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Legislation

Contents

(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.

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EN

[1] Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1049/1999

of 21 May 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 22 May 1999.

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

Done at Brussels, 21 May 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 21 May 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	105,2
	068	72,3
	999	88,8
0707 00 05	052	82,1
	628	129,4
	999	105,7
0709 90 70	052	51,0
	999	51,0
0805 10 10, 0805 10 30, 0805 10 50	204	44,5
	600	46,3
	624	46,6
	999	45,8
0805 30 10	388	113,6
	999	113,6
0808 10 20, 0808 10 50, 0808 10 90	388	71,0
	400	90,7
	508	77,1
	512	74,8
	524	77,7
	528	65,6
	804	102,4
	999	79,9

(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 1050/1999

of 21 May 1999

fixing the maximum purchasing price for butter for the 240th invitation to tender carried out under the standing invitation to tender governed by Regulation (EEC) No 1589/87

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products [1], as last amended by Regulation (EC) No 1587/96 [2], and in particular the first subparagraph of Article 7a(1) first indent and Article 7a(3) thereof,

Whereas Article 5 of Commission Regulation (EEC) No 1589/87 of 5 June 1987 on the sale by tender of butter to intervention agencies [3], as last amended by Regulation (EC) No 124/1999 [4], provides that, in the light of the tenders received for each invitation to tender, a maximum buying-in price is to be fixed in relation to the intervention price applicable and that it may also be decided not to proceed with the invitation to tender;

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 240th invitation to tender issued under Regulation (EEC) No 1589/87, for which tenders had to be submitted not later than 18 May 1999, the maximum buying-in price is fixed at 295,38 EUR/100 kg.

Article 2

This Regulation shall enter into force on 22 May 1999.

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

Done at Brussels, 21 May 1999.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 148, 28.6.1968, p. 13.
[2] OJ L 206, 16.8.1996, p. 21.
[3] OJ L 146, 6.6.1987, p. 27.
[4] OJ L 16, 21.1.1999, p. 19.

COMMISSION REGULATION (EC) No 1051/1999

of 21 May 1999

fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 32nd individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products [1], as last amended by Regulation (EC) No 1587/96 [2], and in particular Article 6(3) and (6) and Article 12(3) thereof,

Whereas the intervention agencies are, pursuant to Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs [3], as last amended by Regulation (EC) No 494/1999 [4], to sell by invitation to tender certain quantities of butter that they hold and to grant aid for cream, butter and concentrated butter; whereas Article 18 of that Regulation stipulates that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter; whereas it is further stipulated that the price or aid may vary according to the intended use of the butter, its fat content and the incorporation procedure, and that a decision may also be taken to make no award in response to the tenders submitted; whereas the amount(s) of the processing securities must be fixed accordingly;

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum aid and processing securities applying for the 32nd individual invitation to tender, under the standing invitation to tender provided for in Regulation (EC) No 2571/97, shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 22 May 1999.

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

Done at Brussels, 21 May 1999.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 148, 28.6.1968, p. 13.
[2] OJ L 206, 16.8.1996, p. 21.
[3] OJ L 350, 20.12.1997, p. 3.
[4] OJ L 59, 6.3.1999, p. 17.

ANNEX

to the Commission Regulation of 21 May 1999 fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 32nd individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

(EUR/100 kg)

Formula			A		B	
Incorporation procedure			With tracers	Without tracers	With tracers	Without tracers
Minimum selling price	Butter ≥ 82 %	Unaltered	—	—	—	—
		Concentrated	—	—	—	—
Processing security		Unaltered	—	—	—	—
		Concentrated	—	—	—	—
Maximum aid	Butter ≥ 82 %		95	91	95	91
	Butter < 82 %		92	88	—	—
	Concentrated butter		117	113	117	113
	Cream		—	—	40	38
Processing security	Butter		105	—	105	—
	Concentrated butter		129	—	129	—
	Cream		—	—	44	—

COMMISSION REGULATION (EC) No 1052/1999

of 21 May 1999

fixing the maximum aid for concentrated butter for the 204th special invitation to tender opened under the standing invitation to tender provided for in Regulation (EEC) No 429/90

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products [1], as last amended by Regulation (EC) No 1587/96 [2], and in particular Article 7a(3) thereof,

Whereas, in accordance with Commission Regulation (EEC) No 429/90 of 20 February 1990 on the granting by invitation to tender of an aid for concentrated butter intended for direct consumption in the Community [3], as last amended by Regulation (EC) No 124/1999 [4], the intervention agencies are opening a standing invitation to tender for the granting of aid for concentrated butter; whereas Article 6 of that Regulation provides that in the light of the tenders received in response to each special invitation to tender, a maximum amount of aid is to be fixed for concentrated butter with a minimum fat content of 96 % or a decision is to be taken to make no award; whereas the end-use security must be fixed accordingly;

Whereas, in the light of the tenders received, the maximum aid should be fixed at the level specified below and the end-use security determined accordingly;

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 204th special invitation to tender under the standing invitation to tender opened by Regulation (EEC) No 429/90, the maximum aid and the amount of the end-use security shall be as follows:

— maximum aid: 117 EUR/100 kg

— end-use security: 129 EUR/100 kg.

Article 2

This Regulation shall enter into force on 22 May 1999.

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

Done at Brussels, 21 May 1999.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 148, 28.6.1968, p. 13.
[2] OJ L 206, 16.8.1996, p. 21.
[3] OJ L 45, 21.2.1990, p. 8.
[4] OJ L 16, 21.1.1999, p. 19.

COMMISSION REGULATION (EC) No 1053/1999

of 21 May 1999

suspending the buying-in of butter in certain Member States

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products [1], as last amended by Regulation (EC) No 1587/96 [2], and in particular the first subparagraph of Article 7a(1) and Article 7a(3) thereof,

Whereas Council Regulation (EEC) No 777/87 [3], as last amended by the Act of Accession of Austria, Finland and Sweden, sets out the circumstances under which the buying-in of butter and skimmed-milk powder may be suspended and subsequently resumed and, where suspension takes place, the alternative measures that may be taken;

Whereas Commission Regulation (EEC) No 1547/87 [4], as last amended by Regulation (EC) No 1802/95 [5], lays down the criteria for opening and suspending the buying-in of butter by invitation to tender in the Member States or, in the case of the United Kingdom and Germany, in a region thereof;

Whereas Commission Regulation (EC) No 981/1999 [6] suspends buying-in of butter in certain Member States; whereas information on market prices shows that the condition laid down in Article 1(3) of Regulation (EEC) No 1547/87 is no longer met in Germany, Finland, France, Great Britain, Italy, Ireland, Northern Ireland, Spain, the Netherlands and Portugal; whereas the list of Member States in which that suspension applies must be adjusted accordingly;

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

HAS ADOPTED THIS REGULATION:

Article 1

Buying-in of butter by invitation to tender as provided for in Article 1(3) of Regulation (EEC) No 777/87 is hereby suspended in Belgium, Denmark, Greece, Luxembourg, Austria and Sweden.

Article 2

Regulation (EC) No 981/1999 is hereby repealed.

Article 3

This Regulation shall enter into force on 22 May 1999.

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

Done at Brussels, 21 May 1999.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 148, 28.6.1968, p. 13.
[2] OJ L 206, 16.8.1996, p. 21.
[3] OJ L 78, 20.3.1987, p. 10.
[4] OJ L 144, 4.6.1987, p. 12.
[5] OJ L 174, 26.7.1995, p. 27.
[6] OJ L 120, 8.5.1999, p. 21.

COMMISSION REGULATION (EC) No 1054/1999

of 21 May 1999

opening and providing for the administration of an import tariff quota for frozen beef intended for processing (1 July 1999 to 30 June 2000)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organisation of the market in beef and veal [1], as last amended by Regulation (EC) No 1633/98 [2], and in particular Article 12(1) thereof,

Having regard to Council Regulation (EC) No 1095/96 of 18 June 1996 on the implementation of the concessions set out in Schedule CXL drawn up in the wake of the conclusion of the GATT XXIV.6 negotiations [3], and in particular Article 1(1) thereof,

(1) Whereas pursuant to Schedule CXL the Community has undertaken to open an annual import tariff quota of 50 700 tonnes of frozen beef intended for processing; whereas the rules of application for the quota year 1999/2000 starting 1 July 1999 must be established;

(2) Whereas the import of frozen beef under the tariff quota shall qualify for the total suspension of the specific rate of customs duty where the meat is intended for the manufacture of preserved food, which does not contain characteristic components other than beef and jelly; whereas where the meat is intended for other processed products containing beef the import shall qualify for a 55 % suspension of the autonomous specific rate of customs duty; whereas the breakdown of the tariff quota into each of the arrangements referred to above should be made taking into account the experience gained in respect of similar imports in the past;

(3) Whereas so as to avoid speculation, access to the quota should be allowed only to active processors carrying out processing in a processing establishment approved in accordance with Article 8 of Council Directive 77/99/EEC [4], as last amended by Directive 97/76/EC [5];

(4) Whereas, imports into the Community under the present tariff quota are subject to presentation of an import licence; whereas licences may be issued following allocations of import rights on the basis of applications from eligible processors; whereas subject to the provisions of this Regulation the provisions of Commission Regulation (EEC) No 3719/88 of 16 November 1988 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products [6], as last amended by Regulation (EC) No 168/1999 [7], and Commission Regulation (EC) No 1445/95 of 26 June 1995 on rules of application for import and export licences in the beef and veal sector and repealing Regulation (EEC) No 2377/80 [8], as last amended by Regulation (EC) No 2648/98 [9], shall apply to import licences issued under this Regulation;

(5) Whereas the application of the present tariff quota requires strict surveillance of imports and effective checks as to their use and destination; whereas the processing should therefore be authorised only in the establishment referred to in box 20 of the import licence; whereas, furthermore, a security shall be lodged in order to ensure that the imported meat is used according to the tariff quota specifications; whereas the amount of security should be fixed taking into account the difference between the customs duties applicable inside and outside the quota;

(6) Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Beef and Veal,

[1] OJ L 148, 28.6.1968, p. 24.
[2] OJ L 210, 28.7.1998, p. 17.
[3] OJ L 146, 20.6.1996, p. 1.
[4] OJ L 26, 31.1.1977, p. 85.
[5] OJ L 10, 16.1.1998, p. 25.
[6] OJ L 331, 2.12.1988, p. 1.
[7] OJ L 19, 26.1.1999, p. 4.
[8] OJ L 143, 27.6.1995, p. 35.
[9] OJ L 335, 10.12.1998, p. 39.

HAS ADOPTED THIS REGULATION:

Article 1

1. An import tariff quota of 50 700 tonnes, bone-in equivalent of frozen beef falling within CN code 0202 20 30, 0202 30 10, 0202 30 50, 0202 30 90 or 0206 29 91 and intended for processing in the Community is hereby opened for the period 1 July 1999 to 30 June 2000.

2. The overall quantity referred to in paragraph 1 shall be divided into two quantities:

(a) 38 000 tonnes of frozen beef intended for manufacture of preserved food as defined in Article 7(a),

(b) 12 700 tonnes of frozen beef intended for manufacture of products as defined in Article 7(b).

3. The quota shall bear the following order Nos:

— 09.4057 for the quantity to in paragraph 2(a),

— 09.4058 for the quantity referred to in paragraph 2(b).

4. The customs import duties to apply on frozen beef under the present tariff quota are those referred to in order No 13 of Annex 7 to Part Three of Commission Regulation (EC) No 2261/98 [1].

Article 2

1. An application for import rights is valid only if it is lodged by, or on behalf of a natural or legal person who, during the 12 months prior to the entry into force of this Regulation, has been in the business of producing processed products containing beef and who is entered in a national VAT register. Furthermore, the application shall be lodged by, or on behalf of a processing establishment approved pursuant to Article 8 of Directive 77/99/EEC. For each quantity referred to in Article 1(2) only one application for import rights may be accepted in respect of each approved processing establishment.

2. Applicants no longer active in the meat processing industry on 1 May 1999 shall not qualify under the arrangements provided for in this Regulation.

3. Documentary evidence, to the satisfaction of the competent authority, of compliance with the conditions of the preceding paragraphs shall be lodged together with the application.

[1] OJ L 292, 30.10.1998, p. 1.

Article 3

1. Each application for import rights for production of A-products or B-products shall be expressed in bone-in equivalence and shall not exceed the available quantity under each of the two categories.

2. Each application referring to either A-products or B-products shall reach the competent authority by 9 June 1999.

3. Member States shall forward to the Commission by 18 June 1999 a list of applicants and quantities applied for under each of the two categories together with the approval numbers of the processing establishments concerned.

The Commission shall decide as soon as possible to what extent applications may be accepted, where necessary as a percentage of the quantity applied for.

Article 4

1. Any import of frozen beef for which import rights have been allocated pursuant to Article 3 shall be subject to presentation of an import licence.

2. Within his allocated import rights a processor may apply for import licences until 25 February 2000 at the latest. The application shall be lodged in the Member State where the import rights are registered.

For the purpose of this paragraph 100 kilograms of bone-in beef equals 77 kilograms of boneless beef.

3. A security shall be lodged with the competent authority at the time of importation ensuring that the processor processes the entire quantity of meat imported into the required finished products in the establishment specified in the licence application, within three months following the day of importation.

The amounts of security are fixed in the Annex.

Article 5

1. On the licence application and the licence itself shall be entered:

(a) in box 8, the country of origin,

(b) in box 16, one of the eligible CN codes,

(c) in box 20, at least one of the following endorsements:

— Certificado válido en ... (Estado miembro expedidor) / carne destinada a la transformación ... [productos A] [productos B] (táchese lo que no proceda) en ... (designación exacta y número de registro del establecimiento en el que vaya a procederse a la transformación) / Reglamento (CE) nº 1054/1999.

— Licens gyldig i ... (udstedende medlemsstat) / Kød bestemt til forarbejdning til (A-produkter) (B-produkter) (det ikke gældende overstreges) i ... (nøjagtig betegnelse for den virksomhed, hvor forarbejdningen sker) / forordning (EF) nr. 1054/1999.

— In ... (ausstellender Mitgliedstaat) gültige Lizenz / Fleisch für die Verarbeitung zu [A-Erzeugnissen] [B-Erzeugnissen] (Unzutreffendes bitte streichen) in ... (genaue Bezeichnung des Betriebs, in dem die Verarbeitung erfolgen soll) / Verordnung (EG) Nr. 1054/1999.

— Το πιστοποιητικό ισχύει ... (κράτος μέλος έκδοσης) / Κρέας που προορίζεται για μεταποίηση ... [προϊόντα Α] [προϊόντα Β] (διαγράφεται η περιττή ένδειξη) ... (ακριβής περιγραφή και αριθμός έγκρισης της εγκατάστασης όπου πρόκειται να πραγματοποιηθεί η μεταποίηση) / Κανονισμός (ΕΚ) αριθ. 1054/1999.

— Licence valid in ... (issuing Member State) / Meat intended for processing ... [A-products] [B-products] (delete as appropriate) at ... (exact designation and approval No of the establishment where the processing is to take place) / Regulation (EC) No 1054/1999.

— Certificat valable ... (État membre émetteur) / viande destinée à la transformation de ... [produits A] [produits B] (rayer la mention inutile) dans ... (désignation exacte et numéro d'agrément de l'établissement dans lequel la transformation doit avoir lieu) / règlement (CE) nº 1054/1999.

— Titolo valido in ... (Stato membro di rilascio) / Carni destinate alla trasformazione ... [prodotti A] [prodotti B] (depennare la voce inutile) presso ... (esatta designazione e numero di riconoscimento dello stabilimento nel quale è prevista la trasformazione) / Regolamento (CE) n. 1054/1999.

— Certificaat geldig in ... (lidstaat van afgifte) / Vlees bestemd voor verwerking tot [A-producten] [B-producten] (doorhalen wat niet van toepassing is) in ... (nauwkeurige aanduiding en toelatingsnummer van het bedrijf waar de verwerking zal plaatsvinden) / Verordening (EG) nr. 1054/1999.

— Certificado válido em ... (Estado-membro emissor) / carne destinada à transformação ... [produtos A] [produtos B] (riscar o que não interessa) em ... (designação exacta e número de aprovação do estabelecimento em que a transformação será efectuada) / Regulamento (CE) n.º 1054/1999.

— Todistus on voimassa ... (myöntäjäjäsenvaltio) / Liha on tarkoitettu [A-luokan tuotteet] [B-luokan tuotteet] (tarpeeton poistettava) jalostukseen ...:ssa (tarkka ilmoitus laitoksesta, jossa jalostus suoritetaan, hyväksyntänumero mukaan lukien) / Asetus (EY) N:o 1054/1999.

— Licensen är giltig i ... (utfärdande medlemsstat) / Kött avsett för bearbetning ... [A-produkter] [B-produkter] (stryk det som inte gäller) vid ... (exakt angivelse av och godkännandenummer för anläggningen där bearbetningen skall ske) / Förordning (EG) nr 1054/1999.

2. Without prejudice to the provisions of this Regulation, Regulations (EEC) No 3719/88 and (EC) No 1445/95 shall apply.

3. Import licences shall be valid for 120 days from the date of issue within the meaning of Article 21(1) of Regulation (EEC) No 3719/88. However, no licence shall be valid before 1 July 1999 or after 30 June 2000.

4. Notwithstanding Article 8(4) of Regulation (EEC) No 3719/88, the full Common Customs Tariff duty applicable on the date of release for free circulation shall be collected in respect of all quantities imported in excess of those shown on the import licence.

Article 6

1. Quantities for which import licence applications have not been lodged by 25 February 2000 shall be subject to a further allocation of import rights.

To that end, by 6 March 2000, Member States shall forward to the Commission details of the quantities for which no applications have been received.

2. The Commission shall decide as soon as possible on the breakdown of those quantities into those intended for A-products and those intended for B-products. In doing so, the actual utilisation of the import rights allocated pursuant to Article 3 under each of the two categories may be taken into account.

3. For the purposes of this Article, Articles 2 to 5 shall apply. However, the date referred to in Article 3(2) shall be replaced by 3 April 2000 and the date referred to in Article 3(3) shall be replaced by 10 April 2000.

Article 7

For the purposes of this Regulation:

(a) An A-product shall be defined as a processed product falling within CN code 1602 10, 1602 50 31, 1602 50 39 or 1602 50 80, not containing meat other than that of animals of the bovine species, with a collagen/protein ratio of no more than 0,45 % [1] and containing by weight at least 20 % [2] of lean meat excluding offal [3] and fat with meat and jelly accounting for at least 85 % of the total net weight.

The product must be subjected to a heat treatment sufficient to ensure the coagulation of meat proteins in the whole of the product which may not show any traces of a pinkish liquid on the cut surface when the product is cut along a line passing through its thickest part.

(b) A B-product shall be defined as a processed product containing beef, other than:

— one specified in Article 1(1)(a) of Regulation (EEC) No 805/68, or

— one referred to under (a).

However, a processed product falling within CN code 0210 20 90 which has been dried or smoked so that the colour and consistency of the fresh meat has totally disappeared and with a water/protein ratio not exceeding 3,2 shall be considered to be a B-product.

Article 8

Member States shall set up a system of physical and documentary supervision to ensure that all meat is processed into the category of product specified on the import licence concerned.

The system must include physical checks of quantity and quality at the start of the processing, during the processing and after the processing operation is completed. To this end, processors shall at any time be able to demonstrate the identity and use of the imported meat through appropriate production records.

Technical verification of the production method by the competent authority may, to the extent necessary, make allowance for drip losses and trimmings.

In order to verify the quality of the finished product and establish its conformity with the processor's recipe Member States shall proceed to representative samplings and analysis of those products. The costs of such operations shall be born by the processor concerned.

Article 9

1. The security referred to in Article 4(3) shall be released in proportion to the quantity for which, within seven months, proof has been furnished to the satisfaction of the competent authority that all or part of the imported meat has been processed into the relevant products within three months following the day of importation in the designated establishment.

However,

(a) if processing took place after the abovementioned three-month time limit, the security shall be released minus:

— 15 %, and

— 2 % of the remaining amount for each day by which the time limit has been exceeded;

(b) if proof of processing is established within the abovementioned seven-month time limit and is produced within 18 months following those seven months the amount forfeited less 15 % of the security amount, shall be repaid.

2. The amount of security not released shall be forfeited and retained as a customs duty.

Article 10

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

(1) Determination of collagen content: the collagen content shall be taken to mean the hydroxyproline content multiplied by the factor 8. The hydroxyproline content must be determined according to ISO method 3496-1994.

(2) The lean bovine meat content excluding fat is determined in accordance with the procedure prescribed in the Annex to Commission Regulation (EEC) No 2429/86 (OJ L 210, 1.8.1986, p. 39).

(3) Offal includes the following: heads and cuts thereof (including ears), feet, tails, hearts, udders, livers, kidneys, sweetbreads (thymus glands and pancreas), brains, lungs, throats, thick skirts, pleens, tongues, caul, spinal cords, edible skin, reproductive organs (i.e. uteri, ovaries and testes), thyroid glands, pituitary glands.

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

Done at Brussels, 21 May 1999.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

AMOUNTS OF SECURITY

(in EUR/1 000 kg net)

Product (CN code)	For manufacture of A-products	For manufacture of B-products
0202 20 30	1 547	553
0202 30 10	2 418	864
0202 30 50	2 418	864
0202 30 90	3 326	1 188
0206 29 91	3 326	1 188

COMMISSION REGULATION (EC) No 1055/1999
of 21 May 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, 21 May 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 No:** 148/98
2. **Beneficiary** (2): WFP (World Food Programme), via Cristoforo Colombo 426, I-00145 Roma tel.: (39-6) 65 13 29 88; fax: 65 13 28 44/3; telex: 626675 WFP I
3. **Beneficiary's representative:** to be designated by the recipient
4. **Country of destination:** Angola
5. **Product to be mobilized:** maize
6. **Total quantity (tonnes net):** 10 000
7. **Number of lots:** 1
8. **Characteristics and quality of the product** (3) (5): see OJ C 114, 29.4.1991, p. 1 (II.A.(1)(d))
9. **Packaging:** see OJ C 267, 13.9.1996, p. 1 (1.0 A 1.c, 2.c and B.2)
10. **Labelling or marking** (6): see OJ C 114, 29.4.1991, p. 1 (II.A.(3))
    — Language to be used for the markings: Portuguese
    — Supplementary markings: —
11. **Method of mobilisation of the product:** the Community market
12. **Specified delivery stage:** free at port of shipment — fob stowed and trimmed
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: 28.6 — 18.7.1999
    — second deadline: 12.7 — 1.8.1999
18. **Period or deadline of supply at the alternative stage:**
    — first deadine: —
    — second deadline: —
19. **Deadline for the submission of tenders (12 noon, Brussels time):**
    — first deadline: 8.6.1999
    — second deadline: 22.6.1999
20. **Amount of tendering guarantee:** EUR 5 per tonne
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/Westraat 200, B-1049 Bruxelles/Brussels tlx: 25670 AGREC B; fax: (32-2) 296 70 03 / 296 70 04 (exclusively)
22. **Export refund** (4): refund applicable on 31.5.1999, fixed by Commission Regulation (EC) No 909/1999 (OJ L 114, 1.5.1999, p. 29)

Notes:

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

(2) The supplier shall contact the beneficiary or its representative as soon as possible to 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.

(6) Notwithstanding OJ C 114 of 29 April 1991, point II.A(3)(c) is replaced by the following: 'the words "European Community".

COMMISSION REGULATION (EC) No 1056/1999

of 21 May 1999

on the supply of vegetable oil 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 vegetable oil 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 for a given lot, provision should be made for tenderers to be able to mobilise either rape-seed oil or sunflower oil; whereas the contract for the supply of each such lot is to be awarded to the tenderer submitting the lowest tender,

HAS ADOPTED THIS REGULATION:

Article 1

Vegetable oil 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 supply shall cover the mobilisation of vegetable oil produced in the Community. Mobilisation may not involve a product manufactured and/or packaged under inward processing arrangements.

Except for lot B, tenders shall cover either rape-seed oil or sunflower oil. Tenders shall be rejected unless they specify the type of oil 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, 21 May 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, B, C, D, E

1. **Action Nos:** 149/98 (A); 150/98 (B); 151/98 (C); 152/98 (D); 153/98 (E)
2. **Beneficiary** ([2]): UNRWA, Supply division, Amman Office, PO Box 140157, Amman-Jordan
   telex: 21170 UNRWA JC; fax: (962-6) 86 41 27
3. **Beneficiary's representative:** UNRWA Field Supply and Transport Officer
   A + E: PO Box 19149, Jerusalem, Israel [tel.: (972-2) 589 05 55; telex: 26194 UNRWA IL; fax: 581 65 64]
   B: PO Box 947, Beirut, Lebanon [tel. (961-1) 840 46 09; telefax: 603 683]
   C: PO Box 4313, Damascus, Syria [tel.: (963-11) 613 30 35; telex: 412006 UNRWA SY; fax: 613 30 47]
   D: PO Box 484, Amman, Jordan [tel.: (962-6) 74 19 14/77 22 26; telex: 23402 UNRWAJFO JO; telefax 74 63 61]
4. **Country of destination:** A, E: Israel (A: Gaza; E: West Bank); B: Lebanon; C: Syria; D: Jordan
5. **Product to be mobilised:**
   A, C, D and E: refined rapeseed oil or refined sunflower oil
   B: refined sunflower oil
6. **Total quantity (tonnes net):** 820,8
7. **Number of lots:** 5 (A: 319,2 tonnes; B: 136,8 tonnes; C: 91,2 tonnes; D: 152 tonnes; E: 121,6 tonnes)
8. **Characteristics and quality of the product** ([3]) ([4]) ([6]) ([9]): see OJ C 114, 29.4.1991, p. 1 (III.A.(1)(a) or (b))
9. **Packaging** ([7]): see OJ C 267, 13.9.1996, p. 1 (10.7 A and B.3)
10. **Labelling or marking** ([5]) ([10]): see OJ C 114 29.4.1991, p. 1 (III.A.(3))
    — language to be used for the markings: English
    — supplementary markings: 'FOR FREE DISTRIBUTION'
    lot D: 'Expiry date . . .' (date of manufacture plus 2 years)
11. **Method of mobilisation of the product:** mobilisation of refined vegetable oil produced in the Community. Mobilisation may not involve a product manufactured and/or packaged under inward-processing arrangements.
12. **Specified delivery stage** ([8]):
    A, C and E: free at port of landing — container terminal
    B and D: free at destination
13. **Alternative delivery stage:** free at port of shipment
14. (a) **Port of shipment:** —
    (b) **Loading address:** —
15. **Port of landing:** A, E: Ashdod; C: Lattakia
16. **Place of destination:** UNRWA warehouse in Beirut (B) and Amman (D)
    — port or warehouse of transit: —
    — overland transport route: —
17. **Period or deadline of supply at the specified stage:**
    — first deadline: A, B, C and E: 1.8.1999; D: 15.8.1999
    — second deadline: A, B, C and E: 15.8.1999; D: 29.8.1999
18. **Period or deadline of supply at the alternative stage:**
    — first deadline: 5 — 18.7.1999
    — second deadline: 19.7 — 1.8.1999
19. **Deadline for the submission of tenders (at 12 noon, Brussels time):**
    — first deadline: 8.6.1999
    — second deadline: 22.6.1999
20. **Amount of tendering guarantee:** ECU 15 per tonne
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 Brussel
    tlx: 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:
— health certificate.

(5) Notwithstanding OJ C 114, point III.A(3)(c) is replaced by the following: 'the words "European Community"'.

(6) Except for lot B, tenders shall be rejected unless they specify the type of oil to which they relate.

(7) Shipment to take place in 20-foot containers: Lots A, C and E: the contracted shipping terms shall be considered full liner terms (liner in/liner out) free port of landing container yard and is understood to cover 15 days — Saturdays, Sundays and official public and religious holidays excluded — free of container detention charges at the port of discharge taken from the day/time of the arrival of the vessel. The 15 day period should be clearly marked on the bill of lading. Bona fide detention charges levied in respect of container detention(s) in excess of the said 15 days as detailed above will be borne by UNRWA. UNRWA shall not pay/not be charged any container deposit fees.

After take-over of the goods at the delivery stage, the recipient will bear all costs of shifting the containers for destuffing outside the port area and of returning them to the container yard.

Ashdod: consignment to be stowed in 20-foot containers containing not more than 17 tonnes each, net.

(8) In addition to the provisions of Article 14(3) of Regulation (EC) No 2519/97, vessels chartered shall not appear on any of the four most recent quarterly lists of detained vessels as published by the Paris Memorandum of Understanding on Port State Control (Council Directive 95/21/EC (OJ L 157, 7.7.1995, p. 1)).

(9) Lot C: the health certificate and the certificate of origin must be signed and stamped by a Syrian Consulate, including the statement that consular fees and charges have been paid.

(10) Marking has to be done on the side surface of the barrels (minimum size of the European flag: 150 × 225 mm).

COMMISSION REGULATION (EC) No 1057/1999

of 21 May 1999

fixing the maximum subsidy for the export of husked long grain rice to the island of Réunion referred to in Regulation (EC) No 2563/98

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [1], as last amended by Regulation (EC) No 2072/98 [2], and in particular Article 10(1) thereof,

Having regard to Commission Regulation (EEC) No 2692/89 of 6 September 1989 laying down detailed rules for exports of rice to Réunion [3], and in particular Article 9(1) thereof,

Whereas Commission Regulation (EC) No 2563/98 [4] opens an invitation to tender for the subsidy on rice exported to Réunion;

Whereas Article 9 of Regulation (EEC) No 2692/89 allows the Commission to decide, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum subsidy;

Whereas the criteria laid down in Articles 2 and 3 of Regulation (EEC) No 2692/89 should be taken into account when fixing this maximum subsidy; whereas successful tenderers shall be those bids at or below the level of the maximum subsidy;

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

HAS ADOPTED THIS REGULATION:

Article 1

A maximum subsidy on exports to Réunion of husked long grain rice falling within CN code 1006 20 98 is hereby set on the basis of the tenders lodged 17 to 20 May 1999 at EUR 300,00 per tonne pursuant to the invitation to tender referred to in Regulation (EC) No 2563/98.

Article 2

This Regulation shall enter into force on 22 May 1999.

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

Done at Brussels, 21 May 1999.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 329, 30.12.1995, p. 18.
[2] OJ L 265, 30.9.1998, p. 4.
[3] OJ L 29, 7.9.1989, p. 8.
[4] OJ L 320, 28.11.1998, p. 40.

COMMISSION REGULATION (EC) No 1058/1999

of 21 May 1999

fixing the maximum export refund on wholly milled round grain rice in connection with the invitation to tender issued in Regulation (EC) No 770/1999

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice [1], as last amended by Regulation (EC) No 2072/98 [2], and in particular Article 13 (3) thereof,

Whereas an invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 770/1999 [3];

Whereas Article 5 of Commission Regulation (EEC) No 584/75 [4], as last amended by Regulation (EC) No 299/95 [5], allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund; whereas in fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account; whereas a contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund;

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

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled round grain rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 770/1999 is hereby fixed on the basis of the tenders submitted from 17 to 20 May 1999 at 201,00 EUR/t.

Article 2

This Regulation shall enter into force on 22 May 1999.

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

Done at Brussels, 21 May 1999.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 329, 30.12.1995, p. 18.
[2] OJ L 265, 30.9.1998, p. 4.
[3] OJ L 100, 15.4.1999, p. 14.
[4] OJ L 61, 7.3.1975, p. 25.
[5] OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 1059/1999

of 21 May 1999

concerning tenders submitted in response to the invitation to tender for the export to certain third countries of wholly milled long grain rice issued in Regulation (EC) No 2566/98

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice [1], as last amended by Regulation (EC) No 2072/98 [2], and in particular Article 13 (3) thereof,

Whereas an invitation to tender for the export refund on rice was issued under Commission Regulation (EC) No 2566/98 [3];

Whereas Article 5 of Commission Regulation (EEC) No 584/75 [4], as last amended by Regulation (EC) No 299/95 [5], allows the Commission to decide, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, to make no award;

Whereas on the basis of the criteria laid down in Article 13 of Regulation (EC) No 3072/95 a maximum refund should not be fixed;

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

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders submitted from 17 to 20 May 1999 in response to the invitation to tender for the export refund on wholly milled long grain rice falling within CN code 1006 30 67 to certain third countries issued in Regulation (EC) No 2566/98.

Article 2

This Regulation shall enter into force on 22 May 1999.

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

Done at Brussels, 21 May 1999.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 329, 30.12.1995, p. 18.
[2] OJ L 265, 30.9.1998, p. 4.
[3] OJ L 320, 28.11.1998, p. 49.
[4] OJ L 61, 7.3.1975, p. 25.
[5] OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 1060/1999

of 21 May 1999

fixing the maximum export refund on wholly milled round grain, medium grain and long grain A rice in connection with the invitation to tender issued in Regulation (EC) No 2564/98

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [1], as last amended by Regulation (EC) No 2072/98 [2], and in particular Article 13(3) thereof,

Whereas an invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2564/98 [3];

Whereas Article 5 of Commission Regulation (EEC) No 584/75 [4], as last amended by Regulation (EC) No 299/95 [5], allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund; whereas in fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account; whereas a contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund;

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

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled round grain, medium grain and long grain A rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2564/98 is hereby fixed on the basis of the tenders submitted from 17 to 20 May 1999 at EUR/t 150,00.

Article 2

This Regulation shall enter into force on 22 May 1999.

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

Done at Brussels, 21 May 1999.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 329, 30.12.1995, p. 18.
[2] OJ L 265, 30.9.1998, p. 4.
[3] OJ L 320, 28.11.1998, p. 43.
[4] OJ L 61, 7.3.1975, p. 25.
[5] OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 1061/1999

of 21 May 1999

concerning tenders submitted in response to the invitation to tender for the export to certain third European countries of wholly milled round, medium and long grain A rice issued in Regulation (EC) No 2565/98

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ([1]), as last amended by Regulation (EC) No 2072/98 ([2]), and in particular Article 13 (3) thereof,

Whereas an invitation to tender for the export refund on rice was issued under Commission Regulation (EC) No 2565/98 ([3]);

Whereas Article 5 of Commission Regulation (EEC) No 584/75 ([4]), as last amended by Regulation (EC) No 299/95 ([5]), allows the Commission to decide, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, to make no award;

Whereas on the basis of the criteria laid down in Article 13 of Regulation (EC) No 3072/95 a maximum refund should not be fixed;

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

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders submitted from 17 to 20 May 1999 in response to the invitation to tender for the export refund on wholly milled round, medium and long grain A rice to certain third European countries issued in Regulation (EC) No 2565/98.

Article 2

This Regulation shall enter into force on 22 May 1999.

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

Done at Brussels, 21 May 1999.

For the Commission

Franz FISCHLER

Member of the Commission

([1]) OJ L 329, 30.12.1995, p. 18.
([2]) OJ L 265, 30.9.1998, p. 4.
([3]) OJ L 320, 28.11.1998, p. 46.
([4]) OJ L 61, 7.3.1975, p. 25.
([5]) OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 1062/1999

of 21 May 1999

amending Regulation (EEC) No 1858/93 laying down detailed rules for applying Council Regulation (EEC) No 404/93 as regards the aid scheme to compensate for loss of income from marketing in the banana sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organisation of the market in bananas [1], as last amended by Regulation (EC) No 1637/98 [2], and in particular Articles 12(4) and (6) and 14 thereof,

(1) Whereas Commission Regulation (EEC) No 1858/93 [3], as last amended by Regulation (EC) No 796/95 [4], lays down detailed rules for applying the system of compensatory aid for loss of income from the marketing of bananas;

(2) Whereas, in accordance with the Commission's undertaking when the Council adopted decisions concerning various agricultural products for the 1998/99 marketing year and the new import arrangements were adopted for bananas, the flat-rate reference income should be increased in order to fix compensation for 1998 and from 1999 onwards; whereas the new amounts should be inserted into Regulation (EEC) No 1858/93;

(3) Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Bananas,

HAS ADOPTED THIS REGULATION:

Article 1

Article 2(2) of Regulation (EEC) No 1858/93 is replaced by the following:

'2. The flat-rate reference income shall be EUR 62,25/100 kg net weight of green bananas ex-packing shed for 1998 and EUR 64,03/100 kg net weight from 1999.'

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, 21 May 1999.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 47, 25.2.1993, p. 1.
[2] OJ L 210, 28.7.1998, p. 28.
[3] OJ L 170, 13.7.1993, p. 5.
[4] OJ L 80, 8.4.1995, p. 17.

COMMISSION REGULATION (EC) No 1063/1999

of 21 May 1999

fixing the compensatory aid for bananas produced and marketed in the Community in 1998, the time limit for payment of the balance of the aid and the unit value of the advances for 1999

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organisation of the market in bananas [1], as last amended by Regulation (EC) No 1637/98 [2], and in particular Articles 12(6) and 14 thereof,

(1) Whereas Commission Regulation (EEC) No 1858/93 [3], as last amended by Regulation (EC) No 1062/1999 [4], lays down detailed rules for applying Regulation (EEC) No 404/93 as regards the aid scheme to compensate for loss of income from marketing in the banana sector;

(2) Whereas, pursuant to Article 12 of Regulation (EEC) No 404/93, the compensatory aid is calculated on the basis of the difference between the flat-rate reference income and the average production income from bananas produced and marketed in the Community during the year in question; whereas supplementary aid is granted in one or more producer regions where average income from production is significantly lower than the average for the Community;

(3) Whereas Article 2(2) of Regulation (EEC) No 1858/93 fixes the flat-rate reference income at EUR 62,25 per 100 kilograms net weight of green bananas ex-packing shed for the aid to be calculated in respect of 1998;

(4) Whereas the prices for bananas produced and marketed in the Community in 1998 were such that the average price for delivery at the first port of unloading in the rest of the Community, less the average costs of transport and delivery fob, is less than the flat-rate reference income fixed for 1998; whereas the compensatory aid to be granted in respect of 1998 should be fixed accordingly;

(5) Whereas the annual average production income from the marketing of bananas produced in Portugal has proved to be significantly lower than the Community average during 1998; whereas, as a result, supplementary aid should be granted to the producer regions in Portugal pursuant to Article 12(6) of Regulation (EEC) No 404/93; whereas, in accordance with the Commission's undertaking when the Council adopted decisions concerning various agricultural products for the 1998/99 marketing year, that supplementary aid must cover 75 % of the difference between the average income recorded in those regions and the average for the Community;

(6) Whereas the Commission also undertook to increase the unit value of the advances on the compensatory aid to be granted in respect of 1998; whereas the unit value of the advances to be granted on the compensatory aid for 1999 should also be adapted, in view of the undertkaing to review the flat-rate reference income when the compensatory aid is fixed for bananas marketed from 1999 on;

(7) Whereas, given the lack of all the data necessary, it has not hitherto been possible to determine the compensatory aid for 1998; whereas provision should be made for the balance of the aid to be paid within two months of the publication of this Regulation; whereas, in view of the latter points, provision should be made for this Regulation to enter into force on the day following its publication;

(8) Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Bananas,

HAS ADOPTED THIS REGULATION:

Article 1

1. The compensatory aid provided for in Article 12 of Regulation (EEC) No 404/93 for fresh bananas falling within CN code ex 0803, excluding plantains, produced and marketed in the Community in 1998 shall be equal to EUR 24,42 per 100 kilograms.

[1] OJ L 47, 25.2.1993, p. 1.
[2] OJ L 210, 28.7.1998, p. 28.
[3] OJ L 170, 13.7.1993, p. 5.
[4] See page 24 of this Official Journal.

2. The aid fixed in paragraph 1 shall be increased by EUR 3,19 per 100 kilograms for bananas produced in producer regions in Portugal.

Article 2

Notwithstanding Article 4(2) of Regulation (EEC) No 1858/93, the unit value of advances for bananas marketed from January to October 1999 shall be equal to EUR 18,34 per 100 kilograms. The relevant security shall be EUR 9,17 per 100 kilograms.

Article 3

Notwithstanding Article 10 of Regulation (EEC) No 1858/93, the competent authorities of the Member States shall pay the balance of the compensatory aid to be granted in respect of 1998 within two months of the entry into force of this Regulation.

Article 4

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, 21 May 1999.

For the Commission

Franz FISCHLER

Member of the Commission

COUNCIL REGULATION (EC) No 1064/1999

of 21 May 1999

imposing a ban on flights between the European Community and the Federal Republic of Yugoslavia, and repealing Regulation (EC) No 1901/98

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 301 thereof,

Having regard to Common Position 1999/318/CFSP of 10 May 1999, adopted by the Council on the basis of Article 15 of the Treaty on European Union, concerning additional restrictive measures against the Federal Republic of Yugoslavia [1],

Having regard to the proposal from the Commission,

Whereas:

(1) The continued violation by the Governments of the Federal Republic of Yugoslavia and of the Republic of Serbia of UN Security Council Resolutions and the pursuance of extreme and criminally irresponsible policies, including repression against its own citizens, constitute serious violations of human rights and international humanitarian law;

(2) Flights between the territory of the Community and that of the Federal Republic of Yugoslavia should therefore be prohibited;

(3) This measure falls within the scope of the Treaty establishing the European Community;

(4) Therefore, and notably with a view to avoiding distortion of competition, Community legislation is necessary for the implementation of this measure, insofar as the territory of the Community is concerned; such territory is deemed to encompass, for the purposes of this Regulation, the territories of the Member States to which the Treaty establishing the European Community is applicable, under the conditions laid down in that Treaty;

(5) There is a need to allow emergency landings and ensuing take-offs, and allow exceptions for flights which serve strictly humanitarian purposes;

(6) There is a need for the Commission and Member States to inform each other of the measures taken under this Regulation and of other relevant information at their disposal in connection with this Regulation;

(7) Council Regulation (EC) No 1901/98 of 7 September 1998 concerning a ban on flights of Yugoslav carriers between the Federal Republic of Yugoslavia and the European Community [2], may be repealed since that Regulation prohibits, *inter alia,* flights by Yugoslav carriers, this being without prejudice to national legislation determining the sanctions to be imposed where the provisions of that Regulation have been infringed,

HAS ADOPTED THIS REGULATION:

Article 1

It shall be prohibited to take off from, or land in, the territory of the European Community for:

(a) any aircraft operated, directly or indirectly, by a Yugoslav carrier, that is a carrier having its principal place of business or its registered office in the Federal Republic of Yugoslavia;

(b) any aircraft registered in the Federal Republic of Yugoslavia; unless lawfully present in the European Community at the date of entry into force of this Regulation;

(c) any civil aircraft, that is an aircraft operated for commercial or private purposes, if it has taken off from, or is destined to land in, the territory of the Federal Republic of Yugoslavia.

Article 2

1. All operating authorisations for scheduled air services between any point in the territory of the Community and any point in the Federal Republic of Yugoslavia are hereby revoked and no new operating authorisations for such services shall be granted.

2. All authorisations for charter flights, whether they be individual or series flights, between any point in the territory of the Community and any point in the Federal Republic of Yugoslavia are hereby revoked and no new authorisations for such flights may be granted.

3. No new operating authorisations shall be granted or existing ones renewed enabling aircraft that are either registered in the Federal Republic of Yugoslavia or operated by Yugoslav carriers, to fly to or from airports in the Community.

[1] OJ L 123, 13.5.1999, p. 1.

[2] OJ L 248, 8.9.1998, p. 7. Regulation as amended by Council Regulation (EC) No 214/1999 (OJ L 23, 30.1.1999, p. 6).

Article 3

1. Article 1 shall not apply to emergency landings and ensuing take-offs.

2. Notwithstanding the provisions of Articles 1 and 2, the competent authorities of the Member States may authorise on a case-by-case basis and subject to the consultation procedure of paragraph 3, that civil aircraft take off from, or land in, the territory of the Community, if conclusive evidence is given to these authorities that the flight to or from the territory of the Federal Republic of Yugoslavia serves strictly humanitarian purposes.

3. The competent authorities of a Member State which intends to authorise a take off, or landing, in accordance with paragraph 2 shall notify to the competent authorities of the other Member States and to the Commission the grounds on which they intend to authorise the take off or landing concerned.

If, within one working day after the receipt of the said notification, a Member State or the Commission has given notice to the other Member States or the Commission of conclusive evidence that the intended flight will not serve the indicated humanitarian purposes, the Commission will convene within one working day of the said notice a meeting with the Member States in order to consult on the relevant evidence.

The Member State which intends to authorise the take off or landing shall only take a decision with regard to this authorisation when either no objections have been raised or the consultations on the conclusive evidence have taken place at the meeting convened by the Commission. Where an authorisation is granted after such meeting, the Member state concerned shall notify to the other member States and the Commission the grounds on which its decision to authorise has been taken.

Article 4

Nothing in this Regulation shall be construed as limiting pre-existing rights in respect of aircraft referred to in Article 1 other than rights to land in, or take off from, the territory of the Community.

Article 5

Participation, knowingly and intentionally, in related activities, the object or effect of which is, directly or indirectly, to circumvent the provisions of Articles 1 and 2 shall be prohibited.

Article 6

Each Member State shall determine the sanctions to be imposed where the provisions of this Regulation are infringed. Such sanctions must be effective, proportionate and dissuasive.

Pending the adoption, where necessary, fo any legislation to this end, the sanctions to be imposed where the provisions of this Regulation are infringed shall be those determined by the Member States in accordance with Article 5 of Regulation (EC) No 1901/98.

Article 7

The Commission and the Member States shall inform each other of the measures taken under this Regulation and shall supply each other with any other relevant information at their disposal in connection with this Regulation, such as breaches and enforcement problems, judgments handed down by national courts or decisions of relevant international fora.

Article 8

1. The Commission shall estabish a list of the competent authorities referred to in Article 3 on the basis of relevant inforamtion provided by the Member States. The Commission shall publish this list and any changes to it in the *Official Journal of the European Communities.*

2. The Commission shall establish a list of the aircraft registered in the Federal Republic of Yugoslavia which are lawfully present in the European Community in accordance with Article 1(b) on the basis of relevant information provided by the Member States. The Commission shall publish this list in the *Official Journal of the European Communties.*

Article 9

Regulation (EC) No 1901/98 shall be repealed and replaced by the provisions of this Regulation.

Article 10

This Regulation shall apply:

(a) within the territory of the Community including its airspace,

(b) on board any aircraft or any vessel under the jurisdiction of a Member State,

(c) to any person elsewhere who is a national of a Member Sate, and

(d) to any body which is incorporated or constituted under the law of a Member State.

Article 11

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

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

Done at Brussels, 21 May 1999.

For the Council

The President

H. WIECZOREK-ZEUL

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 16 September 1998

authorising subject to conditions, aid granted by Italy to Società Italiana per Condotte d'Acqua SpA

(notified under document number C(1998) 2858)

(Only the Italian text is authentic)

(Text with EEA relevance)

(1999/338/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having given notice to the parties concerned to submit their comments [1], in accordance with the aforementioned provisions,

Whereas:

I

Società Italiana per Condotte d'Acqua SpA (Condotte) is a company operating in engineering and civil infrastructure construction (roads, railways, etc.); it was previously the property of Iritecna SpA (Iritecna), a wholly owned subsidiary of IRI SpA (IRI), which was in its turn wholly owned by the Italian Treasury. In 1993 IRI, which wished to restructure its engineering and construction activities, decided:

— to put Iritecna into liquidation, at a total cost of ITL 4 490 billion (ECU 2,3 billion), and

— to set up a subholding company, Fintecna (Fintecna), which was to privatise Iritecna's profitable businesses.

Condotte recorded losses totalling ITL 152 billion over the period from 1991 to 1994. Its gross profit margin fell from 11 % of turnover in 1991 to 4,5 % in 1994, with a low point of 2 % in 1993. The shareholders repeatedly had to make up the company's losses, at a total cost of more than ITL 118 billion (ECU 61 billion).

Despite its losses, Condotte was considered to be potentially attractive to private investors, largely because of the size of its order-book; the main items in the order-book derived from Condotte's membership of the Iricav 1 and Iricav 2 consortia, the contractors for the Rome-Naples and Verona-Venice stretches of the projected Italian high-speed rail network. Iritecna's controlling stake in Condone, which amounted at that time to 91,7 %, was accordingly transferred to Fintecna, with a view to privatisation.

The restructuring measures which Condotte now undertook, reducing its workforce from 1 500 to less than 1 000, writing down the value of work in hand, etc., together with the prospects generated by the resumption of work on the high-speed rail network, led Fintecna to

[1] OJ C 327, 29.10.1997, p. 4.

believe that Condotte could be privatised as early as 1995; and this was expressly provided for in the plan for the restructuring of Iritecna which was submitted to the Commission. At the end of 1994 an adviser was appointed to select potential buyers for Condotte.

By Decision 95/524/EC [2] (the Decision) the Commission declared that the aid granted to Iritecna and Fintecna in connection with the Iritecna liquidation was compatible with the common market. The Decision also authorised Iritecna to cover Condotte's losses up to 31 December 1994, which amounted to ITL 110 billion, or ECU 56,4 million.

Article 1 of the Decision required compliance with the restructuring plan approved by the Commission, which among other things called for the privatisation of Fintecna's subsidiaries, including Condotte, within a reasonable time limit and without further State aid.

After the Decision was adopted, however, the Italian Government informed the Commission that the sale of Condotte had been suspended in order to allow time for an assessment of the legal implications of guarantees given by IRI in connection with the high-speed rail network project.

When that assessment was completed in November 1995, the procedure for the sale of Condotte was set in motion once again, the objective now being to sell off a minority holding: the whole of the capital was to be sold only when IRI had discharged the guarantees for the work on the high-speed rail network.

In the mean time Condotte continued to record substantial losses: these reached ITL 71 billion (ECU 36 million) in 1995, falling to ITL 21 billion (ECU 11 million) in 1996.

In order to replenish Condotte's share capital, which had been eroded by its losses, Fintecna was obliged to provide fresh funding of ITL 65 billion in March 1996 (ECU 33 million) and a further ITL 7 billion (ECU 4 million) in December 1996. As a result of these transactions Fintecna's holding in Condotte increased to 95,8 % of the capital.

On 24 June 1997, in response to a request from the Commission, the Italian authorities informed it of the measures taken to replenish Condotte's share capital and reported that negotiations for the sale of the company had resumed. The Italian authorities took the view that Fintecna's funding of Condotte must be considered a duty (*atto dovuto*) within the meaning of the Civil Code, as Condotte would otherwise have had to be put into liquidation.

Finally, in March 1997, Fintecna sold 45,7 % of the capital in Condotte to a private investor, Ferrocemento SpA (Ferrocemento); the contract of sale includes the following clauses:

(a) Fintecna gives Ferrocemento an option to buy the remaining shares at a predetermined price, and Ferrocemento gives Fintecna an option to sell them at the same price; these options are valid until six months after the expiry of IRI's guarantees on the work on the high-speed rail network or, in the event of early discharge by IRI itself, until 30 June 1999;

(b) the sale price is based on a valuation of ITL 100 billion (ECU 51 million) for Condotte;

(c) Fintecna must replenish Condotte's share capital to bring it up to ITL 40 billion at the time of the transfer;

(d) Fintecna is to have no further interest in Condotte's trading results from the time of the transfer of 45,7 % of the shares, this being achieved by means of a compensation mechanism which adjusts the selling price for the remaining 50,1 % of the capital.

In June 1997, in order to comply with the clause requiring it to replenish Condotte's share capital, Fintecna provided further funding of ITL 33 billion (ECU 17 million).

The Commission now decided to initiate proceedings under Article 93(2) of the Treaty in respect of the fresh capital contributed in the years from 1995 to 1997, the unsatisfactory restructuring measures taken, and the terms of the privatisation of the company, which appeared to conflict with the conditions laid down in the Decision. The Commission informed the Italian Government of its decision to initiate proceedings by letter of 1 August 1997 [3].

The Italian Government submitted formal observations by letter of 20 October 1997.

No other Member State or interested party submitted observations within the time allowed. By letter of 1 December 1997 the Commission requested more information from the Italian authorities. That information was supplied in a letter of 22 January 1998, and at a meeting which took place in Rome on 20 January 1998.

[2] OJ L 300, 13.12.1995, p. 23.

[3] See footnote 1.

The Italian authorities provided further particulars by letters of 10 and 12 February. Lastly, on 5 May the Commission received a copy of the company's balance sheet as at 31 December 1997 and its industrial plan for the period 1998 to 2000.

The information furnished by the Italian authorities showed that on 17 December 1997 Fintecna had provided Condotte with a further capital injection amounting to ITL 58 billion (ECU 30 million) as an adjustment for the purchaser, following further falls in the value of Condotte's assets. With this injection, the total funding provided by Fintecna to Condotte after 1994 was brought up to ITL 163 billion (ECU 84 million).

II

In its observations the Italian Government argues:

(i) that the Decision makes provision for injections of fresh capital into Condotte;

(ii) that Fintecna provided the fresh capital out of its own resources and acted as a private investor would have done, so that the money does not constitute State aid,

(iii) that there has been no infringement of the conditions imposed by the Decision.

The Italian Government further argues that, if the measures referred to are to be considered State aid, they should in any event be declared compatible with the common market under Article 92(3) of the Treaty.

As regards point (i), the Italian Government contends that at the time of the Decision the Commission was already aware of the need for further funding of the company in order to allow privatisation to take place and that the Commission was informed in good time of each of the recapitalisation operations at Condotte and of the progress of the sale of the company.

The restructuring plan approved in the Decision provided that sound businesses, and those that could be returned to a sound footing, were to be transferred to Fintecna with a view to privatisation. The Italian Government argues, therefore, that the Decision allowed for the need to finance a measure of restructuring, particularly in the construction industry, which is the industry in which Condotte operates.

After the Decision, the Italian Government contends, both Fintecna and its parent IRI kept the Commission regularly informed of the progress of the privatisation process. At a meeting in Rome in June 1997, for example, IRI and Fintecna supplied all the information needed for an assessment of the facts which now form the basis of the Article 93(2) proceedings.

As regards point (ii), the Italian Government argues that Fintecna helped Condotte using resources generated by Fintecna's own activities, without any contribution on the part of the State, and that Fintecna acted in accordance with the private investor principle, so that its action cannot be considered State aid.

The Italian Government states that Fintecna compared the cost of putting Condotte into liquidation with the cost of recapitalising and privatising it. Where the foreseeable cost of a liquidation exceeds that of recapitalisation and sale of the company, the Italian Government argues, there is no State aid caught by Article 92(1).

The Italian Government states in particular that Fintecna estimated the cost of putting Condotte into liquidation at ITL 600 billion, if the company were wound up in an orderly fashion, and at ITL 2 700 billion, if it were wound up in free fall. Fintecna concluded that it would be preferable to recapitalise Condotte and to keep it in operation pending privatisation. With that end in view, Fintecna behaved as a private investor would have done, and the funds it injected into Condotte do not constitute State aid.

As regards point (iii), the Italian Government maintains that it has complied with all the conditions imposed by the Decision, with particular reference to the total cost of restructuring, the commitment to restructure the group, and the privatisation of Condotte.

On the total cost of the plan approved by the Commission, the Italian Government points out that the Decision authorised a total of ITL 4 490 billion in aid, ITL 1 090 billion being money already given to subsidiaries, including Condotte, in the period 1991 to 1993, and ITL 3 400 billion being the estimated cost of putting Iritecna into liquidation, after deduction of ITL 1 653 billion in proceeds from sales by Fintecna.

As things stand at present, the Italian authorities expect that the final cost will be less than the maximum just mentioned, despite the lower returns on the sale of Condotte: the Decision has thus been complied with.

Turning to the restructuring operations provided for in the Decision, the Italian Government argues that the action taken does in reality comply with the plan approved by the Commission. As regards the reduction in the workforce (and thus indirectly in production capacity), the forecast figures which the Commission cites in the letter initiating proceedings refer to the active workforce

engaged on open-ended contracts, while the figures taken from the annual reports include other staff, such as those on fixed-term contracts and those laid off under the 'Cassa integrazione guadagni' wage compensation scheme.

The Italian Government argues that the decline in Condotte's performance as compared with the forecasts in the plan, which called for net profits of ITL 19 billion in 1995 and ITL 40 billion in 1996, was due to worsening market conditions, and not to a failure to restructure the company.

The Italian Government contends that the results obtained by Condotte in 1995 and 1996 cannot be compared directly with the restructuring plan which the Commission approved in the Decision. The failure to achieve the turnover called for in the plan caused a reduction of ITL 130 billion in Condotte's gross margin over the two years. A number of non-operational items amounting to ITL 46 billion have to be added to that negative effect — items which were not foreseeable at the time the plan was drawn up; once this has been done, it can be seen that the restructuring effort provided for has actually been exceeded.

On the obligation to privatise laid down in the Decision, the Italian Government points out:

— that the same question is currently before the Court of First Instance of the European Communities,

— that in any event Fintecna complied with the condition, having sold Condotte within a 'reasonable time limit' as required by the Decision.

When it initiated the proceedings, the Commission argued that on the basis of the information at its disposal the sale of Condotte could not be considered a genuine privatisation: out of the shares in its possession Fintecna had sold only 45,7 % and had kept 50,1 % (the remaining 4,2 % is quoted on the Milan Stock Exchange).

The Italian Government argues that the privatisation of Condotte must be considered genuine and definitive. The sale of 45,7 % is linked to specific contractual clauses which make the sale of the remaining 50,1 % inevitable. The decision to sell the company in two instalments is due to the presence of a contractual clause in the agreement between the high-speed rail company TAV and the Iricav consortium, of which Condone is a member. The consortium has won the contracts awarded by TAV for the building of the Rome-Naples stretch of the high-speed network. The clause requires IRI to preserve its 'majority participation' in the consortium until the work is completed.

According to the Italian Government, that clause could be cancelled by agreement between the Iricav consortium and TAV. In that event the contract for the sale of Condotte would already entitle Fintecna to sell the remainder of its holding.

In support of its claim that the sale of Condotte has to be considered definitive, the Italian Government cites two other points:

— the fact that the Italian competition authority, the 'Autorità garante della concorrenza e del mercato', found in the course of its own inquiry that, although the sale related to only 45,7 % of the capital, it nevertheless directly transferred managerial responsibility to the purchaser,

— the fact that the auditors certifying Condotte's accounts intended to exclude the company's 1997 results from Fintecna's consolidated accounts on the grounds that there was no effective control.

The Decision also required that the privatisation of Condotte be carried out without further aid. The Italian Government maintains that the financing that Fintecna gave to Condotte after 1994, amounting to some ITL 163 billion (about ECU 84 million), should not be considered State aid within the scope of Article 92, on the grounds explained with reference to point (ii). Alternatively, any aid should be considered compatible with the common market because:

— the financing was provided in connection with a restructuring plan aimed at restoring the company to profitability, something which is confirmed by its privatisation,

— the funds were limited to what was strictly necessary to ensure that Condotte returned to market viability.

III

In the light of what has been said, it will first have to be determined whether or not the measures described infringe the conditions laid down in the Decision. If they do, the question of the compatibility of the aid given to Condotte up to 1994, which was approved in that Decision, will have to be reconsidered. In order to determine whether the conditions laid down in Article 1(4) and (5) of the Decision have been complied with, it will also have to be established whether the funds given to Condotte after 1994 constitute State aid caught by Article 92 of the Treaty, and, if more State aid has in fact been granted, it will then have to be considered whether the aid measures for Condotte, taken as a whole, are compatible with the common market.

As has been explained, the Decision found that the aid granted to Condotte up to 1994 (ITL 110 billion or ECU 56 million) was compatible with the common market subject to a series of conditions, including the following:

(i) Condotte was to carry out the measures called for in the restructuring plan approved by the Commission;

(ii) Fintecna and its subsidiaries, including Condotte, were to be privatised in accordance with the time-scale submitted to the Commission, and in any case within a reasonable time limit;

(iii) the income from the sale of companies was not to be used to assist companies in difficulty which had not yet been sold;

(iv) no further State aid was to be granted in connection with the privatisations.

(i) **The obligation to carry out the restructuring measures called for in the plan**

In the decision initiating the Article 93(2) proceedings, the Commission argued that the reorganisation of Condotte called for by the restructuring plan had not been completed. In particular, it observed that:

— the number of employees on open-ended contracts had increased in the period 1994 to 1996 from 383 to 431 (or 513 including Metroroma, which was taken over in 1996),

— this increase in staff coincided with a very unfavourable economic situation, with losses of ITL 71 billion in 1995 and ITL 21 billion in 1996.

In its observations the Italian Government contends that the figures used by the Commission include workers who are entered on the company's personnel register (*libro matricola*) but are not actually working, such as those laid off under the Cassa integrazione guadagni scheme. According to the Italian Government, comparing comparable figures gives the following picture:

	1993	1994	1995	1996	1997
Staff provided for in restructuring plan (average)	1 003	759	550	...	609
Staff at end of year (as shown in personnel register)	854	645	680	642	543

Note: Figures for entire construction sector (Condotte and Italstrade).

According to the Italian Government, these figures show that the efficiency objective in the plan has been achieved.

To make a proper comparison, however, the figure that must be looked at is the average number of employees over the year (estimated on the basis of the arithmetic average of the end-of-year figures for two successive years):

	1993	1994	1995	1996	1997
Annual average staff (Commission estimate)	n.a.	750	663	661	592

It will be seen that only in 1994 was the real average figure in line with the restructuring plan; subsequently, in both 1995 and 1996, it easily exceeded what was laid down in the plan.

At the same time, and partly as a consequence, Condotte's financial results were heavily negative, in contrast to what had been provided for in the plan. The plan anticipated a net profit of ITL 19 billion in 1995, when there was in fact a net loss of ITL 71 billion, and a net profit of ITL 40 billion in 1996, when there was in fact a net loss of ITL 21 billion. In 1997, whereas the plan anticipated a net profit of ITL 37 billion, the company in fact made a loss of ITL 78 billion.

It is not sufficient to say here, as the Italian Government does, that the worsening situation was due to an unforeseeable decline in the market. The plan provided that beginning in 1995, the internal restructuring measures would enable Condotte to achieve a gross industrial margin, before structural costs, equal to 7 % of turnover. In theory, that margin would have allowed the company's losses to be contained at roughly ITL 20 billion in 1995, despite the fall in revenue that actually took place.

With an industrial margin of 7 % the Commission took the view that, even with a pessimistic forecast of the market (which proved to be justified) the company would be able to maintain a substantial economic balance without resort to further capital injections. In fact Condotte's 1995 industrial margin was negative and indeed it made a net loss in excess of its corporate assets.

However, in 1996 and above all in 1997 Condotte undertook a more stringent effort than that in the plan that had been approved, in order to deal with the manifest deterioration in market conditions. The period 1995 to 1997 proved to be one of the most difficult periods experienced by the construction sector in Italy (where Condotte generates over 70 % of its income).

Despite adverse trading conditions, Condotte maintained an adequate operating profit margin and reduced its structural costs more drastically than assumed in the restructuring plan approved by the Commission. As can be seen from Table 1 its 1996 gross margin reached 12 % of net turnover, compared with the figure of 7 % anticipated in the plan. In 1997, its structural costs were around 20 % below those anticipated in the plan, as a result of further restructuring measures adopted by the enterprise.

Table 1

Condotte's financial results

(in billion ITL)

	1996 planned	1996 actual	1997 planned	1997 actual
Net turnover	1,425	496	1 366	603
Gross margin	126	61	120	41
Structural costs	(35)		(37)	(31)
Operating loss	38	(21)	37	(78)

Source: Condotte's annual accounts for 1996 and 1997 (excluding for Metroroma).

Much of the company's net losses in the period resulted from writing down assets in line with the smaller margins which were capable of being generated on work in progress and work already completed.

Moreover, Condotte's rationalisation measures continued into the first months of 1998; headquarters staff was further cut from 110 as at 31 December 1997 to 105 as at 27 March 1998 (they had numbered 185 on 31 December 1996). Managerial staff, with an appreciably higher unit cost, was cut from 25 as at 31 December 1997 to 19 as at 27 March 1998.

It can be concluded that the condition imposed by Article 1(2) of the Decision has been complied with, more especially in view of the action taken by the company to contend with a market less favourable than that anticipated in the restructuring plan.

(ii) **The obligation to privatise Condotte in accordance with the timescale submitted or, in any case, within a reasonable time limit**

One of the factors which was felt to justify the Decision was the Italian Government's undertaking to privatise Condotte rapidly in accordance with the restructuring plan; on the basis of the information submitted it was considered in the Decision that privatisation would be possible in a very short time ([4]). The intention to sell off Condotte rapidly was considered a major factor in the assessment of the aid granted to Iritecna, among other things, in view of the enormous aid given to Iritecna's construction sector up to that time.

The Commission accepted that some restructuring of the construction sector was still going on at the time of the Decision but, in the light of the Iritecna plan, it expected that this 'should be completed by the end of 1995' ([5]), allowing the companies to be sold off. For this reason, Article 1(3) and (5) of the Decision expressly required that Fintecna's subsidiaries be privatised in accordance with the timescale submitted to the Commission or, in any event, within a reasonable time and that no further State aid be given.

But the procedure for the sale of the companies was suspended shortly after the Decision was adopted, and set in motion again only in November 1995. According to the Italian Government, this was because of the need to study the legal implications of the contractual guarantees given by IRI for the work on the high-speed rail network.

Only in March 1997 was a contract concluded for the sale to Ferrocemento of 45,7 % of Condotte's capital belonging to Fintecna. When it initiated proceedings, the Commission did not have sufficient information to be able to establish whether the sale could be considered genuine and irreversible so as to satisfy the requirements of the Decision. The Commission raised doubts regarding the following aspects in particular:

— the transfer from Fintecna to the buyer power to appoint the management,

— the financial implications for Fintecna of any further losses by Condotte,

— the terms of the transfer of the remaining 50,1 % of the capital,

— the possibility that the IRI guarantees in respect of the high-speed rail network contracts might have to be met.

In its reply, the Italian Government has supplied sufficient information to dispel the doubts raised by the Commission.

As regards the transfer of managerial power, the buyer is given the responsibility for appointing the managing director (*amministratore delegato*), who has the power to manage the company subject to the authorisation of the board of directors (*consiglio di amministrazione*). The only restrictions relate to acts which might be damaging

([4]) See Section III, point 6.
([5]) See Section IV, point 3.

to Fintecna or IRI in connection with the work on the high-speed rail network. The board of directors itself is made up of seven members, three of them, including the managing director, being appointed by Ferrocemento, three by Fintecna, and the chairman by Ferrocemento subject to Fintecna's agreement.

On the basis of this information, it can be concluded that the buyer takes over from Fintecna full power to manage Condotte.

Turning now to the possibility that future losses by Condotte might have to be borne by Fintecna, the contract establishes a complex mechanism for the adjustment of the selling price for the 50,1 % of the share capital remaining with Fintecna; this has the result of excluding Fintecna itself from any financial burdens whatsoever deriving from operating losses by Condotte.

The selling price for the 50,1 % is set at ITL 50,1 billion, but this is to be adjusted to include:

— the portion borne by Fintecna in any further capital increase, whether or not intended to cover losses made after the transfer of the shares (to be added to the price),

— the portion accruing to Fintecna in any profits made by Condotte and distributed to the shareholders after the transfer of the shares (to be subtracted from the price),

— any payments by Fintecna to cover losses made by Condotte after the reference date laid down in the contract (to be added to the price).

All of the items described, including the selling price, are indexed from the date of the particular transaction to the date of transfer of the remaining 50,1 % of the capital, at a rate of interest laid down in the contract.

On the basis of this information, it can be confirmed that Fintecna will not bear the financial effects of any further losses by Condotte. It is clear, then, that Fintecna will no longer be liable for the company's operating losses. From the point of view of liability, the privatisation of Condotte can be regarded as complete even though Fintecna continues to hold the majority of the share capital.

The contract lays down the following mechanism for the transfer of the remaining 50,1 % of the share capital to Ferrocemento:

— Fintecna is entitled to transfer its 50,1 % to Ferrocemento at the predetermined price between 1 January and 30 June 1999 or until six months after the discharge by IRI of the guarantees for the high-speed rail network,

— Ferrocemento is entitled to acquire the 50,1 % in Fintecna at the predetermined price at any time from the date of discharge of the guarantees referred to until 30 June 1999 or until six months from the date of discharge of the guarantees by IRI.

It transpires from this that there is no legal obligation on the parties to complete the transfer of Condotte. Each party is entitled to call for completion of the sale, and only if one exercises its right is the other obliged to complete the transaction. It might conceivably happen that neither party exercises its right: in that case the transfer of Condotte would not be completed, and the condition laid down in the Decision would not have been complied with.

However, the Italian Government has given an undertaking that Fintecna will transfer the remaining holding in Condotte on the contractual conditions, with particular reference to the deadlines for the exercise of the option itself. In view of that commitment Fintecna's remaining holding in Condotte can be considered a temporary one only, serving merely to protect IRI with respect to the guarantees it gave in connection with the contracts for the high-speed rail network regarding the acquirer's possible failure to complete.

Despite the fact, then, that Fintecna continues to hold 50,1 % of Condotte, the condition laid down in Article 1(3) of the Decision has been complied with. The delays in the sale were due to circumstances beyond Fintecna's control (the contractual clause in respect of the work on the high-speed rail network); as far as was in its power, Fintecna acted with the objective of privatising Condotte as rapidly as possible. That objective has been achieved, as was explained, by virtue of the clauses in the contract of sale and the commitment given by the Italian authorities that the transfer of the remaining holding will be completed as soon as possible.

The Commission notes that negotiations are taking place between IRI and TAV, the company which awarded the contract, with a view to removing the clause that requires IRI to continue holding an absolute majority of the capital in Condotte. The Commission notes that a positive outcome to those negotiations could speed up the formal transfer of the entire capital of Condotte to Ferrocemento.

(iii) **The prohibition on using the proceeds of the asset sales by Fintecna to assist companies in difficulty, and** (iv) **The prohibition on granting further State aid in connection with privatisations**

In order to determine whether Fintecna has complied with the conditions set out in Article 1(4) and (5) of the Decision, and in particular the prohibition on the granting of further aid, it has to be established whether the funding that Condotte received after 1994 can be considered an investment on market lines or whether it constitutes State aid for the purposes of Article 92(1) of the Treaty.

When it has to determine whether the financial relations between a State and a public enterprise include a State-aid component caught by Article 92 of the Treaty, the Commission applies the private-investor test to the financial flows between them. In the case under consideration, this means considering whether the funds given to Condotte after 1995 were public resources and, if so, whether they would have been invested in accordance with the private-investor test.

Under the Iritecna plan, Condotte was transferred to Fintecna, a wholly owned subsidiary of IRI, an industrial holding company itself wholly owned by the Italian Treasury. The Italian Government appoints the board of directors of IRI, which in turn appoints the board of Fintecna.

According to the settled case-law of the Court of Justice of the European Communities, in particular its judgment of 21 March 1991 in Case C-305/89 Italy v. Commission ([6]), in order to establish whether an aid measure can be considered State aid within the scope of Article 92 of the Treaty, 'no distinction should be drawn between cases where aid is granted directly by the State and cases where it is granted by public or private bodies established or appointed by the State'. Thus, even if the funds given to Condotte did not come directly from the State, it may nevertheless be that they are public funds.

It is not enough to affirm here, as the Italian Government does in its observations, that the financial measures taken by Fintecna used resources generated by the operation of its own business and not obtained from the State. If Fintecna's operating cash flow is used for an unprofitable purpose, as it was in the case of Condotte, that reduces the profit accruing to Fintecna's shareholder IRI and thus ultimately to the State. Fintecna might have used its own funds to engage in activities with a better return; this would have enabled IRI, and consequently the State, to obtain a better economic return on its investment.

A lower return on IRI's investment in Fintecna will ultimately be reflected in a loss of profit to the State so that, even though the funds given to Condotte were not provided directly by the State, they can nevertheless be said to constitute State resources. In order to establish whether or not they are caught by the prohibition in Article 92(1) of the Treaty, they have to be studied in the light of the private-investor principle ([7]).

According to that principle, a financial transaction between the State and a public undertaking contains a State-aid component if it would not have been acceptable to a private investor operating under normal market economy conditions. In particular, the presence of State aid can be presumed 'where the financial position of the company, and particularly the structure and volume of its debt, is such that a normal return (in dividends or capital gains) cannot be expected within a reasonable time from the capital invested' ([8]).

Accordingly, an analysis has to be made of Condotte's financial position in the years before the increases in capital; this is shown in Table 2.

Table 2

Condotte's financial results

(in billion ITL)

	1992	1993	1994	1995	1996
Net turnover	672,1	660,3	445,3	352,9	495,7
Gross margin	33,8	14,8	19,5	(19,0)	60,9
Operating income	(9,1)	(34,9)	(9,0)	(74,8)	0,1
Net profit (loss)	(40,7)	(87,7)	(23,9)	(70,9)	(20,4)
Net worth	39,9	63,9	46,9	(23,9)	28,1

Source: Condotte's annual accounts.

The figures set out above show that Condotte was not a profitable concern when Fintecna provided the funds. Fintecna provided further funding in 1996 despite the fact that, given Condotte's results, Fintecna could not reasonably expect any significant return on its investment.

It is not sufficient to plead that the costs of putting the company into liquidation would have been higher than those of the recapitalisations carried out. A private shareholder faced with declining market prospects and the impossibility of a return to viability would have put the company into liquidation well before 1996, and indeed before 1994, thus avoiding costly recapitalisations and substantially reducing the costs of the liquidation itself.

Furthermore, a shareholder not subject to the unlimited guarantee rule in Article 2362 of the Civil Code would have been liable for Condotte's debts only up to the amount of the equity of the company, possibly via insolvency proceedings, and would consequently have been liable for amounts significantly smaller than those actually injected into Condotte.

([6]) [1991] ECR I-1603, paragraph 13.

([7]) Commission communication to the Member States on the application of Articles 92 and 93 of the EC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector (see Part III), (OJ C 307, 13.11.1993, p. 3).

([8]) Ibid., paragraph 16.

The financial resources given by Fintecna to Condotte in 1996 and 1997 therefore constitute State aid within the meaning of Article 92(1) of the Treaty. Thus the condition laid down in Article 1(5) of the Decision has not been complied with; consideration will accordingly have to be given not only to the compatibility of the fresh aid granted, but also to the compatibility of the aid received by Condotte and approved in the Decision, which amounted to ITL 110 billion.

In assessing compliance with the Decision, it is not enough to say that the total volume of aid approved has not been exceeded. The Decision expressly provided that the individual privatisation operations were not to be financed by further State aid. The purpose of this obligation was to reduce the distorting effect of the aid granted and, consequently, to ensure that any resources acquired as a result of the sell-offs were devoted to reducing the costs of putting the Iritecna/Fintecna group into liquidation.

In addition, given that the businesses likely to be most attractive to potential private investors had been transferred to Fintecna primarily with a view to sale, and only within limits with a view to restructuring, the Decision expressly prohibited further aid to those businesses.

In principle, when State-owned businesses are privatised it may be permissible to grant State aid for purchasers where the sale does not take place on market conditions or for the business where the contract of sale requires the acquirer of the business to carry on unprofitable segments which would have been discontinued by an investor operating on market conditions.

Regarding the sale of Condotte to a private investor, that sale was carried through in compliance with the relevant Community rules. Both the 1994 procedure, which was subsequently abandoned, and the 1995 procedure, which terminated in the sale of the company to Ferrocemento, entailed making public offers to buy the business. Thus about 20 investors were initially interested in the sale of Fintecna's civil engineering businesses. Of the 20, 13 submitted offers, of which two were placed on a shortlist. Only Ferrocemento submitted a binding offer and therefore it alone was admitted to the due diligence stage.

In the procedure followed by Fintecna all potential investors were placed on an equal footing in the sale and the best offer was chosen. That gave the Commission reason to conclude that the sale took place at the market price and thus that no aid was given to Ferrocemento in its acquisition of Condotte.

Moreover, the contract of sale does not contain any clauses specifically obliging the acquirer to continue any loss-making activities. In any case, no element of aid for Condotte can be discerned in the terms of sale.

As has been explained, the aid granted to Condotte after 1994 constitutes State aid within the scope of Article 92(1) of the Treaty and, as a result, the aid received by the company before 1994, which the Commission approved in the Decision, is in principle likewise unlawful; the possibility has now to be considered whether the grants of aid, taken as a whole, are compatible with the common market.

IV

Under Article 92(2) and (3) of the Treaty certain aid is, or may be declared, compatible with the common market.

Paragraphs 2, 3(a) and 3(b) of Article 92 of the Treaty cannot be applied to measures of the kind under consideration here. In view of the variety of Condotte's activities and locations, and the fact that the aid does not have a regional objective, the only possible exemption is that provided for in paragraph 3(c), which deals with aid to facilitate the development of certain economic activities. By its very nature, the aid in this case must be considered aid for the restructuring of firms in difficulty.

As regards such aid, the Commission has published Guidelines on State aid for rescuing and restructuring firms in difficulty ([9]). In practice, if it is to approve one-off measures to restructure a firm in difficulty, the following tests must be satisfied:

(i) the measures must restore the long-term viability of the firm;

(ii) the measures must avoid undue distortion of competition;

(iii) the measures must be in proportion to the costs and benefits of restructuring and thus limited to the strict minimum needed;

(iv) the restructuring plan must be fully implemented;

(v) the implementation of the restructuring plan must be monitored and verified by the Commission.

([9]) OJ C 368, 23.12.1994, p. 12.

Only if all of these tests are satisfied can the Commission take the view that the effects of the aid are not contrary to the Community interest and approve it under Article 92(3)(c) of the Treaty.

As regards test (i), the restoration of viability, the Italian authorities had submitted a restructuring plan at the time of the Decision which was intended to restore Condotte to profitability from 1996 onward. The aid given to Condotte up to 1994 (ITL 110 billion) was held to be compatible with specific regard to that plan and to the Community Guidelines. However, Condotte did not achieve the financial results expected and so had to fall back on public assistance once again (receiving ITL 163 billion, as has been explained).

It should be pointed out, however, that Condotte's failure to return to profitability was the result of a market situation which was not foreseeable at the time of the Decision.

Condotte's restructuring plan, which the Commission approved in the Decision, was based on prudent estimates of the future development of the company's order book. On 31 December 1992 that portfolio of work amounted to ITL 2 255 billion, of which more than ITL 795 billion related to contracts connected with the high-speed rail network. On the basis of the work schedule laid down by the company awarding the contract, it was reasonable to expect Condotte's turnover and financial results to develop as shown in Table 3.

Table 3

Forecast financial results of Condotte

(in billion ITL)

	1995	1996	1997
Net turnover	896	1 425	1 366
Gross margin	66	126	120
Operating result	31	91	83
Net profit (loss)	19	38	37

Source: Iritecna's restructuring plan.

The above valuations have already given due regard to the difficulties of the civil engineering sector, which experienced a severe crisis in the 1990s, in staging a recovery. They allowed for a rate of acquisition of orders much below Condotte's potential and indeed assumed the company would be focusing on work related to the high-speed rail network. None the less, the crisis in the sector continued until 1996 with a severity that was not foreseeable, giving some signs of recovery only in the second half of 1997.

Moreover, the contracts already secured for the high-speed rail network were delayed for reasons outside the company's control.

With the interaction of those two factors, Condotte's turnover was in fact substantially lower than forecast in the plan, as is shown in Table 1:

— in 1995 it amounted to ITL 353 billion, or 39 % of the figure forecast,

— in 1996 it amounted to ITL 496 billion, or 35 % of the figure forecast.

In both those years, as in 1994, Condotte's turnover was about 40 % less than in 1992 and 1993, years in which the crisis in the industry in which Condotte operates was already very serious. Faced with this crisis on the market around it, Condotte reacted by taking further restructuring measures, going beyond what had been provided for in the plan; although these were not enough to secure net profits, they did allow the company to record a positive operating result in 1996, its first in a long time.

In particular, the restructuring measures concentrated on reducing structural costs, which in 1996 reached levels some 10 % below what had been provided for in the restructuring plan. In 1997, as has been indicated, these costs were about 20 % below what had been provided for in the restructuring plan. In that period, the company stepped up its internal restructuring effort with the aim of returning to a stable level of profitability. For example, headquarters staff, an item reflected in structural administrative costs, was reduced from 201 on 31 December 1995 to 105 in March 1998, with management staff, which has a higher unit cost, falling from 51 at the end of 1995 to 19 in March 1998 (down 61 %).

As a result of these operations and of further restructuring efforts affecting the entire structure of the group, Condotte succeeded in 1996 in reversing the negative economic trend that had been apparent up to 1995, in spite of the crisis in the construction sector. Its gross margin went from − 5,4 % of turnover to positive figures in both 1996 and 1997 (ITL 61 billion and ITL 41 billion respectively).

In 1996 and 1997 Condotte recorded a net loss, particularly heavy in 1997, but this was due mainly to the extraordinary items representing the costs of restructuring.

The restructuring efforts undertaken will bring the company to a better level of profitability in future years, bearing in mind the anticipated slow-down in work on the high-speed rail network, as forecast in the industrial plan presented to the Commission.

Table 4

Condotte's industrial plan 1998 to 2000

(in billion ITL)

	1998	1999	2000
Net turnover	660	570	459
Gross margin	95	84	70
Operating result	13	9	10
Operating loss	8	8	5

Source: Condotte's 1998 to 2000 restructuring plan.

As a result of the company's restructuring effort, particularly in the period 1996 to 1997, in addition to the plan approved by the Commission Decision, Condotte will be able to reach a satisfactory level of profitability despite the forecast deterioration in market conditions. Nevertheless, it must be kept in mind that long-term profitability is being attained through the crucial contribution of internal rationalisations (reductions in capacity etc.) rather than on the basis of favourable market prospects.

It may be considered that the first test of the admissibility of aid for restructuring is thus satisfied.

The Commission notes that the company has been transferred to a private shareholder, so that the State will not, under the contractual terms, be made financially liable for any losses that Condotte may incur. The presence of a private controlling shareholder (see section III) also provides a better assurance of Condotte's prospects of profitability.

The second test requires that the aid avoid undue distortion of competition. In principle, any aid granted by a State to a firm causes undue distortion of free competition since it leaves that firm in a more favourable economic situation than its competitors. This effect consequently has to be offset by reductions in production capacity, especially in an industry such as construction, where there is substantial overcapacity.

In this case the restructuring plan approved by the Commission in the Decision has already provided for significant cuts in production capacity. The production capacity of a construction firm, both in terms of its ability to plan and design and in terms of its ability to implement its plans, is based mainly on its human resources; the significant reduction in the size of Condotte's human resources base at the time of the Decision, along with the relevant decline in production, pointed clearly to a substantial fall in its market share. The Commission accordingly held that the aid given to Condone up to 31 December 1994 satisfied the tests for restructuring aid.

But Condotte received further aid after the Decision, and it must therefore be asked whether these new resources have not affected trade between Member States in a manner contrary to the common interest; this would be so if Condotte had been put in a position to use the resources to finance trading practices enabling it to increase its own market share at the expense of competitors who had received no State aid.

As has been explained, however, Condotte reduced its staff and thus its production capacity in 1995 and especially in 1996 and 1997, and the reductions went beyond what was provided for in the plan.

The Commission took the view that the development of turnover provided for in the plan (see Table 3) would not affect trade to an extent contrary to the common interest. As it turned out, Condotte's turnover during the period 1995 to 1997 was about 40 % of what was called for in the plan, and the rate of incoming orders was a great deal slower, as is shown in Table 5.

Table 5

Condotte's turnover and orderbook

	1993	1994	1995	1996	1997
Net turnover	660	445	352	495	603
Order book	2 012	2 411	2 214	2 376	2 058
Including high-speed rail network	795	1 566	1 516	1 792	n.a.

Source: Condotte's annual accounts.

It is clear from these figures that, as a result of the restructuring of the company, Condotte has been competing less and less on world markets. Its order book for work connected with the high-speed rail network (orders won as a result of the formation of the Iricav consortia at the beginning of the 1990s) has increased as a proportion of its overall activities, from 39 % in 1993 to

75 % in 1996. The increase in the order book in 1994 was almost entirely due to the acquisition by Iritecna of a further share in the Iricav consortium for the high-speed rail network. In the same way, the increase in turnover in 1996 is the direct consequence of the progress of the work of the consortium itself.

Moreover, the industrial plan for the period 1998 to 2000 that was drawn up by the company's new management entails, through its concentration on orders already placed for the high-speed rail network, a further reduction in the company's presence on the market. In future, turnover will therefore be reduced, resulting in a further reduction in the distortion caused by the grants of aid.

At the same time, the company has substantially reduced its operations abroad, where the number and value of new contracts has fallen significantly. It has consequently reduced its production capacity by much more than what was called for in the restructuring plan for the company. Accordingly, its ultimate competitive position will not affect trade to an extent contrary to the common interest.

Test (iii) requires that aid be in proportion to costs and benefits: if State aid is to be declared compatible, it must be limited to the strict minimum needed to finance the return to viability and must not be used to finance aggressive competitive practices, except to the extent necessary to restore the firm itself to profitability.

From the information supplied by the Italian Government it can be concluded that the funding provided by Fintecna to Condotte was needed to cover losses due mainly to the writing-down of activities and to the costs of reducing production capacity (staff cuts). During the delays in the sale of Condotte, Fintecna financed further restructuring efforts, going beyond what was laid down in the Iritecna plan, in order to cope with the unexpected worsening of market prospects.

The Commission takes the view, therefore, that the aid granted did not bring the company additional liquidity which was unrelated to the process of restructuring and might have helped to finance aggressive commercial or investment practices not necessary to the restructuring operation.

The Commission also observes that Condone will not qualify for any tax credit in respect of the losses covered by the funds contributed by Fintecna.

Lastly, the recipient will make a significant contribution to the financing of the restructuring operation, as any further burdens are to be borne entirely by the buyer of the company, through the mechanism for adjusting the price of the transfer of the 50,1 % of the share capital still in Fintecna's possession.

The Italian Government should be required to submit periodic reports on the progress of privatisation and on the implementation of the restructuring plan drawn up for Condotte,

HAS ADOPTED THIS DECISION:

Article 1

The aid to Società Italiana per Condotte d'Acqua SpA (Condotte) to which this Decision relates, namely the capital injections granted in the years 1995 to 1997 totalling ITL 163 billion, and the aid granted up to 1994 already approved by the Commission, amounting to a total of ITL 110 billion, constitute State aid within the meaning of Article 92(1) of the Treaty and Article 61(1) of the EEA Agreement.

It satisfies the tests laid down in the Community Guidelines of 27 July 1994 on State aid for rescuing and restructuring firms in difficulty. The aid is consequently declared exempt, under Article 92(3)(c) of the Treaty and Article 61(3)(c) of the EEA Agreement, from the prohibition imposed by Article 92(1) of the Treaty and Article 61(1) of the EEA Agreement, being aid that is compatible with the common market, provided that Article 2 is complied with.

Article 2

Italy shall transfer its remaining shares in Condotte to the private shareholder on the terms and conditions stipulated in the contract of sale, in particular the terms within which the option is to be exercised.

Article 3

In order to secure full cooperation in the arrangements for monitoring this Decision, Italy shall provide the Commission with half-yearly reports on Condotte's economic and financial situation and communicate to it in good time the main steps in the transfer of Fintecna SpA's remaining holding in Condotte.

The first report shall set out Condotte's economic and financial results at 30 June 1998 and shall reach the Commission by 31 December 1998.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 16 September 1998.

For the Commission
Karel VAN MIERT
Member of the Commission