not comply with this Directive may be marketed until stocks are exhausted.

They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 4

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

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 8 March 1999.

For the Commission

Martin BANGEMANN

Member of the Commission

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 10 February 1999

relating to a proceeding pursuant to Article 86 of the Treaty

(IV/35.767 — Ilmailulaitos/Luftfartsverket)

(notified under document number C(1999) 239)

(Only the Finnish and Swedish texts are authentic)

(Text with EEA relevance)

(1999/198/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 17 of 6 February 1962, first Regulation implementing Articles 85 and 86 of the Treaty ([1]), as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 3 thereof,

Having regard to the Commission's decision on 5 May 1997 to initiate proceedings in this case,

Having given the undertaking concerned the opportunity to make known its views on the objections raised by the Commission regarding the system of discounts on landing charges in use at Finnish airports,

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

I. THE FACTS

(a) Subject of the Decision

(1) The Commission is currently investigating, in own-initiative proceedings, the various methods used for discounting landing charges at Community airports, following Commission Decision 95/364/EC of 28 June 1995 relating to a proceeding pursuant to Article 90(3) of the Treaty ([2]) on the system of discounts on landing charges in use at Brussels National Airport.

(b) The relevant undertaking

(2) Ilmailulaitos/Luftfartsverket (the Finnish Civil Aviation Administration, hereinafter 'CAA') has since 1991 been a self-financing public undertaking operating under the responsibility of the Ministry of Transport and Communications. It was previously the Finnish Aviation Administration, a centralised department of the Finnish Ministry of Transport.

(3) Law No 1123/90 of 14 December 1990, laying down the statutes of and creating the CAA, sets out the terms of operation and objectives of the CAA. Article 2 lists the various duties of the CAA:

'The Civil Aviation Administration shall provide airport and air navigation services for the requirements of both civil and military aircraft (...).

The task of the Civil Aviation Administration shall be to ensure general flight safety and (...) to deal with aviation authorisations and licences (...)'.

(4) The CAA thus levies charges for the services related to the landing and take-off of the aircraft using the airport facilities which it administers.

([1]) OJ 13, 21. 2. 1962, p. 204/62.

([2]) OJ L 216, 12. 9. 1995, p. 8.

(c) **The relevant system — landing charges**

(5) In its Airport Economics Manual ([3]), the International Civil Aviation Organisation (ICAO) recommends that its members base their charges on the maximum take-off weight (MTOW) of the aircraft. The landing charge is defined as follows: 'Charges and fees collected for the use of runways, taxiways and apron areas, including associated lighting, as well as for the provision of approach and aerodrome control'.

(6) The charge is imposed to cover all 'operation and maintenance costs, and administrative costs attributable to those areas and their associated vehicles and equipment, including the expense of all labour, maintenance materials, power and fuels'.

(7) According to Article 6 of Law No 1123/90, landing charges in airports administered by the CAA can if necessary be fixed by decree. Since no such decree has been issued, it is the CAA itself that sets the level of landing charges and any applicable discounts.

(8) For 1998, the landing charges set by the CAA were calculated as follows:

— for domestic flights: FIM ([4]) 17 or 20 (depending on the weight of the aircraft) per tonne of the aircraft's MTOW,

— for international flights: FIM 50,50 per tonne of the aircraft's MTOW.

(9) For environmental reasons, charges for landings taking place between 22.00 and 06.00 hrs at any airport in Finland except Helsinki-Vantaa are multiplied by a coefficient of 1,3.

(10) The CAA has also instituted a discount linked to frequency of landing, for international flights only, calculated as follows:

Number of landings at Finnish airports in the last six months for a given airline	Discounts to apply to all landings by that airline over the next six months		
	(in 1996)	(in 1997)	(in 1998)
1 001-3 000	3 %	2 %	2 %
3 001-5 000	5 %	3 %	2 %
5 001-7 000	8 %	6 %	4 %
7 001-	11 %	9 %	4 %

(11) A statement of objections was sent to the CAA on 20 May 1997. Two measures were singled out as being possible infringements of Article 86 of the Treaty: the progressive discount system (see point 10) and the setting of charges according to the country of origin of the flight (see point 8).

(d) **The main arguments of the CAA**

(12) While it maintains that the reasons for the introduction in 1977 of the frequency-based discount system are unknown, the CAA claims that 'large-scale users' have the advantage of offering a guarantee of payment.

(13) The CAA thus argues that:

'As far as the owner of an airport is concerned, one of the advantages offered by large-scale users of airports is that of a customer payment guarantee. The large-scale users have never experienced any difficulties in settling their accounts, nor has it been necessary to make provision for non-payment of amounts outstanding.'

(14) The CAA nevertheless points out that the discounts in question have been reduced significantly over recent years (from 20 % in 1989 to 4 % in 1998).

(15) Moreover, in its reply dated 19 November 1997 to a request for information made by the Commission on 28 October 1997, the CAA stated that the discount system would be abolished on 1 January 1999.

(16) Lastly, according to the CAA, this approach was approved by IATA, which, at a meeting with the CAA in April 1996, gave its 'support to the idea of phased changes to the system' and asked the CAA to refrain from sudden changes to its system, which would have serious financial consequences for certain airlines.

(17) As regards the differentiation of charges according to the country of origin of the flight, the CAA points out that the technical and operational requirements to which airports are subject (length and durability of runways, hours of operation and availability of airports) are different for domestic and for international flights. The different requirements explain the differentiation of the charges.

([3]) Document 9562-1991 ICAO.

([4]) FIM 1 = 0,1681 EUR.

II. LEGAL ASSESSMENT

(a) Legal provisions and procedural regulations applicable

(18) It should be borne in mind that Regulation No 17 was rendered inapplicable to the transport sector by Council Regulation No 141 ([5]), as last amended by Regulation No 1002/67/EEC ([6]), to take account of the distinctive features of the transport sector. Consequently, the scope of Regulation No 141 and, therefore, the procedural regulations specific to the transport sector are limited to anti-competitive practices arising in connection with the transport market.

(19) Council Regulation (EEC) No 3975/87 ([7]), as last amended by Regulation No 2410/92 ([8]), determines the ways in which Articles 85 and 86 of the Treaty are applied to air transport services.

(20) However, services associated with access to airport facilities are not directly part of the air transport services provided to passengers. These activities are therefore not covered by the procedural regulations specific to the transport sector, but instead fall under Regulation No 17 for the purposes of applying Articles 85 and 86 of the Treaty.

(b) Concept of an undertaking

(21) The Court of Justice of the European Communities has consistently held ([9]) that the concept of an undertaking in Community competition law encompasses every entity engaged in an economic activity, regardless of the legal status of the entity and the way it is financed.

(22) Articles 85 and 86 of the Treaty apply to the behaviour of a public entity when it is established that, through that entity, the State carries on economic activities of an industrial or commercial nature by offering goods and services on the market. It makes no difference whether the State carries out such activities directly through a body forming part of the State administration or through a body to which it has granted special or exclusive rights. It is therefore necessary to examine the nature of the activities carried out by the public undertaking or entity granted special or exclusive rights by the State ([10]).

([5]) OJ 124, 28. 11. 1962, p. 2751/62.
([6]) OJ 306, 16. 12. 1967, p. 1.
([7]) OJ L 374, 31. 12. 1987, p. 1.
([8]) OJ L 240, 24. 8. 1992, p. 18.
([9]) See in particular Case C-41/90 Höfner and Elser v. Macroton [1991] ECR I-1979, paragraph 21, and Joined Cases C-159 and 160/91 Christian Poucet v. Assurances Générales de France and Caisse Mutuelle Régionale du Languedoc-Roussillon [1993] ECR I-637, paragraph 17.
([10]) See the judgments in Case 118/85 Commission v. Italy [1987] ECR 2599, paragraphs 7 and 8, and in Case C-343/95 Diego Cali & Figli Srl/Servizi ecologici Porto di Genova [1997] ECR I-1547, paragraphs 16, 17 and 18.

(23) In this connection, there is no doubt that the CAA, whose core activity ([11]) is providing airlines with access services to civil airport facilities in return for a fee, is, according to the definition of the Court, an undertaking within the meaning of Article 86 of the Treaty.

(c) Relevant market

(24) As the Court of Justice has pointed out in the Port of Genoa case ([12]), the organisation of port activities for third parties in a single port can constitute a relevant market within the meaning of Article 86. By the same token, in the Corsica Ferries II case ([13]), the Court took the market for piloting services in the Port of Genoa to be the relevant market.

(25) Transposing this line of reasoning to airports, the relevant market in this matter is therefore the market in services linked to access to airport infrastructures for which a fee is payable. The market definition is the same as that applied in Commission Decision 95/364/EC ([14]).

(26) More specifically, the services in question are those linked to the exploitation and maintenance of runways, the use of taxiways and aprons, and approach guidance for civil aircraft.

(27) In addition, the markets for passenger and freight transport on medium and short-haul intra-EEA routes constitute a neighbouring but distinct market which is affected by the impact of an abuse on the part of the undertaking in question on the market for landing and take-off services. The effect of the abuse of the dominant position held by the CAA can therefore also be felt in this market.

(28) Of the 25 airports administered by the CAA, only five have a significant volume of international traffic (Helsinki-Vantaa, Vaasa, Turku, Pori, Tampere). Disregarding Helsinki, the international traffic amounts to several scheduled flights to Stockholm, Hamburg, Copenhagen, Petrozavodsk (Russia), Murmansk (Russia) and Lulea (Sweden), as well as numerous charter flights.

(29) The airports with international traffic are interchangeable only to a limited extent and each can therefore be regarded as a distinct geographic market.

([11]) See points 2, 3 and 4.
([12]) Case C-179/90, Merci convenzionali porto di Genova/Siderurgica Gabrielli [1991] ECR I-5889.
([13]) Case C-18/93, Corsica Ferries Italia/Corpo dei piloti del porto di Genova [1994] ECR I-1783.
([14]) Cited in footnote 2.

(30) The airlines operating domestic or intra-EEA scheduled or charter flights to and from Finland are obliged to use the airports administered by the CAA (of the 29 airports in Finland, only four are private and not under the aegis of the CAA). The other airports are hundreds of kilometres away and located in other Member States.

(31) This being the case, for many passengers travelling to and from Finland, the domestic and intra-EEA flights that use the CAA-administered airports are not interchangeable with the services offered at other EEA airports.

(32) Airlines running domestic or intra-EEA flights, either to or from Finland, have no option, therefore, but to use the airports administered by the CAA, along with the airport facility access services provided in these airports.

(d) **Dominant position**

(33) The Court of Justice has held that an undertaking benefiting from a legal monopoly in a substantial part of the common market may be regarded as holding a dominant position within the meaning of Article 86 of the Treaty ([15]).

(34) This is the case with the CAA, a public undertaking which, as a result of the exclusive rights granted to it under Law No 1123/90 in its capacity as airport authority, holds a dominant position on the market for landing and take-off services in respect of which the charge in question is levied, in each of the five Finnish airports with international traffic.

(e) **Substantial part of the common market**

(35) The five Finnish airports operating intra-EEA flights were used by a total of approximately 9 million passengers in 1996 and handled more than 91 000 tonnes of freight.

(36) The airports which operate intra-EEA services, taken together, can therefore be regarded as a substantial part of the common market, if one applies the reasoning adopted by the Court in the Crespelle ([16]) and Almelo ([17]) judgments. In the Crespelle judgment, the Court stated that, 'by thus establishing, in favour of those undertakings, a contiguous series of monopolies territorially limited but together covering the entire territory of a Member State, those national provisions create a dominant position, within the meaning of Article 86 of the Treaty, in a substantial part of the common market.' ([18]).

(37) *A fortiori,* a contiguous series of monopolies controlled by the same undertaking (the CAA) may represent a substantial part of the common market.

(f) **Abuse of a dominant position**

The system of discounts based on frequency

(38) In view of the announcement made by the CAA that this system would be abolished on 1 January 1999, and taking into account the practice established by the Commission in Decision 95/364/EC, the discount system, which was included in the statement of objections pursuant to Article 86 of the Treaty against the CAA, will no longer be dealt with in this Decision.

The differentiation of charges according to type of flight (domestic or intra-EEA)

(39) Article 86 is intended to cover anti-competitive practices engaged in by undertakings on their own initiative. It prohibits undertakings that hold a dominant position in a substantial part of the common market from applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage.

(40) In this respect, the Corsica Ferries II judgment ([19]) by the Court of Justice is unambiguous. The Court held:

'1. Article 1(1) of Council Regulation No 4055/86 of 22 December 1986, applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries precludes the application in a Member State of different tariffs for identical piloting services, depending on whether the undertaking providing maritime transport services between two Member States operates a vessel which is authorised to engage in maritime sabotage, which is reserved to vessels flying the flag of that State.

([15]) Case C-41/90 Höfner and Elser, cited in footnote 9, paragraph 28; Case C-260/89 ERT [1991] ECR I-2925, paragraph 31.
([16]) Case C-323/93, Société agricole du Centre d'insémination de la Crespelle/Coopérative d'élévage et d'insémination artificielle du département de la Mayenne [1994] ECR I-5077.
([17]) Case C-393/92 Commune d'Almelo et autres/Energiebedrijf Ijsselmij [1994] ECR I-1477.
([18]) Paragraph 17.
([19]) Cited in footnote 13.

2. Article 90, paragraph 1, and Article 86 of the EEC Treaty prohibit a national authority from inducing an undertaking which has been granted the exclusive right of providing compulsory piloting services in a substantial part of the common market, by approving the tariffs adopted by it, to apply different tariffs to maritime transport undertakings, depending on whether they operate transport services between Member States or between ports situated on national territory, to the extent that trade between Member States is affected.'

(41) In his opinion in the same case, Advocate-General Van Gerven stated that ([20]):

'What is important is that there is no connection between those differences in tariffs and the nature of the piloting service offered, which is precisely the same in both cases (...). For my part, I consider that what is involved here is clearly an instance of the form of abuse of a dominant position which is covered by indent (c) of the second paragraph of Article 86 of the EC Treaty, namely "applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage" (*).

(*) Footnote 61: In this respect, a parallel may be drawn with the situation at issue in the case of United Brands (judgment in Case 27/76 United Brands [1978] ECR 207): there the Court held that the discriminatory pricing policy practised by UBC, which invoiced distributor/ripeners at prices which differed from one Member State to another for identical quantities and types of bananas constituted an abuse of a dominant position on the ground that these discriminatory practices, which varied according to the circumstances of the Member States, were just so many obstacles to the free movement of goods (paragraph 232) and that "a rigid partitioning of national markets was thus created at price levels which were artificially different, placing certain distributor/ripeners at a competitive disadvantage, since compared with what it should have been competition had thereby been distorted" (paragraph 233). The same reasoning can be applied *mutatis mutandis* in the present case: the differentiated tariffs charged by the Corporation constitute an obstacle to freedom to provide intra-EEA shipping transport services and place persons providing such services at a disadvantageous competitive position.'

([20]) Paragraph 34.

(42) Applying this line of reasoning to the airports sector, it becomes apparent that the system of differentiated landing charges (higher charges for intra-EEA flights) established by the CAA has the effect of applying dissimilar conditions for equivalent landing and take-off services for airlines, thereby placing them at a competitive disadvantage, and thus constitutes an abuse of a dominant position within the meaning of indent (c) of the second paragraph of Article 86.

(43) It is obvious that such a system has the direct effect of putting at a disadvantage companies providing intra-Community flights by artificially altering the cost to the undertakings, depending on whether they operate domestic or intra-EEA services.

(44) Regarding this infringement of the Treaty, the CAA claims that the implementation of such a system is justified on the grounds that 'the technical and operational requirements applying to airports, and therefore the underlying costs, are different for internal flights and for international flights, primarily as a result of different requirements regarding the following:

(i) the length of the runways;

(ii) the durability of the runways;

(iii) the hours of operation, and

(iv) the availability of the airports.'

(45) More specifically, the CAA argues as follows:

(i) Requirements as to the length of the runways

— the average distance of internal flights in Finland is between 300 km and 400 km, whereas the average flight distance between Finland and the other Member States varies between 1 500 km and 2 000 km, with a maximum of 3 000 km (Helsinki-Madrid),

— the fleet of aircraft used for domestic flights is smaller than that used for intra-EEA flights,

— the actual weight of aircraft used for domestic flights is less since the journeys are shorter than international flights,

— the size of aircraft and the flight distance determine runway length,

— for domestic air traffic, runways of 2 000 m in length are sufficient; however, for intra-EEA flights, runways of at least 2 400 m are required. Thus, for traffic between Finland and the rest of Europe, the runways must be around 25 % longer than those for domestic traffic,

— airports which accommodate large air fleets are subject to more stringent conditions regarding security and emergency arrangements; this requires considerable manpower investment and is expensive.

By way of conclusion: the maintenance and capital investment costs associated with intra-EEA traffic are higher than those for domestic services.

(46) The validity of the arguments advanced by the CAA is debatable, for the following reasons:

— many domestic routes (for example, the Helsinki-Vantaa/Ivalo, Maarianhamina/Kittilä and Turku/Rovaniemi routes) are of a similar distance to intra-EEA flights,

— some of the intra-EEA flights are relatively short: Helsinki/Stockholm (approximately 405 km), Helsinki/Gothenburg (approximately 810 km), Helsinki/Oslo (approximately 810 km) and Helsinki/Copenhagen (approximately 910 km),

— the distance of the route to be flown is not the sole criterion on which airlines base their choice of aircraft,

— the CAA claimed that, whereas a runway length of 2 000 m is sufficient for domestic flights, intra-EEA or international flights would require an additional 400 m of runway. However, most of Finland's airports have already made this investment; of the 25 administered by the CAA, only 6 have runways that are less than 2 400 m long ([21]).

(47) Moreover, according to the figures in the Commission's possession, several of the airports with runways shorter than 2 400 m nevertheless handle intra-EEA traffic. They are in particular the following airports: Lappeenranta (2 000 m), Maarianhamina (1 900 m), Pori (2 000 m) and Vaasa (2 000 m) ([22]). The argument based on runway length is therefore not relevant.

(48) As regards the claim that the aircraft used for domestic traffic are smaller than those used for intra-EEA traffic, the Commission notes that this is not always the case. For example, the airline Finnair uses the same aircraft (MD-80s) for domestic routes (e.g. Helsinki-Oulu) as it does for the intra-Community routes Helsinki-Alicante or Helsinki-Barcelona.

(49) The CAA claims to have 'monitored product costing, and in particular the cost of services associated with manoeuvring areas since 1994', and that 'based on 1995 product costs, the cost per tonne (MTOW) of taxiway services for international traffic has risen by around 50 % compared with the cost of the same for domestic traffic'. According to the CAA, this means that 'landing charges based solely on the MTOW are inaccurate in a system of pricing based on real costs, and therefore the landing charges for international traffic must be higher'.

(50) However, the CAA itself admits that the alleged differential in costs between those incurred by the landing of an intra-EEA flight and those associated with a domestic landing is less than the differential between the landing charge for intra-EEA flights and that for domestic flights.

(ii) Requirements as to the durability of runways

(51) According to the CAA, because heavier aircraft are used for international traffic, 'in order to cater for international traffic, the superstructure of the runways must be around 10 % more stable'.

(52) This argument does not stand, because the runway durability factor is already taken into account, the charge being based on the weight of the aircraft.

(iii) Requirements as to the hours of operation of airports and their availability

(53) The CAA claims that, in view of the fact that 90 % of international air traffic to and from Finland passes through Helsinki, and that the departure and arrival times for international flights are fixed for both the morning and the evening, the provincial airports are also obliged to stay open in the mornings and evenings, for connecting flights. This means that 'the cost of providing services must be included when calculating the cost of passenger charges'.

(54) The CAA claims that 'international traffic requires more space for the passenger terminals and aircraft parking areas than domestic traffic, as well as more services. The CAA is therefore obliged to cover the construction costs when setting the passenger charge'.

(55) The last two arguments are irrelevant to the system in question: given that, according to the CAA, the costs incurred by the requirements regarding airport operating hours and availability are included in the calculation of passenger charges, it follows that it is not possible to include them in the landing charges.

(56) In the light of the above, the Commission holds that none of the arguments put forward by the

([21]) *Source:* ACI Europe Airport Database.
([22]) *Source:* Finnish Civil Aviation Statistics.

CAA justifies the implementation of a system of charges that is discriminatory in nature, according to the origin of the flight (i.e. domestic or intra-EEA), such as that operated by the undertaking in question.

(g) **Effect on trade between Member States**

(57) In its judgment in the Corsica Ferries II case ([23]), the Court of Justice recognised that discriminatory practices which 'affect undertakings providing transport services between two Member States, (...) may affect trade between Member States'.

(58) Following a request under Article 11 of Regulation No 17 for the CAA to provide information, it was ascertained that there are no statistics that separate intra-EEA traffic from the rest of the international traffic for each airport.

(59) As regards Helsinki airport, which handled 7,7 million passengers in 1996, the effect of the system in question on trade between Member States is beyond doubt.

(60) As regards the other Finnish airports operating intra-EEA services (Vaasa, Turku, Tampere and Pori), apart from charter flights to the Mediterranean Member States and the Canary Islands, these airports operate each day to Stockholm six flights (Vaasa and Turku), five flights (Tampere), and two flights (Pori). The flights to Stockholm connect with flights to Amsterdam, Billund, Brussels, Copenhagen, Düsseldorf, Frankfurt, Gothenburg, Hamburg, London, Manchester, Milan, Munich, Paris and Vienna, on either Lufthansa/SAS or Finnair (on a code-sharing basis with its partners).

The table below shows the volume of international flights as a proportion of overall passenger traffic for the airports in question.

(%)

Airport	Domestic traffic	International traffic
Helsinki Vantaa	30	70
Vaasa	66	34
Turku	51	49
Pori	72	28
Tampere	49	51

Source: Finnish Civil Aviation Statistics 1996, p. 9.

(61) It is thus legitimate to regard the system at issue in those five airports as having an effect on trade between Member States.

(h) **Conclusion**

(62) The foregoing analysis establishes that the system for calculating landing charges used by the CAA entails the payment, for no objective reason, of different charges, depending on the origin of the flight (domestic or intra-EEA), in respect of the same approach control, taxiway and apron areas services.

(63) The Commission therefore considers that the system in question is discriminatory and distorts competition on the relevant market, contrary to indent (c) of the second paragraph of Article 86 of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

Ilmailulaitos/Luftfartsverket has infringed Article 86 of the Treaty by using its dominant position as Finnish airport administrator to impose discriminatory landing charges in Finnish airports, according to the type of flight, that is either domestic or intra-EEA.

Article 2

Ilmailulaitos/Luftfartsverket must bring to an end the infringement referred to in Article 1 and inform the Commission within two months of the date of notification of this Decision of the measures it has taken to that end.

Article 3

This Decision is addressed to Ilmailulaitos/Luftfartsverket, PO Box 50, FIN-01531 Vantaa.

Done at Brussels, 10 February 1999.

For the Commission
Karel VAN MIERT
Member of the Commission

([23]) Cited in footnote 13.

COMMISSION DECISION

of 10 February 1999

relating to a proceeding pursuant to Article 90 of the Treaty

(Case No IV/35.703 — Portuguese airports)

(notified under document number C(1999) 243)

(Only the Portuguese text is authentic)

(Text with EEA relevance)

(1999/199/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 86 and Article 90(1) and (3) thereof,

Having given the Portuguese authorities, Aeroportos e Navegaçao Aérea — Empresa Publica (ANA), TAP Air Portugal and Portugalia the opportunity to make known their views on the objections raised by the Commission,

Whereas:

I. THE FACTS

(a) The relevant State measure

(1) This proceeding relates to the system of discounts on landing charges in use at Portuguese airports and the differentiation of these charges according to the origin of the flight.

Article 18 of Decree-law No 102/90 of 21 March 1990 provides that the amount of aeronautical charges at airports administered by Aeroportos e Navegaçao Aérea — Empresa Publica (ANA) is fixed by order in Council, following consultation with the Directorate-General for Civil Aviation. The third paragraph of Article 18 states that the charges may be differentiated according to the category, function and degree of utilisation of the airport in question.

Implementing decree (Decreto regulamentar) No 38/91 of 29 July 1991 lays down the conditions governing landing charges:

'Article 4(1): A landing and take-off charge shall be due for each landing by an aircraft, and shall be based on the maximum take-off weight stated in the airworthiness certificate.

Article 4(5): Domestic flights shall be granted a reduction of 50 %'.

Every year the Government issues an order updating the levels of the charges.

(2) The following system of discounts was introduced by order in Council (Portaria) No 352/98 on 23 June 1998, pursuant to Decree-law No 102/90.

Lisbon airport	Charges (PTE/t)	Discount relative to charge for first 50 flights (%)
First 50 flights (landings per month)	1 146	
Second 50 flights	1 063	−7,2
Third 50 flights	979	−14,6
Fourth 50 flights	888	−22,5
Thereafter	771	−32,7
Airports at Oporto, Faro and the Azores		
First 50 flights	1 146	
Second 50 flights	938	−18,4
Third 50 flights	866	−24,4
Fourth 50 flights	786	−31,4
Thereafter	681	−40,6

Source: Letter from Portuguese authorities, 16 July 1998.

(b) **The relevant undertaking and the relevant services**

(3) ANA is a public undertaking responsible for administering Portugal's three mainland airports (Lisbon, Faro and Oporto), the four airports in the Azores (Ponta Delgada, Horta, Santa Maria and Flores), aerodromes and air traffic control services. The airports of the archipelago of Madeira are administered by ANAM SA.

According to Article 3(1) of Decree-law No 246/79, which provides the legal basis for the creation of ANA:

'ANA-EP shall be responsible for operating and developing, on a public-sector basis, auxiliary services for civil aviation, taking the form of an undertaking with responsibility for directing, guiding and controlling air traffic movements, and providing services associated with the departure and arrival of aircraft, the boarding, debarkation and transport of passengers and the loading, unloading and transport of freight and mail.'

(4) ANA issues authorisations to the airlines which require access to the airport facilities that it administers, and provides these airlines with landing and take-off services for their aircraft, in return for which it levies charges, the level and amount of which are set by order in Council [1].

(c) **The landing charges**

(5) In its Airport Economics Manual [2], the International Civil Aviation Organisation (ICAO) recommends that its members base their charges on the maximum take-off weight (MTOW) of the aircraft. The landing charge is defined as follows:

'Charges and fees collected for the use of runways, taxiways and apron areas, including associated lighting, as well as for the provision of approach and aerodrome control.'

(6) The charge is imposed to cover all 'operation and maintenance costs, and administrative costs attributable to those areas and their associated vehicles and equipment, including the expense of all labour, maintenance materials, power and fuels'.

(d) **The main arguments of the Portuguese authorities and ANA**

(7) The Portuguese authorities justify the differentiation of charges according to the origin of the flight on the grounds that:

— domestic flights serve the island airports, for which there is no alternative to air transport,

— the other domestic flights involve very short distances and low fares.

(8) The Portuguese authorities emphasise the economic and social cohesion aspects on which the system is based.

(9) As regards international flights, the Portuguese airports are in competition with the airports at Madrid and Barcelona, which employ the same type of charging mechanism. The Portuguese authorities also wish to encourage the economies of scale deriving from more intense use of the airports, and to promote Portugal as a tourist destination.

(10) ANA asserted that the system of differentiated discounts on landing charges had been introduced for two reasons:

— in order to apply a pricing policy similar to those in operation at the Madrid and Barcelona airports, which are situated in the same geographical area
and

— in order to reduce operating costs for the most frequent and regular users of the airports administered by ANA.

II. **LEGAL ASSESSMENT**

(a) **Article 90(1)**

(11) Article 90(1) of the Treaty states that 'in the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 6 and Articles 85 to 94'.

(12) Decree-law No 246/79 confers on ANA the exclusive right to administer the airport facilities at Lisbon, Oporto, Faro and the Azores.

According to its articles of association, ANA is a public undertaking within the meaning of Article 90(1) of the Treaty.

(13) Moreover, Article 21 of Decree-law No 246/79 states that the State is responsible for approving the prices and charges proposed by ANA.

ANA's current pricing policy is therefore based on both legislative provisions (Decree-laws Nos 246/79 and 102/90) and regulatory provisions (Decrees

[1] See recitals 1 and 2.
[2] Document 9562. 1991 ICAO.

Nos 38/91 and 24/95) and was established by the Government by order in Council No 352/98.

These legislative and regulatory provisions can therefore be regarded as State measures within the meaning of Article 90(1).

(b) **Article 86**

The relevant market

(14) The relevant market is the market in services linked to access to airport infrastructures for which a fee is payable, i. e. the operation and maintenance of the runways, taxiways and aprons and approach guidance.

As the Court of Justice of the European Communities has held in the 'Port of Genoa case' ([3]), the organisation of port activities for third parties at a single port may constitute a relevant market within the meaning of Article 86. Likewise, the Court considered piloting services in the Port of Genoa to constitute the relevant market in its judgment in 'Corsica Ferries II' ([4]).

The Court based its reasoning on the fact that, if an operator wishes to offer a transport service on a given maritime route, access to port installations situated at either end of that route is essential to the provision of the service.

This reasoning can easily be transposed to the air transport sector and access to airports. The market definition is the same as that applied in the Commission Decision 95/364/EC of 28 June 1995 relating to a proceeding pursuant to Article 90(3) of the Treaty ([5]) on the system of discounts on landing charges in operation at Brussels National Airport.

(15) Moreover, the markets for passenger and freight transport on short and medium-haul air services within the Community constitute a neighbouring but distinct market which is affected by the impact of an abuse on the part of the undertaking in question on the market for landing and take-off services. The effect of the abuse of the dominant position held by ANA can therefore also be felt in this market.

(16) Of the seven airports administered by ANA, only three currently handle a significant volume of intra-Community traffic (Lisbon, Oporto and Faro).

(17) These seven airports are interchangeable only to a limited extent and each can therefore be regarded as a distinct geographic market.

The airlines operating domestic or intra-Community scheduled or chartered flights to and from Portugal are obliged to use the airports administered by ANA. The airports at Lisbon, Faro, Oporto and the Azores are not interchangeable, since they are hundreds of kilometres away from each other and each has its own, well-defined catchment area, corresponding to a different tourist region: Lisbon airport serves the capital and the centre of the country, Oporto the north, Faro the south and Santa Maria, Ponta Delgada, Horta and Flores the Azores archipelago. In addition, the existing road and rail links cannot be considered a viable alternative transport link between Lisbon, Faro and Oporto.

The only international airports that could serve the same geographic area, Madrid and Barcelona airports, being more than 600 km away from the Portuguese mainland airports and, moreover, not linked by an adequate road or rail infrastructure, do not constitute a realistic alternative.

Lisbon and Madrid can, however, be regarded as competitors where an airline uses one or other of them as a hub airport. It should be noted, though, that flights of this type are a negligible proportion of the total volume of traffic at Lisbon.

Likewise, as regards the airports in the Azores, Santa Maria, Ponta Delgada, Horta and Flores are, realistically speaking, scarcely interchangeable, given the fact that each one serves a different island and that the islands are linked by maritime services which are relatively slow and infrequent.

(18) This being the case, for many passengers to and from Portugal, the domestic and intra-Community flights using the airports administered by ANA are not interchangeable with the flights to and from other Community airports.

([3]) Case C-179/90 Porto di Genova v. Siderurgica Gabrielli [1991] ECR I-5889, p. 5923, paragraph 15.
([4]) Case C-18/93 Corsica Ferries Italia v. Corpo dei Piloti del Porto di Genova [1994] ECR I-1783.
([5]) OJ L 216, 12. 9. 1995, p. 8.

(19) Airlines running domestic or intra-Community flights to and from Portugal have no option, therefore, but to use the airports administered by ANA, along with the airport facility access services provided in these airports.

Effect on trade between Member States

(20) In its judgment in the Corsica Ferries II case [6], the Court of Justice recognised that discriminatory practices which 'affect undertakings providing transport services between two Member States, (. . .) may affect trade between Member States'.

The tables below show the volume of intra-Community flights as a proportion of the total traffic for Portuguese airports:

Passenger traffic (excluding transit passengers)

Airport	International passengers (%)	Intra-Community passengers (%)	Domestic passengers (%)	Total (millions)
Lisbon	24	56	20	6,6
Oporto	24	62	14	2,1
Faro	4	92	4	3,7
Santa Maria A	2	0	98	0,04
Ponta Delgada A	18	1	81	0,5
Horta A	0	0	100	0,1
Flores A	0	0	100	0,04

Source: Letter from Portuguese authorities dated 16 July 1998 (1997 figures)
A = airport of the Azores archipelago.

Freight traffic

Airport	International freight (%)	Intra-Community freight (%)	Domestic freight (%)	Total (thousands of tonnes)
Lisbon	41	43	16	100
Oporto	21	72	7	29
Faro	5	75	20	2
Santa Maria A	0	0	100	0,1
Ponta Delgada A	12	0	88	6,8
Horta A	0	0	100	0,9
Flores A	0	0	100	0,2

Source: Letter from Portuguese authorities dated 16 July 1998 (1997 figures)
A = airport of the Azores archipelago.

The figures above for the mainland airports clearly demonstrate the effect on trade between Member States. The great majority of traffic volume is between Portugal and other Member States of the Community.

As regards the four airports on the Azores archipelago, traffic is either entirely domestic or from third countries. In this respect, therefore, the relevant State measure does not affect trade between Member States. This is without prejudice to the application of the Treaty rules and secondary legislation on freedom to provide services.

Substantial part of the common market

(21) The 1997 traffic volume for ANA-administered airports was as follows:

[6] Cited above, footnote 4.

Airport	Passengers (millions) (including transit passengers)	Freight (thousands of tonnes)
Lisbon	6,8	99,7
Oporto	2,3	29,3
Faro	3,8	2,0
Santa Maria A	0,1	0,1
Ponta Delgada A	0,5	6,9
Horta A	0,1	0,9
Flores A	0,0	0,2

Source: Letter from Portuguese authorities dated 16 July 1998.
A = airport of the Azones Achipelogo

Lisbon, Oporto and Faro airports have a considerable volume of passenger traffic above the 2 million mark (Lisbon 6,8 million, Oporto 2,3 million and Faro 3,8 million) and cover the whole of mainland Portugal. Taken together, therefore, the airports which operate intra-Community services can be regarded as a substantial part of the common market, if one applies the reasoning adopted by the Court in the Crespelle ([7]) and Almelo ([8]) judgments to the case in hand. In the Crespelle judgment, the Court stated that: 'by thus establishing, in favour of those undertakings, a contiguous series of monopolies territorially limited but together covering the entire territory of a Member State, those national provisions create a dominant position, within the meaning of Article 86 of the Treaty, in a substantial part of the common market' ([9]).

(22) *A fortiori,* a contiguous series of monopolies controlled by the same undertaking (ANA) may represent a substantial part of the common market.

Dominant position

(23) In its judgment Corsica Ferries III ([10]), the Court held that 'an undertaking having a statutory monopoly in a substantial part of the common market may be regarded as having a dominant position within the meaning of Article 86 of the Treaty' ([11]).

It follows that ANA, a public undertaking which, by virtue of the exclusive rights granted to it under Decree-law No 246/79 in respect of each airport that it administers, holds a dominant position on the market for aircraft landing and take-off services, for which the charge in question is levied.

Abuse of a dominant position

(24) The system of landing charges and discounts on charges applied by ANA and approved by the Portuguese Government after a process of consultation has the effect of applying dissimilar conditions to airlines for equivalent transactions linked to landing and take-off services, thereby placing them at a competitive disadvantage.

(a) Discounts based on landing frequency

(25) Airlines which have more than 50 landings per month are granted a discount of 7,2 % at Lisbon airport (or 18,4 % at the other airports on all successive landings). After the 100th monthly landing, the discount increases to 14,6 % at Lisbon (24,4 % at the other airports) and landings after the 150th qualify for a discount of 22,5 % at Lisbon (or 31,4 % in the other airports). From the 200th landing onwards, the discount is 32,7 % at Lisbon and 40,6 % elsewhere.

The following airlines receive these discounts at Lisbon airport (the average discount is calculated by successively applying the different discount percentages. The resulting figure reflects the actual discount obtained by the following airlines from ANA on all of their flights):

(%)

Airline	TAP	Portugalia	Iberia	AF	LH	BA	Swissair	Alitalia	Sabena
Average discount	30	22	8	6	5	4	1	1	1

Source: Monthly landings, by airline — Annex 3 of letter from ANA dated 29 July 1997.

([7]) Case C-323/93 Crespelle [1994] ECR I-5077.
([8]) Case C-393/92 Almelo [1994] ECR I-1477.
([9]) Paragraph 17.
([10]) Corsica Ferries France v. Gruppo Antichi Ormeggiatori del porto di Genova [1998] ECR I-3949, paragraph 39.
([11]) See also Case C-41/90 Hofner and Elser v. Macrotron [1991] ECR I-1979, paragraph 28; Case C-260/89 ERT v. DRP [1991] ECR I-2925, paragraph 31; the Port of Genoa case, cited in footnote 3, paragraph 14; and Case C-163/96 Silvano Raso and others [1998] ECR I-0533, recital 25.

(26) Every landing after the 200th qualifies for a discount of 32,7 % at Lisbon and 40,6 % at the other airports, with no limit on the number of landings thereafter. Thus, airlines which carry out significantly more than 200 landings a month, such as TAP and Portugalia, benefit from a proportionally higher overall discount. On any given route on which TAP or Portugalia are in competition with other carriers, using the same type of aircraft, they receive average discounts of 30 % and 22 % respectively on their landing and take-off charges, in return for equivalent services provided by ANA, thereby placing the other carriers at a competitive disadvantage. The discounts granted to the other carriers vary between 8 % and 1 % (Iberia 8 %, Air France 6 %, Lufthansa 5 %, British Airways 4 %, Swissair, Alitalia and Sabena 1 %) and are therefore negligible. The *de facto* effect of this system, therefore, is to favour the national carriers, i. e. TAP and Portugalia.

(27) The Court of First Instance has held [12] that business practices considered to be normal may constitute an abuse within the meaning of Article 86 of the Treaty if they are carried out by an undertaking which holds a dominant position.

There must be an objective justification for any difference in treatment of its various clients by an undertaking in a dominant position.

There is no objective justification whatsoever for the difference in treatment applied by ANA to services (such as approach control and use of apron areas) which have the same substantive content for all airlines. As the only means available to a carrier of providing air transport services to a given town, airports have a natural monopoly as regards a very high proportion of their traffic.

No evidence has been supplied by the Portuguese authorities to demonstrate that there exist economies of scale in this instance. Aircraft receive the same landing and take-off services, regardless of the airline to which they belong and whether they are the first or the 10th aircraft belonging to the carrier.

(28) The Portuguese authorities put forward three main justifications for the implementation of the discount system:

— competition from Madrid and Barcelona airports, which themselves have implemented this type of discount system,

— the economies of scale associated with intensive use of the facilities,

— the promotion of Portugal as a tourist destination.

(29) As regards the first justification, the Commission has also initiated proceedings concerning the system in use at Spanish airports and sent a letter of formal notice on 28 April 1997. What is more, the Court of Justice, in particular in its judgment in Hedley Lomas [13], has held that a Member State cannot justify an infringement of Community law on its own part by invoking the fact that another Member State has likewise failed to comply with its obligations under Community law.

(30) As regards the second justification, the Portuguese authorities did not refer to any specific economies of scale, stating instead that the airport needed to promote greater utilisation of its facilities. In its Decision 95/364/EC [14], the Commission responded to the economies of scale argument thus: 'the Commission considers that such a system could be justified solely by economies of scale achieved by the airways authority. This does not apply in the case at issue. The airways authority has not demonstrated to the Commission that handling the take-off or landing of an aircraft belonging to one airline rather than to another gives rise to economies of scale. The handling of the landing or take-off of an aircraft requires the same service, irrespective of its owner or the number of aircraft belonging to a given airline. The airways authority might, at most, argue that economies of scale occur at the level of invoicing since a single invoice covering a large number of movements can be issued to a carrier with a high level of traffic whilst many invoices covering only a few movements are needed for other carriers. Such economies of scale are, however, negligible'. The same reasoning applies in the case in hand, since the handling of landing and take-off requires the same service, irrespective of the number of aircraft belonging to a given airline.

(31) The goal of promoting increased usage of the facilities, and the third justification, i.e. the promotion of Portugal as a tourist destination, cannot be accepted, since these objectives could be achieved by non-discriminatory discounts accessible to all airlines operating services to and from the airports in mainland Portugal.

[12] Case T-65/89 BPB Industries and British Gypsum v. Commission [1993] ECR II-389, paragraph 69.

[13] Case C-5/94 The Queen v. Ministry of Agriculture, Fisheries and Food, ex parte: Hedley Lomas (Ireland [1996] ECR I-2553.

[14] Cited in footnote 5, recital 16.

(32) The Court has held that where a Member State induces an undertaking to abuse its dominant position by applying dissimilar conditions to equivalent transactions with other trading parties, within the meaning of indent (c) of the second paragraph of Article 86 of the Treaty, this constitutes an infringement of the provisions of Articles 90 and 86 of the Treaty (judgments in Corsica Ferries II ([15]), Raso ([16]) and Corsica Ferries III ([17])).

Where an undertaking in the position of ANA applies dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage, this constitutes an initial abuse of a dominant position within the meaning of indent (c) of the second paragraph of Article 86.

(b) The differentiation of charges according to type of flight (domestic or international)

(33) Article 4(5) of implementing decree No 38/91 specifies that 'domestic flights are eligible for a reduction of 50 %'. The system of differentiated charges according to type of flight, i.e. either domestic or intra-Community, is also an infringement of the Treaty.

(34) In this respect, the judgment of the Court of Justice in Corsica Ferries II ([18]) case is unequivocal:

'Article 90(1) and Article 86 of the EEC Treaty prohibit a national authority from inducing an undertaking which has been granted the exclusive right of providing compulsory piloting services in a substantial part of the common market, by approving the tariffs adopted by it, to apply different tariffs to maritime transport undertakings, depending on whether they operate transport services between Member States or between ports situated on national territory.'

In his opinion, advocate general Van Gerven stated, moreover, that ([19]):

'What is important is that there is no connection between those differences in tariffs and the nature of the piloting service offered, which is precisely the same in both cases (. . .). For my part, I consider that what is involved here is clearly an instance of the form of abuse of a dominant position which is covered by indent (c) of the second paragraph of Article 86 of the EC Treaty, namely "applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a disadvantage" (*).

(*) Footnote 61: In this respect, a parallel may be drawn with the situation at issue in the case of United Brands (judgment in case 27/76 United Brands [1978] ECR 207): there the Court held that the discriminatory pricing policy practised by UBC, which invoiced distributor/ripeners at prices which differed from one Member State to another for identical quantities and types of bananas constituted an abuse of a dominant position on the ground that "these discriminatory practices, which varied according to the circumstances of the Member States, were just so many obstacles to the free movement of goods" paragraph 232) and that "a rigid partitioning of national markets was thus created at price levels which were artificially different, placing certain distributor/ripeners at a competitive disadvantage, since compared with what it should have been, competition had thereby been distorted" (paragraph 233). The same reasoning can be applied *mutatis mutandis* in the present case: the differentiated tariffs charged by the corporation constitute an obstacle to freedom to provide intra-Community shipping transport services and place persons providing such services at a disadvantageous competitive position.'

(35) Applying this line of reasoning to the airports sector, it becomes apparent that the system of differentiated landing charges established by ANA has the effect of applying dissimilar conditions for equivalent landing and take-off services supplied to airlines, thereby placing them at a competitive disadvantage, and thus constitutes an abuse of a dominant position within the meaning of indent (c) of the second paragraph of Article 86.

It is obvious that such a system has the direct effect of placing airlines operating intra-Community services at a disadvantage by artificially altering the cost to the undertakings, depending on whether they operate domestic or intra-Community services.

(36) As regards this second infringement of the Treaty, the Portuguese authorities claim that the objective of the measure was to provide support for the flights linking the Azores with the mainland, there being no alternative to them, and for the domestic services operating from mainland airports, in view of their short distances and low fares.

The amount of traffic from Member States other than Portugal landing at the Azores airports is negligible. This is why, in recital 20, it is held that the relevant State measure, inasmuch as it applies

([15]) Cited above, footnote 4.
([16]) Cited above, footnote 11.
([17]) Cited above, footnote 10.
([18]) Cited above, footnote 4.
([19]) See recital 34.

to flights serving the Azores, is unlikely to effect trade between Member States. There is therefore no need to formulate a response to the argument put forward by the Portuguese authorities as regards the application of this system to flights serving the Azores.

(37) However, it is clear that if, as a consequence of the liberalisation, as from 1 July 1998, of air traffic to and from the Azores archipelago, under Article 1(4) of Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes [20], as amended by the Act of Accession of Austria, Finland and Sweden, Community traffic [21] were to develop between the Azores airports and the other airports in the Community, there could be a case for examining the relevant State measure as to its compliance with Articles 90(1) and 86 of the Treaty.

(38) As regards the other domestic flights, the argument put forward by the Portuguese authorities is that, since they are so short, the landing charges would account for too high a proportion of the transport costs. However, the charge is based on the weight of the aircraft rather than distance.

(39) If this line of argument were accepted, flights from Portugal to Madrid, Seville, Malaga and Santiago would also have to qualify for this reduction, since these destinations are situated at a comparable distance to that involved in domestic flights. Distance should therefore also be factored into the calculation of the charge.

(40) Where an undertaking in the position of ANA applies dissimilar conditions to equivalent transactions with other trading parties as regards flights to and from the mainland Portuguese airports, thereby placing them at a competitive disadvantage, this constitutes a second abuse of a dominant position within the meaning of indent (c) of the second paragraph of Article 86 of the Treaty.

(c) **Article 90(2)**

(41) The Portuguese authorities have not invoked the derogation provided for in Article 90(2) of the Treaty to justify the introduction and maintenance of such a system of discounts on landing charges.

(42) Moreover, the Commission considers that, in the case at issue, application of the competition rules does not obstruct performance of the particular task assigned to ANA, which is to maintain and operate the Portuguese airports. Nor would it obstruct any specific public-service task assigned to an airline. The conditions and arrangements governing the imposition by a Member State of public-service obligations on intra-Community scheduled air services are specified in Article 4 of Regulation (EEC) No 2408/92.

(43) The derogation provided for in Article 90(2) of the Treaty does not, therefore, apply.

(d) **Conclusion**

(44) The foregoing analysis establishes that the system of landing charges used by ANA entails the levying, for no objective reason, of different charges, depending on the number of monthly landings or the origin of the flight (domestic or intra-Community), in respect of the same runway, taxiway, apron area and approach control services.

(45) In view of the above, the Commission considers that the State measure referred to in points l and 2, as applied in the mainland Portuguese airports, in so far as it obliges the public undertaking ANA to apply the abovementioned system, constitutes an infringement of Article 90(1) of the Treaty, read in conjunction with Article 86 thereof,

HAS ADOPTED THIS DECISION:

Article 1

The system of discounts on landing charges, differentiated according to the origin of the flight, provided for at the airports of Lisbon, Oporto and Faro by Decree-law (Decreto-Lei) No 102/90 of 21 March 1990, implementing decree (Decreto Regulamentar) No 38/91 of 29 July 1991 and order in Council (Portaria) No 352/98 of 23 June 1998 constitutes a measure incompatible with Article 90(1) of the Treaty, read in conjunction with Article 86 thereof.

Article 2

Portugal shall bring to an end the infringement referred to in Article 1 and shall inform the Commission within two months of the date of notification of this Decision of the measures it has taken to that end.

[20] OJ L 240, 24. 8. 1992, p. 8.
[21] According to the timetables published for November 1998 in the Official Airline Guide (OAG), there are still no direct flights between any of the airports in the Azores and any Community airport outside Portugal.

Article 3

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 10 February 1999.

For the Commission
Karel VAN MIERT
Member of the Commission

COMMISSION DECISION

of 26 February 1999

concerning the intention of the Hellenic Republic to apply a reduced rate of VAT to supplies of natural gas and electricity in accordance with Article 12(3)(b) of Council Directive 77/388/EEC

(notified under document number C(1999) 477)

(Only the Greek text is authentic)

(1999/200/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (the Sixth VAT Directive) ([1]), as last amended by Directive 98/80/EC ([2]), and in particular Article 12(3)(b) thereof,

Whereas the Government of the Hellenic Republic intends to apply a reduced rate of VAT to supplies of natural gas and of electricity; whereas it so informed the Commission by letter registered as received by the Commission on 30 November;

Whereas the measure envisaged is a general measure under which a reduced rate of VAT would be applied to supplies of natural gas and electricity in accordance with Article 12(3)(b) of the Sixth VAT Directive, irrespective of the manner in which they are produced or supplied (whether supplied domestically, or acquired elsewhere in the Community, or imported from outside the Community);

Whereas the measure is a general one, admitting no exceptions, so that there is no risk of distortion of competition; whereas the test laid down in Article 12(3)(b) is accordingly satisfied, and the Hellenic Republic should be allowed to apply the measure,

HAS ADOPTED THIS DECISION:

Article 1

The measure described by the Hellenic Republic in its letter of 30 November 1998 under which a reduced rate of VAT would be applied to supplies of natural gas and electricity irrespective of the manner in which they are produced or supplied (whether supplied domestically, or acquired elsewhere in the Community, or imported) does not carry any risk of distortion of competition.

The Hellenic Republic may accordingly apply the measure from 1 January 1999 onward.

Article 2

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 26 February 1999.

For the Commission

Mario MONTI

Member of the Commission

([1]) OJ L 145, 13. 6. 1977, p. 1.
([2]) OJ L 281, 17. 10. 1998, p. 31.