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(Continued overleaf)

EN

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

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

II *Acts whose publication is not obligatory*

EN

[1] Text with EEA relevance

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 390/2001

of 26 February 2001

on assistance to Turkey in the framework of the pre-accession strategy, and in particular on the establishment of an Accession Partnership

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Whereas:

(1) The conditions to be fulfilled by applicant States wishing to join the European Union were set out at the European Council meeting in Copenhagen in June 1993.

(2) The Heads of State and Government meeting at the European Council in Helsinki from 10 to 11 December 1999 reaffirmed the inclusive nature of the accession process, which now comprises 13 candidate States within a single framework.

(3) The European Council in Helsinki stated that Turkey is a candidate State destined to join the Union on the basis of the same criteria applied to other candidate States and that building on the existing European strategy, Turkey, like other candidate States, will benefit from a pre-accession strategy to stimulate and support its reforms.

(4) The European Council in Helsinki stated that an Accession Partnership will be drawn up for Turkey on the basis of previous European Council conclusions while containing priorities on which accession preparations must concentrate in the light of the political and economic criteria and the obligations of a Member State.

(5) It would be appropriate for European Community assistance within the framework of the Accession Partnership to focus on the aforementioned political and economic criteria and be guided by defined principles, priorities, intermediate objectives and conditions.

(6) The Heads of State and Government meeting at the European Council in Feira from 19 to 20 June 2000 invited the Commission to present as soon as possible proposals for a single financial framework for assistance to Turkey, as well as for an Accession Partnership.

(7) The Partnership, and in particular its intermediate objectives, should assist Turkey in preparing for membership within a framework of economic and social convergence and in developing its national programme for the taking up of the acquis as well as a relevant timetable for its implementation.

(8) It is essential to manage the available financial resources carefully and in line with the priorities arising out of the Accession Partnership for Turkey and the Commission's regular reports.

(9) Community assistance under the pre-accession strategy should be provided by applying to Turkey the aid programmes adopted in accordance with the provisions of the Treaties and therefore this Regulation will have no financial implications.

(10) Community assistance is conditional upon respect of the commitments contained in the EC-Turkey Agreements, the Accession Partnership and upon progress towards fulfilment of the Copenhagen criteria.

(11) The programming of the financial resources making up Community assistance will be decided in accordance with the procedures set out in the Regulations relating to the corresponding financial instruments or programmes.

(12) The role played by the bodies set up under the EC-Turkey Agreements is central to ensuring the proper implementation and follow-up of this Accession Partnership.

(13) Establishing the Accession Partnership is likely to help achieve the Community's objectives. The Treaty does not provide, for the adoption of this Regulation, powers other than those of Article 308,

[1] Opinion delivered on 14 February 2001 (not yet published in the Official Journal).

HAS ADOPTED THIS REGULATION:

Article 1

As part of the European Union's pre-accession strategy for Turkey, an Accession Partnership shall be established for Turkey. The Accession Partnership shall provide a single framework covering:

— the priorities, as defined in the analysis of the situation in Turkey, on which preparations for accession must concentrate in view of the political and economic criteria and the obligations incumbent upon a Member State of the European Union as defined by the European Council,

— the financial resources for assisting Turkey to implement the priorities identified during the pre-accession period.

Article 2

Acting on a proposal from the Commission, the Council shall decide by qualified majority on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership, as it will be submitted to Turkey, as well as on subsequent significant adjustments applicable to it.

Article 3

This Regulation shall have no financial implications. Under the pre-accession strategy, the Community assistance shall be the assistance provided for in the programmes adopted in accordance with the provisions of the Treaty.

On the basis of decisions taken by the Council pursuant to Article 2, the programming of the financial resources granted in the framework of the Accession Partnership shall be established in accordance with the procedures set out in the Regulations relating to the corresponding financial instruments or programmes.

Article 4

Where an element that is essential for continuing to grant pre-accession assistance is lacking, in particular when the commitments contained in the EC-Turkey Agreements are not respected and/or progress towards fulfilment of the Copenhagen criteria is insufficient, the Council, acting by a qualified majority on a proposal from the Commission, may take appropriate steps with regard to pre-accession assistance granted to Turkey.

Article 5

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

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

Done at Brussels, 26 February 2001.

For the Council

The President

A. LINDH

COUNCIL REGULATION (EC) No 391/2001

of 26 February 2001

amending Regulation (EEC) No 3030/93 on common rules for imports of certain textile products from third countries

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Textiles imports for which no valid import authorisations are available are sometimes taken into the possession of the competent authorities of the Member States, particularly in the context of bankruptcy or similar proceedings. In such cases it should be possible in particular circumstances for the Member State concerned to apply to dispose of the products within the Community.

(2) Regulation (EEC) No 3030/93 [1] makes provision for a double-checking system relying on the issue of export and import licences in paper form. In the light of technological progress it is appropriate to provide for the possibility of transmitting the necessary information in electronic form.

(3) It is appropriate to allow the Member States to extend the period of validity of import authorisations for two periods of three months rather than one period.

(4) The provisions of the double-checking system for products subject to surveillance should contain the same possibilities of extending the periods of validity of import authorisations as those concerning the double-checking system for administering quantitative limits.

(5) Where goods are the subject of a single import licence and are classified in the same category and are within a trade flow between the same exporter and the same importer it should be possible to present a single certificate of origin covering more than one consignment of goods.

(6) The measures necessary for the implementation of Regulation (EEC) No 3030/93 should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [2].

(7) It should be made clear that the grant of additional amounts provided for in column 9 of Annex VIII is subject to the regulatory committee procedure,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3030/93 is hereby amended as follows:

1. in Article 2 the following paragraph shall be added:

   '8. At the request of the Member State concerned, textile products in the possession of the competent authorities of that Member State, particularly in the context of bankruptcy or similar procedures, for which a valid import authorisation is no longer available, may be released into free circulation in accordance with the procedure laid down in Article 17(2).';

2. Article 12(5) shall be replaced by the following:

   '5. The competent authorities shall notify the Commission immediately after being informed of any quantity that is not used during the duration of validity of the import authorisation or at the time of its expiry. Such unused quantities shall automatically be transferred into the remaining quantities of the total Community quantitative limit for each category of product and each third country concerned.';

3. in Article 16(1) the expression 'Article 17(5)' shall be replaced by 'Article 17a'.

4. Article 17 shall be replaced by the following Articles

   '*Article 17*

   The textile committee

   1. The Commission shall be assisted by a committee (hereinafter referred to as the "textile committee").

   2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

   The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at one month.

   3. The textile committee shall adopt its rules of procedure.

   Article 17a

   The chairman may, on his own initiative or at the request of one of the Member States representatives, consult the textile committee about any other matter relating to the operation or application of this Regulation.';

5. Annexes III and VIII shall be amended in accordance with the Annex hereto.

[1] OJ L 275, 8.11.1993, p. 1. Regulation as last amended by Regulation (EC) No 2474/2000 (OJ L 286, 11.11.2000, p. 1).
[2] OJ L 184, 17.7.1999, p. 23.

Article 2

This Regulation shall enter into force on the first day of the second month 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, 26 February 2001.

For the Council

The President

A. LINDH

ANNEX

1. Annex III is hereby amended as follows:

(a) in Article 11 the following paragraph is added:

'3. Where a supplier country has entered into administrative arrangements with the Community concerning electronic licensing the relevant information may be transmitted by electronic means to replace the grant of export licences in paper form.';

(b) in Article 12 the following paragraph is added:

'4. Where a supplier country has entered into administrative arrangements with the Community concerning electronic licensing the relevant information may be transmitted by electronic means and shall be in substitution of the specimens referred to in paragraphs 1 or 2.';

(c) Article 14(2) shall be replaced by the following:

'2. The import authorisations shall be valid for six months from the date of their issue. Upon duly motivated request by an importer, the competent authorities of a Member State may extend the duration of validity for two further periods of three months. Such extensions shall be notified to the Commission. In exceptional circumstances, an importer may request a third period of extension. These exceptional requests may only be granted by a decision taken in accordance with the procedure laid down in Article 17(2) of the Regulation.';

(d) in Article 18 the following paragraph is added:

'4. Where a supplier country has entered into administrative arrangements with the Community concerning electronic licensing the relevant information may be transmitted by electronic means to replace the grant of export licences in paper form.';

(e) in Article 19 the following paragraph is added:

'4. Where a supplier country has entered into administrative arrangements with the Community concerning electronic licensing the relevant information may be transmitted by electronic means and shall be in substitution of the specimens referred to in paragraphs 1 or 2.';

(f) Article 21(2) is replaced by the following:

'2. The import authorisations shall be valid for six months from the date of their issue. Upon duly motivated request by an importer, the competent authorities of a Member State may extend the duration of validity for two further periods of three months. Such extensions shall be notified to the Commission. In exceptional circumstances, an importer may request a third period of extension. These exceptional requests may only be granted by a decision taken in accordance with the procedure laid down in Article 17(2) of the Regulation.';

(g) in Article 28 the following paragraph is added:

'7. At the request of the importer, the customs authorities of the Member States may accept a single certificate of origin relating to more than one consignment, when goods:

(a) are the subject of a single export licence;

(b) are classified in the same category;

(c) come exclusively from the same exporter, are destined for the same importer; and,

(d) are made the subject of entry formalities at the same customs office in the Community.

This procedure shall be applicable for the same period as the validity of the import authorisation including any subsequent extension thereof.

Notwithstanding subparagraph (d), if, after the importation of the first consignment, the remaining goods need to be cleared in a customs office different from the customs office where the original certificate of origin was presented, at the written request of the importer, one or several replacement certificate(s) of origin may be issued by the first customs office, corresponding with the quantities remaining on the original certificate. The specifications of the replacement certificate shall be identical to those of the original certificate. The replacement certificate shall be regarded as the definitive certificate of origin for the products to which it refers.'

2. In Annex VIII under 'Additional conditions' (column 9), on each occasion that it appears, the phrase 'Further amounts may be authorised following consultations in accordance with Article 16' shall be replaced by:

'Further amounts may be authorised by the Commission in accordance with the procedure set out in Article 17(2).'

COMMISSION REGULATION (EC) No 392/2001

of 27 February 2001

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:

(1) 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.

(2) 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 28 February 2001.

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

Done at Brussels, 27 February 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 337, 24.12.1994, p. 66.
[2] OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 27 February 2001 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	101,9
	204	47,8
	212	105,3
	624	113,7
	999	92,2
0707 00 05	052	111,6
	068	133,9
	628	144,3
	999	129,9
0709 90 70	052	105,5
	204	72,7
	999	89,1
0805 10 10, 0805 10 30, 0805 10 50	052	62,3
	204	46,4
	212	49,8
	220	49,4
	624	59,5
	999	53,5
0805 20 10	204	91,4
	999	91,4
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	76,1
	204	58,7
	600	68,3
	624	76,5
	999	69,9
0805 30 10	600	52,1
	999	52,1
0808 10 20, 0808 10 50, 0808 10 90	039	91,2
	388	99,3
	400	86,7
	404	79,5
	508	91,5
	512	108,6
	720	103,2
	728	101,4
	999	95,2
0808 20 50	388	88,4
	400	99,7
	512	78,7
	528	79,9
	999	86,7

(1) Country nomenclature as fixed by Commission Regulation (EC) No 2032/2000 (OJ L 243, 28.9.2000, p. 14). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 393/2001

of 27 February 2001

amending Regulation (EC) No 2097/2000 on a special intervention measure for cereals in Finland and Sweden

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals [1], as last amended by Regulation (EC) No 1666/2000 [2],

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals [3], as last amended by Regulation (EC) No 2513/98 [4],

Whereas:

(1) Commission Regulation (EC) No 2097/2000 [5], opened an invitation to tender for the refund for the export of oats produced in Finland and Sweden to all third countries. In the present situation, it is appropriate to increase the quantity put up for tender.

(2) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(1) of Regulation (EC) No 2097/2000 is hereby amended as follows:

'1. A special intervention measure in the form of an export refund shall be implemented in respect of 650 000 tonnes of oats produced in Finland and Sweden and intended for export from Finland and Sweden to all third countries.

Article 13 of Regulation (EEC) No 1766/92 and the provisions adopted for the application of that Article shall apply, *mutatis mutandis*, to the said refund.'

Article 2

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, 27 February 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 181, 1.7.1992, p. 21.
[2] OJ L 193, 29.7.2000, p. 1.
[3] OJ L 147, 30.6.1995, p. 7.
[4] OJ L 313, 21.11.1998, p. 16.
[5] OJ L 249, 4.10.2000, p. 15.

COMMISSION REGULATION (EC) No 394/2001

of 27 February 2001

amending Regulation (EEC) No 2700/93 on detailed rules for the application of the premium in favour of sheepmeat and goatmeat producers

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2467/98 of 3 November 1998 on the common organisation of the market in sheepmeat and goatmeat [1], as amended by Regulation (EC) No 1669/2000 [2], and in particular Article 5(9) thereof,

Having regard to Council Regulation (EEC) No 3493/90 of 27 November 1990 laying down general rules for the granting of premiums to sheepmeat and goatmeat producers [3], as last amended by Regulation (EC) No 2825/2000 [4] and in particular Article 2(4) thereof,

Whereas:

(1) Council Regulation (EEC) No 1323/90 of 14 May 1990 instituting specific aid for sheep and goat farming in certain less-favoured areas of the Community [5], as last amended by Regulation (EC) No 193/98 [6], grants specific aid to producers located in less-favoured areas, as defined in Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain regulations [7].

(2) The definition of a producer in a less-favoured area set down in Article 2(2) of Regulation (EEC) No 3493/90 has been amended to mean any producer of sheepmeat or goatmeat whose holding is located in the areas defined pursuant to Article 17 of Regulation (EC) No 1257/1999, or whose holding has at least 50 % of its area which is used for agriculture situated in such areas.

(3) It is therefore necessary to amend Commission Regulation (EEC) No 2700/93 [8], as last amended by Regulation (EC) No 1410/1999 [9], in order to bring it into line with the amended definition of a producer in a less-favoured area.

(4) The amendment of Regulation (EEC) No 3493/90 entered into force on 23 December 2000. Because the amendment makes the rules easier for the farmer to comply with, it is appropriate that this Regulation is made applicable from the beginning of the 2001 marketing year.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sheep and Goats,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1a of Regulation (EEC) No 2700/93 is replaced by the following:

'*Article 1a*

Application for specific aid in certain less-favoured areas (Regulation (EEC) No 1323/90):

1. In order to benefit from the specific aid provided for in Article 1 of Regulation (EEC) No 1323/90, a producer fullfilling the conditions laid down in the second subparagraph of Article 2(2) of Regulation (EEC) No 3493/90:

   (a) who is required to submit each year a declaration of the total utilised agricultural area of his holding, by means of an "area" aid application form, as provided for in Article 4 of Regulation (EEC) No 3887/92 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes, shall indicate in that declaration those parcels which are located in less-favoured areas and are used for agriculture;

   (b) who is not required to submit the declaration referred to under (a), shall submit each year a specific declaration using, where appropriate, the system for identifying agricultural parcels provided for under the integrated system. That declaration shall indicate the location of all the land he owns, rents or uses under whatever arrangements, indicating its area and detailing those parcels which are located in less-favoured areas and are used for agriculture. Member States may provide for the specific declaration to be included in the application for the ewe and/or goat premium.

[1] OJ L 312, 20.11.1998, p. 1.
[2] OJ L 193, 29.7.2000, p. 8.
[3] OJ L 337, 4.12.1990, p. 7.
[4] OJ L 328, 23.12.2000, p. 1.
[5] OJ L 132, 23.5.1990, p. 17.
[6] OJ L 20, 27.1.1998, p. 18.
[7] OJ L 160, 26.6.1999, p. 80.
[8] OJ L 245, 1.10.1993, p. 99.
[9] OJ L 164, 30.6.1999, p. 53.

2. The competent national authority may demand presentation of a property deed, a rental contract or a written agreement between producers and, where appropriate, an attestation from the local or regional authority which has made land used for agriculture available to the producer concerned. The attestation shall indicate the area of land granted to the producer and the parcels located in less-favoured areas.

3. The Member States may demand that, in the case referred to in paragraph 1(b), the specific declaration be made by means of an "area" aid application form.

4. Member States shall inform the Commission before 30 June of each marketing year of the number and regional location of the producers justifying their claim to premium by means of the attestation referred to in paragraph 1(b).

5. The producer's "area" declaration and specific declaration must be checked in accordance with Articles 6 and 7 of Regulation (EEC) No 3887/92. The areas actually determined by the abovementioned procedure shall be used for calculating the percentage of the area of the holding used for agriculture located in less-favoured areas in relation to the total area of the farm which is being used for agriculture.

6. Where the abovementioned documents as presented by the farmer indicate that at least 50 % of the area used for agriculture is located in less-favoured areas, but where on the occasion of a check or control the percentage actually determined is below 50 %, the specific aid shall not be paid and the ewe premium shall be reduced by a percentage equivalent to the difference between the percentage actually determined and 50 %.

However, in the case of a false declaration made intentionally or as a result of serious negligence:

— the producer in question shall be excluded from the ewe/goat premium scheme for the marketing year in question, and,

— in the case of a false declaration made intentionally, from that scheme for the following marketing year.

The reduction shall not be applied if the producer can show that determination of the area was based on information recognised by the competent authority.'

Article 2

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

It shall apply from the beginning of the 2001 marketing year.

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

Done at Brussels, 27 February 2001.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 395/2001

of 27 February 2001

fixing certain indicative quantities and individual ceilings for the issuing of Community import licences for bananas for the second quarter of 2001 under the tariff quotas or as part of the quantity of traditional ACP bananas

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 216/2001 [2], and in particular Article 20 thereof,

Having regard to Council Regulation (EC) No 216/2001 of 29 January 2001 amending Regulation (EEC) No 404/93 on the common organisation of the market in bananas, and in particular the second paragraph of Article 2 thereof,

Whereas:

(1) The second paragraph of Article 2 of Regulation (EC) No 216/2001 lays down that the amendment to Regulation (EEC) No 404/93 applies from 1 April 2000. However, the Commission may, according to the procedure laid down in Article 27 of Regulation (EEC) No 404/93, delay the date until 1 July 2001 at the latest, if this proves necessary for the implementation of modifications in the management of the tariff quotas. It is necessary to apply this provision. The introduction of a new method of management of tariff quotas and the adoption of Community and national administrative measures to apply it, justify the postponement of the application of the provisions of Regulation (EC) No 216/2000 to 1 July 2001, taking into account the quarterly management method currently practised.

(2) Article 14(1) of Commission Regulation (EC) No 2362/98 of 28 October 1998 laying down detailed rules for the implementation of Council Regulation (EEC) No 404/93 regarding imports of bananas into the Community [3], as last amended by Regulation (EC) No 1632/2000 [4], provides for the possibility of fixing an indicative quantity, expressed as a set percentage of the quantities available for each origin mentioned in Annex I to that Regulation, for the issuing of import licences for each of the first three quarters of the year.

(3) An analysis of the data on quantities of bananas marketed in the Community in 2000, and in particular on actual imports during the second quarter of that year, and on the outlook for supply and consumption on the Community market during the second quarter of 2001 indicates that, with a view to satisfactory supplies for the Community as a whole, an indicative quantity of 30 % of the quantity allocated to it should be fixed for each origin mentioned in Annex I to Regulation (EC) No 2362/98.

(4) The same data indicate that the maximum quantity for which each operator may submit licence applications for the second quarter of 2001 should be fixed, pursuant to Article 14(2) of Regulation (EC) No 2362/98.

(5) In accordance with Article 1 of Commission Regulation (EC) No 2374/2000 of 26 October 2000 on imports of bananas under the tariff quotas and of traditional ACP bananas for 2001 [5], the quantities for which traditional operators registered in respect of 1999 may submit applications for import licences for a given quarter of 2001 are to be determined on the basis of the reference quantity fixed for 1999 by the competent national authority and notified to them. In the case of newcomer operators, that maximum quantity is to be determined by applying the set percentage to the annual allocation determined by the competent national authority in accordance with the Annex to Regulation (EC) No 2598/2000 [6] and notified to each operator concerned.

(6) This Regulation must enter into force without delay, and in any case before the start of the period for the submission of licence applications for the second quarter of 2001.

(7) This Regulation seeks to ensure uninterrupted supplies to the market in the second quarter of 2001 and continued trade with supplier countries but is without prejudice to any measures that may subsequently be adopted, in particular to comply with international commitments entered into by the Community within the World Trade Organisation (WTO), and cannot be invoked by operators as grounds for legitimate expectations.

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

[1] OJ L 47, 25.2.1993, p. 1.
[2] OJ L 31, 2.2.2001, p. 2.
[3] OJ L 293, 31.10.1998, p. 32.
[4] OJ L 187, 26.7.2000, p. 27.
[5] OJ L 275, 27.10.2000, p. 5.
[6] OJ L 300, 29.11.2000, p. 6.

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 of Regulation (EC) No 216/2001 shall apply from 1 July 2001.

Article 2

For the second quarter of 2001 the indicative quantity referred to in Article 14(1) of Regulation (EC) No 2362/98 for imports of bananas under the tariff quotas or as part of the quantity of traditional ACP bananas provided for in Articles 18 and 19 of Regulation (EEC) No 404/93 shall amount to 30 % of the quantities laid down for each origin mentioned in Annex I to Regulation (EC) No 2362/98.

Article 3

1. For the second quarter of 2001 the quantity authorised for each traditional operator as referred to in Article 14(2) of Regulation (EC) No 2362/98 shall amount to 31 % of the reference quantity determined by the competent national authority and notified to him in respect of 1999 pursuant to Article 6(4) of that Regulation.

2. For the second quarter of 2001 the quantity authorised for each newcomer operator as referred to in Article 14(2) of Regulation (EC) No 2362/98 shall amount to 31 % of the quantity determined and notified to him pursuant to Article 2(6) of Regulation (EC) No 2374/2000.

Article 4

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, 27 February 2001.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 396/2001

of 27 February 2001

providing for the continued application of safeguard measures for imports from the overseas countries and territories of sugar sector products with EC/OCT cumulation of origin for the period 1 March to 30 June 2001

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community [1], as last amended by Decision 2000/169/EC [2], hereafter referred to as the 'OCT Decision', and in particular Article 109 thereof,

Following consultation with the Committee set up under Article 1(2) of Annex IV to that Decision,

Whereas:

(1) The Commission has noted that imports of sugar (CN code 1701) and of mixtures of sugar and cocoa falling within CN codes 1806 10 30 and 1806 10 90 originating in the overseas countries and territories (the OCT) increased greatly between 1997 and 1999, particularly those imports with EC-OCT cumulation of origin, which increased from zero in 1996 to more than 53 000 tonnes in 1999. Such products are imported into the Community free of import duties and are admitted without quantity limits in accordance with Article 101(1) of the OCT Decision.

(2) By Decision of 25 February 2000 extending Decision 91/482/EEC on the association of the overseas countries and territories with the European Economic Community, the Council extended the period of application of the OCT Decision until 28 February 2001. The Commission has proposed that the Council extend this Decision for the four-month period ending on 30 June 2001.

(3) Commission Regulation (EC) No 2081/2000 of 29 September 2000 providing for the continued application of safeguard measures for imports from the overseas countries and territories of sugar sector products with EC/OCT cumulation of origin [3], as amended by Regulation (EC) No 2496/2000 [4], limits EC/OCT cumulation of origin for the products referred to in recital 1 to a maximum of 4 848 tonnes of sugar for the period 1 October 2000 to 28 February 2001.

(4) In the past few years difficulties have arisen on the Community sugar market, a market in surplus. Sugar consumption is constant at some 12,7 million tonnes per year, while production under quota is around 14,3 million tonnes per year. Any imports of sugar into the Community therefore involve a corresponding quantity of Community sugar which cannot be sold on that market having to be exported. Refunds for that sugar — within the limit of certain quotas — are charged to the Community budget (currently at around EUR 435/tonne). However, exports with refund are limited in volume by the Agreement on Agriculture concluded as part of the Uruguay Round [5] and have been reduced from 1 555 600 tonnes for the 1995/96 marketing year to 1 273 500 tonnes for the 2000/2001 marketing year.

(5) The operation of the COM in sugar may be greatly destabilised by these difficulties. For the 2000/2001 marketing year, the Commission reduced Community producers' quotas by 498 800 tonnes [6]. Any further import of sugar or products with a high sugar content from the OCT will mean a greater reduction in the quota for Community producers and a greater loss of income for them.

(6) As a result of these continuing difficulties, there is a risk that a sector of Community activity will deteriorate. The Commission therefore decided on 13 February 2001 to continue to apply the safeguard clause provided for in Article 109 of the OCT Decision in respect of imports of sugar sector products from the OCT with EC-OCT cumulation of origin.

(7) Article 100 of the OCT Decision states that its object is to promote trade between the overseas countries and territories and the Community, taking account of their respective levels of development. In accordance with Article 109(2) of the OCT Decision, priority must be given to such measures as would least disturb the functioning of the association and the Community. Moreover, those measures must not exceed the limits of what is strictly necessary to remedy the difficulties that have arisen.

[1] OJ L 263, 19.9.1991, p. 1.
[2] OJ L 55, 29.2.2000, p. 67.
[3] OJ L 246, 30.9.2000, p. 64.
[4] OJ L 288, 15.11.2000, p. 13.
[5] OJ L 336, 23.12.1994, p. 22.
[6] Commission Regulation (EC) No 2073/2000 of 29 September 2000 reducing, for the 2000/2001 marketing year, the guaranteed quantity under the production quotas scheme for the sugar sector and the presumed maximum supply needs of sugar refineries under the preferential import arrangements (OJ L 246, 30.9.2000, p. 38).

(8) To that end, EC/OCT cumulation of origin for products falling within CN codes 1701, 1806 10 30 and 1806 10 90 should be restricted to a maximum of 3 878 tonnes of sugar for the period 1 March to 30 June 2001, that figure representing the sum of the highest annual volumes of imports of the products in question recorded in the three years preceding 1999, the year in which imports recorded a sharp rise. In determining the quantities of sugar to be taken into consideration, the Commission takes note of the position adopted by the President of the Court of First Instance in his rulings of 12 July and 8 August 2000 in cases T-94/00R, T-110/00R and T-159/00R [1], without, however, recognising it as justified. Consequently, in order to avoid unnecessary procedures and solely for the purposes of adopting these safeguard measures, the Commission, for sugar falling within CN code 1701 and for 1997, bases itself on the figure of 10 372,2 tonnes, the total imports of sugar from the OCT with EC-OCT and ACP/OCT cumulation of origin recorded by Eurostat.

(9) Safeguard measures should also be introduced for products falling within CN codes 1806 10 30 and 1806 10 90 in view of their high sugar content and the similar prejudicial effects on the COM in sugar as with unprocessed sugar. Those measures should ensure that the quantities of sugar-based products imported from the OCT do not exceed a volume that could disturb the COM in sugar, while at the same time guaranteeing them a commercial outlet.

(10) It should be recalled that the Commission proposed to the Council, as part of a review of the OCT Decision, that the rules allowing cumulation in the sugar sector be abolished.

(11) The specific checks on imported goods covered by the measures laid down by this Regulation and the checks applicable in trade with third countries established under the Community rules on release for free circulation and customs value laid down by Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [2], as last amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council [3], should ensure compliance with the provisions laid down by this Regulation.

(12) In order to guarantee proper management, avoid speculation and permit effective controls on products falling within CN codes 1701, 1806 10 30 and 1806 10 90, the rules for the lodging of licence applications should be specified. They must include, for products with EC-OCT cumulation of origin, proof that the applicant normally carries on business in the sugar sector, a declaration that no other applications have been lodged by that person and proof that a special security has been lodged to ensure performance of the undertakings arising from the licences.

(13) In view of the impact of the imports, the safeguard measures should be made to apply with immediate effect,

HAS ADOPTED THIS REGULATION:

Article 1

For products falling within tariff headings CN 1701, 1806 10 30 and 1806 10 90, EC/OCT cumulation of origin as referred to in Article 6 of Annex II to Decision 91/482/EEC shall be permitted for a quantity of 3 878 tonnes of sugar during the period of validity of this Regulation.

For products other than unprocessed sugar, the sugar content of the imported product shall be taken into account for the purposes of complying with that limit.

Article 2

1. Import of the products referred to in Article 1 shall be subject to the issue of an import licence in accordance with Commission Regulation (EC) No 1291/2000 of 9 June 2000 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products [4].

2. Articles 2 to 6 of Commission Regulation (EC) No 2553/97 of 17 December 1997 on rules for issuing import licences for certain products covered by CN codes 1701, 1702, 1703 and 1704 and qualify as ACP/OCT originating products [5] shall apply *mutatis mutandis*.

However:

— licences shall bear the serial number 53.0001,

— licence applications may be for a maximum of 3 878 tonnes,

— Article 4(3) of Regulation (EC) No 2553/97 shall not apply,

— applications shall be lodged with the competent authorities during the first five working days of each month, with the exception of March 2001, when applications may be lodged by 15 March 2001 at the latest,

— the single reducing coefficient shall be applied and the lodging of new applications suspended where the quantity covered by applications for import licences exceeds 3 878 tonnes during the period of application of this Regulation,

— import licences shall expire on the final day of the third month following issue.

[1] Not yet published in the Official Journal.
[2] OJ L 302, 19.10.1992, p. 1.
[3] OJ L 311, 12.12.2000, p. 17.
[4] OJ L 152, 24.6.2000, p. 1.
[5] OJ L 349, 19.12.1997, p. 26.

3. For the products referred to in Article 1 with EC/OCT cumulation of origin, on completion of the formalities for release for free circulation in the customs territory of the Community, operators shall give the customs authorities in the Member States a copy of the export licence, issued in accordance with Article 13 of Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector [1], for the sugar used in those products.

Article 3

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

It shall apply from 1 March 2001 to 30 June 2001.

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

Done at Brussels, 27 February 2001.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 252, 25.9.1999, p. 1.

COMMISSION REGULATION (EC) No 397/2001
of 27 February 2001
fixing export refunds on fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables [1], as last amended by Regulation (EC) No 2826/2000 [2], and in particular Article 35(3) thereof,

Whereas:

(1) Commission Regulation (EC) No 2190/96 [3], as last amended by Regulation (EC) No 298/2000 [4], lays down detailed rules on export refunds on fruit and vegetables.

(2) Article 35(1) of Regulation (EC) No 2200/96, provides that, to the extent necessary for economically significant quantities of the products listed in that Article to be exported, the difference between the international market prices for those products and their prices in the Community may be covered by export refunds.

(3) Article 35(4) of Regulation (EC) No 2200/96 provides that refunds must be fixed in the light of the existing situation or the outlook for fruit and vegetable prices on the Community market and supplies available on the one hand, and prices on the international market on the other hand. Account must also be taken of the costs referred to in Article 35(4)(b) of that Regulation and of the economic aspect of the exports planned.

(4) Pursuant to Article 35(1) of Regulation (EC) No 2200/96, refunds are to be set with due regard to the limits resulting from agreements concluded in accordance with Article 300 of the Treaty.

(5) In accordance with Article 35(5) of Regulation (EC) No 2200/96, prices on the Community market are to be established in the light of the most favourable prices from the export standpoint. International trade prices are to be established in the light of the prices referred to in the second subparagraph of that paragraph.

(6) The international trade situation or the special requirements of certain markets may call for the refund on a given product to vary according to its destination.

(7) Tomatoes, lemons, oranges, apples, peaches and nectarines of classes Extra, I and II of the common quality standards, table grapes of classes Extra and I of the common quality standard, shelled almonds, hazelnuts and walnuts in shell can currently be exported in economically significant quantities.

(8) The application of the abovementioned rules to the present and forecast market situation, and in particular to fruit and vegetable prices in the Community and international trade, gives the refund rates set out in the Annex hereto.

(9) Pursuant to Article 35(2) of Regulation (EC) No 2200/96, the resources available should be used as efficiently as possible while avoiding discrimination between traders. Therefore, care should be taken not to disturb the trade flows previously induced by the refund arrangements. For those reasons and because of the seasonal nature of exports of fruit and vegetables, quotas should be fixed for each product.

(10) Commission Regulation (EEC) No 3846/87 [5], as last amended by Regulation (EC) No 2849/2000 [6], establishes an agricultural product nomenclature for export refunds.

(11) Commission Regulation (EEC) No 1291/2000 [7], lays down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products.

(12) Owing to the market situation, in order to make the most efficient use of the resources available and given the structure of Community exports, the most appropriate method should be selected for export refunds on certain products and certain destinations and consequently refunds under the A 1 and A 2 licence arrangements referred to in Article 1 of Regulation (EC) No 2190/96 should not be fixed simultaneously for the export period in question.

[1] OJ L 297, 21.11.1996, p. 1.
[2] OJ L 328, 23.12.2000, p. 2.
[3] OJ L 292, 15.11.1996, p. 12.
[4] OJ L 34, 9.2.2000, p. 16.
[5] OJ L 366, 24.12.1987, p. 1.
[6] OJ L 335, 30.12.2000, p. 1.
[7] OJ L 152, 24.6.2000, p. 1.

(13) The quantities laid down for the various products should be distributed in accordance with the different systems for the grant of the refund, taking account in particular of their perishability.

(14) The Management Committee for fresh Fruit and Vegetables has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. The export refunds on fruit and vegetables shall be as set out in the Annex hereto.

2. Quantities covered by licences issued for food aid as referred to in Article 16 of Regulation (EC) No 1291/2000 shall not count against the eligible quantities covered by the Annex.

3. Without prejudice to the application of Article 4(5) of Regulation (EC) No 2190/96, the term of validity of A 1 and A 2 licences shall be two months.

Article 2

This Regulation shall enter into force on 10 March 2001.

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

Done at Brussels, 27 February 2001.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

to Commission Regulation of 27 February 2001 fixing the export refunds on fruit and vegetables

Product code	Destination	System Application periods					
		A 1 10.3 to 6.5.2001		A 2 12 to 13.3.2001		B 17.3 to 13.5.2001	
		Refund amount (EUR/t net weight)	Scheduled quantity (t)	Indicative refund amount (EUR/t net weight)	Scheduled quantity (t)	Indicative refund amount (EUR/t net weight)	Scheduled quantity (t)
0702 00 00 9100	F08	18		18	5 786	18	11 830
0802 12 90 9000	A00	45	357			45	342
0802 22 00 9000	A00	103	636			103	1 938
0805 10 10 9100 0805 10 30 9100 0805 10 50 9100	A00	45		45	24 509	45	42 495
0805 30 10 9100	A00	35		35	14 931	35	13 869
0808 10 20 9100 0808 10 50 9100 0808 10 90 9100	F09	25		25	5 440	25	4 404

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended.

The numeric destination codes are set out in Commission Regulation (EC) No 2032/2000 (OJ L 243, 28.9.2000, p. 14).

The other destinations are defined as follows:

F08 All destinations except Slovakia, Latvia, Lithuania and Bulgaria.

F09 Norway, Iceland, Greenland, Faeroe Islands, Poland, Hungary, Romania, Albania, Bosnia and Herzegovina, Croatia, Slovenia, Former Yugoslav Republic of Macedonia, Federal Republic of Yugoslavia (Serbia and Montenegro), Malta, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan, Ukraine, destinations referred to in Article 36 of Commission Regulation (EC) No 800/1999, African countries and territories except South Africa, countries of the Arabian Peninsula (Saudi Arabia, Bahrain, Qatar, Oman, United Arab Emirates (Abu Dhabi, Dubai, Sharjah, Ajman, Umm al Qalwain, Ras al Khaimah, Fujairah), Kuwait, Yemen), Syria, Iran, Jordan, Bolivia, Brazil, Venezuela, Peru, Panama, Ecuador and Colombia.

COMMISSION REGULATION (EC) No 398/2001

of 27 February 2001

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector [1], as amended by Commission Regulation (EC) No 1527/2000 [2],

Having regard to Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses [3], as last amended by Regulation (EC) No 624/98 [4], and in particular the second subparagraph of Article 1(2), and Article 3(1) thereof,

Whereas:

(1) The amounts of the representative prices and additional duties applicable to the import of white sugar, raw sugar and certain syrups are fixed by Commission Regulation (EC) No 1411/2000 [5], as last amended by Regulation (EC) No 72/2001 [6].

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 28 February 2001.

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

Done at Brussels, 27 February 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 252, 25.9.1999, p. 1.
[2] OJ L 175, 14.7.2000, p. 59.
[3] OJ L 141, 24.6.1995, p. 16.
[4] OJ L 85, 20.3.1998, p. 5.
[5] OJ L 161, 1.7.2000, p. 22.
[6] OJ L 10, 13.1.2001, p. 45.

ANNEX

to the Commission Regulation of 27 February 2001 amending representative prices and the amounts of additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99

(EUR)

CN code	Amount of representative prices per 100 kg net of product concerned	Amount of additional duty per 100 kg net of product concerned
1701 11 10 (1)	26,41	3,36
1701 11 90 (1)	26,41	8,33
1701 12 10 (1)	26,41	3,23
1701 12 90 (1)	26,41	7,90
1701 91 00 (2)	24,24	13,44
1701 99 10 (2)	24,24	8,59
1701 99 90 (2)	24,24	8,59
1702 90 99 (3)	0,24	0,40

(1) For the standard quality as defined in Article 1 of amended Council Regulation (EEC) No 431/68 (OJ L 89, 10.4.1968, p. 3).
(2) For the standard quality as defined in Article 1 of Council Regulation (EEC) No 793/72 (OJ L 94, 21.4.1972, p. 1).
(3) By 1 % sucrose content.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 26 February 2001

extending Decision 91/482/EEC on the association of the overseas countries and territories with the European Community

(2001/161/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Decision 91/482/EEC [1], and in particular Article 240(4), second subparagraph thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Pending the entry into force of a new Council Decision on the association of the overseas countries and territories (OCT) with the European Community, the applicable provisions under Decision 91/482/EEC should be extended until the entry into force of the new Decision, but not beyond 1 December 2001.

(2) For the purpose of continuing participation by OCT nationals, account should be taken on a transitional basis of new Community programmes which succeed those which have lapsed or which are established in the interim period,

HAS DECIDED AS FOLLOWS:

Article 1

Decision 91/482/EEC is amended as follows:

1. Article 233c, shall be amended as follows:

   (a) the introductory wording shall be replaced by the following:

   'The following programmes, and any programmes succeeding them, shall apply to OCT nationals, in accordance with the conditions applicable for their Member State.';

   (b) the following paragraph shall be added:

   'The Commission may modify this list at the request of an OCT or a Member State or on its own initiative, in order to include any relevant new future programmes.'

2. Article 240(1) shall be replaced by the following:

   '1. This Decision shall apply until 1 December 2001.'

Article 2

This Decision shall take effect on the day of its publication in the *Official Journal of the European Communities*.

It shall apply from 1 March 2001.

Done at Brussels, 26 February 2001.

For the Council

The President

A. LINDH

[1] OJ L 263, 19.9.1991, p. 1. Decision as last amended by Decision 2000/169/EC (OJ L 55, 29.2.2000, p. 67).

Declaration of Sweden and Finland pursuant to Article 36(2)(a) of Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses [1]

(a) Declaration of Sweden

Pursuant to Article 36(2)(a) of Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses, Sweden hereby declares that the Convention of 6 February 1931 between Denmark, Finland, Iceland, Norway and Sweden comprising international private law provisions on marriage, adoption and guardianship, together with the Final Protocol thereto, will apply in full in relations between Sweden and Finland, in place of the rules of the Regulation, from the date on which the agreement of 6 February 2001 between the Nordic countries on the amendment of that Convention enters into force between Sweden and Finland.

(b) Declaration of Finland

Finland exercises its right, under Article 36(2) of Regulation (EC) No 1347/2000 (Brussels II Regulation) on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses, to apply the Convention of 6 February 1931 between Finland, Iceland, Norway, Sweden and Denmark comprising international private law provisions on marriage, adoption and guardianship, together with the Final Protocol thereto (Nordic Convention on Marriage), in full in mutual relations between Finland and Sweden in place of the Brussels II Regulation, once the agreement signed on 6 February 2001 on amending the Nordic Convention on Marriage has entered into force between Finland and Sweden.

[1] OJ L 160, 30.6.2000, p. 19.

Information concerning the entry into force of Title III 'Government procurement' of Decision No 2/2000 of the EC-Mexico Joint Council of 23 March 2000 (hereinafter referred to as 'the Decision') [1]

With the EC-Mexico Joint Council [2] having determined, on the basis of Recommendation No 1/2000 of the Special Committee established under Article 32 of the Decision, that the information referred to in Article 38(2) has been exchanged in accordance with Annex XIV, Title III 'Government procurement' of the Decision enters into force on 27 February 2001, in accordance with Article 38(3) thereof.

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[1] OJ L 157, 30.6.2000, p. 10.

[2] Set up by the Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part (OJ L 276, 28.10.2000, p. 44).

COMMISSION

COMMISSION DECISION
of 13 December 2000
on the granting by Spain of aid to the coal industry in 2000

(notified under document number C(2000) 4190)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2001/162/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry [1], and in particular Articles 2(1) and 9 thereof,

Whereas:

I

(1) By letter of 5 October 1999, Spain notified the Commission, pursuant to Article 9(1) of Decision No 3632/93/ECSC, of the financial support it intended to grant to the coal industry in 2000. Following Commission requests in letters dated 11 November 1999 and 7 September 2000, Spain provided additional information in letters dated 24 July 2000 and 8 November 2000, respectively.

(2) Spain also notified the Commission, by letter dated 7 October 1999, of the production costs per undertaking for 1998.

(3) In a second letter dated 24 July 2000, Spain notified the Commission, pursuant to Article 9(2) of Decision No 3632/93/ECSC, of the amount of aid actually paid during the 1999 coal production year.

(4) Pursuant to Decision No 3632/93/ECSC, the Commission must rule on the following financial measures relating to 2000:

(a) aid of ESP 116 180 million (EUR 698 255 862,87) to cover operating losses by coal undertakings;

(b) aid of ESP 55 209 million (EUR 331 812 772,71) to cover exceptional welfare aid paid to workers who lose their jobs as a result of the measures to modernise, rationalise, restructure and reduce the activity of the coal industry;

(c) aid of ESP 15 152 million (EUR 91 065 354,06) to cover the technical costs of closing down mining installations as a result of the measures to modernise, rationalise, restructure and reduce the activity of the coal industry.

(5) The financial measures proposed by Spain for the coal industry fall within the provisions of Article 1 of Decision No 3632/93/ECSC. The Commission must therefore take a decision on such measures in accordance with Article 9(4) of the Decision. The Commission's assessment will depend on the compliance of the measures with the general criteria and objectives laid down in Article 2 and the specific criteria established by Articles 3 and 4 of the Decision, and on their compatibility with the proper functioning of the common market. Additionally, in accordance with Article 9(6) of the Decision, the Commission when conducting its assessment must check whether the measures conform with the modernisation, rationalisation, restructuring and activity-reduction plan which the Commission approved in its Decision No 98/637/ECSC [2].

II

(6) By Decision 98/637/ECSC the Commission gave an opinion as to the conformity of the 1998 to 2002 phase of the plan notified by Spain for the modernisation, rationalisation, restructuring and activity reduction of the coal industry with the general and specific objectives of Decision No 3632/93/ECSC.

[1] OJ L 329, 30.12.1993, p. 12.

[2] OJ L 303, 13.11.1998, p. 57.

(7) The Commission has verified that the measures taken to modernise, rationalise, restructure and reduce activity in the Spanish coal industry during 1999, and those notified for 2000, correspond to the plans which it approved in Decision No 98/637/ECSC.

(8) Spain's coal production of 15 418 272 tonnes in 1999 is 5,5 % lower than the figure for 1998. The forecast production figure notified by Spain for 2000 is 14 611 728 tonnes, i.e. 5,25 % lower than that for 1999. These production figures are lower than those shown in the Plan.

(9) The number of workers in the undertakings fell from 18 140 at the end of 1998 to 17 345 at the end of 1999. A further reduction of 1 500 workers is forecast for 2000.

(10) Installations with a total production capacity of 3 521 121 tonnes per year are in the process of closing down or reducing their activity, which must take place before the expiry of Decision No 3632/93/ECSC.

(11) These reductions, which are larger than those initially envisaged, are due to the inclusion in the closure plans, in conformity with Article 4 of Decision No 3632/93/ECSC, of undertakings which were unable to meet the conditions which would entitle them to operating aid under Article 3 of the Decision.

(12) By letter of 7 October 1999 Spain notified the Commission, as required by Commission Decision 1999/451/ECSC [1] of the undertakings' production costs in 1998. The Commission's analysis of the trend in the production costs of the undertakings or production units in receipt of operating aid (Article 3 of Decision No 3632/93/ECSC) revealed a mean reduction in the cost of production, at 1992 prices, from ECU 102,5/tce in 1994 to ECU 87,7/tce in 1998. This mean reduction of 16,4 % between 1994 and 1998 breaks down into a reduction of more than 30 % for 22 % of production, between 30 % and 20 % for 7 % of production, between 20 % and 10 % for 39 % of production and between 10 % and 0 % for 33 % of production.

(13) The Antracitas de Rengos SA and Inversiones Terrales SA undertakings, with a total annual production of 90 000 tonnes, closed down their production installations definitively. The following undertakings or production units: Promotora de Minas de Carbón SA, UTE Terrales-Ubeda, Incomisa, Coto Minero Jove SA, Mina Escobal SL, Minas de Valdeloso SL, Virgilio Riesco SA, the María Group of Minero Siderúrgica de Ponferrada SA, the Escandal Group of Coto Minero del Sil SA, and the Picardín, Pontedo and Arbas Groups of Uminsa, with a total annual production capacity of 955 611 tonnes, have been included by Spain in a closure/activity reduction plan which provides for a reduction in annual capacity of 800 000 tonnes in 2000. The Commission has checked that the conditions laid down in Article 3(2) of Decision No 3632/93/ECSC cannot be achieved by these undertakings, which do however qualify for activity reduction aid in accordance with Article 4 of the Decision.

(14) During the period 2000 to 2002, Spain will continue to monitor production cost trends at all coal undertakings receiving operating aid. Should the latter prove unable to achieve the downward trend in production costs stipulated in Article 3(2) of Decision No 3632/93/ECSC, Spain will propose the requisite corrective measures to the Commission.

(15) The aid notified by Spain to cover operating losses in 2000 provides for a reduction in production aid compared with 1999, at current currency values, of 4 % for underground mines and 6 % for open-cast mines. These reductions will help achieve the objective of degression of aid. The aid under Articles 3 and 4 of Decision No 3632/93/ECSC is intended to cover all or part of the difference between the production costs and the selling price freely agreed between the contracting parties in the light of the conditions prevailing on the world market.

(16) In accordance with Article 2(2) of Decision No 3632/93/ECSC, all the aid which Spain plans to grant to the coal industry under the said Decision in 2000 has been entered in national, regional or local public budgets. Part of this aid to Hunosa could be channelled via SEPI (Sociedad Estatal de Participaciones Industriales).

(17) In view of the above, the measures notified by Spain for 2000 are deemed to be in line with the modernisation, rationalisation, restructuring and activity-reduction plans approved by the Commission in its Decision 98/637/ECSC, provided all the conditions laid down in the Decision are complied with, particularly those relating to nondiscrimination between producers, between purchasers or between users of coal in the Community.

III

(18) The aid of ESP 116 180 million (EUR 698 255 862,87) which Spain plans to grant the coal industry in 2000 is intended to compensate in full or in part for operating losses sustained by coal undertakings.

(19) It is intended to cover the difference between the production costs and the selling price freely agreed between the contracting parties in the light of the conditions prevailing on the world market.

[1] OJ L 177, 13.7.1999, p. 27.

(20) The sum notified subdivides into operating aid of ESP 48 696 million (EUR 292 668 864,35) under Article 3 of Decision No 3632/93/ECSC, and activity reduction aid of ESP 67 484 million (EUR 405 587 008,52) under Article 4 thereof.

(21) The operating aid of ESP 48 696 million (EUR 292 668 864,35) is intended to cover the operating losses of 42 undertakings with a combined envisaged production of 11 088 607 tonnes in 2000.

(22) The Commission notes, after verifying the production costs of these undertakings, that the downward trend of production costs at 1992 prices observed in the period 1994-1997 will continue in 2000. The reduction envisaged for 2000, compared with 1998, will be 11,23 %.

(23) The mean production cost in 1998, at 1992 prices, of the undertakings receiving aid under Article 3 of Decision No 3632/93/ECSC is ECU 87,7/tce, broken down as follows:

— 10 % of production at costs between ECU 20 and 60/tce,

— 50 % of production at costs between ECU 60 and 80/tce,

— 30 % of production at costs between ECU 80 and 95/tce,

— 10 % of production at costs between ECU 95 and 199/tce.

(24) The mean selling price to thermal power stations of the 11 088 607 tonnes (6 939 844 tce) of production envisaged in 2000 by the undertakings in receipt of operating aid is ESP 8 902/tce (EUR 53,5/tce). In the light of the envisaged mean cost of this production in 2000, namely ESP 16 620/tce (EUR 100/tce), the Commission notes that the aid notified corresponds to the difference between the cost of production and the selling price freely agreed between the contracting parties in the light of the conditions prevailing on the world market.

(25) Of the aid of ESP 67 487 million (EUR 405 605 038,88) to reduce activity, ESP 56 121 million (EUR 337 294 003,1) is intended to cover the operating losses of Hunosa, ESP 4 940 million (EUR 29 689 997,96) the operating losses of Mina la Camocha, ESP 636 million (EUR 3 822 436,98) the operating losses of the underground workings of Endesa, ESP 322 million (EUR 1 935 258,98) the operating losses of the underground workings of Encasur, ESP 903 million (EUR 5 427 139,3) the operating losses of Antracitas de Guillón, ESP 681 million (EUR 4 092 892,43) the operating losses of Coto Minero Jove SA, ESP 83 million (EUR 498 840,05) the operating losses of Inversiones Terrales-Plácido Ubeda, ESP 154 million (EUR 925 558,64) the operating losses of Industrial y Comercial Minera (Incomisa), ESP 52 million (EUR 312 526,29) the operating losses of Mina Escobal, ESP 356 million (EUR 2 139 603,09) the operating losses of Minas de Escucha, ESP 118 million (EUR 709 194,28) the operating losses of Minas de Valdeloso SL, ESP 445 million (EUR 2 674 503,86) the operating losses of Promotora de Minas de Carbón SA, ESP 189 million (EUR 1 135 912,88) the operating losses of Virgilio Riesco SA, ESP 600 million (EUR 3 606 072,27) the operating losses of the Picadin, Pontedo and Arbas Groups of Uminsa, ESP 853 million (EUR 5 126 633,25) the operating losses of the María Group of Minero Siderúrgica de Ponferrada SA and ESP million (EUR 6 184 414,55) the operating losses of the Escandal Group of Coto Minero del Sil SA. The total production to be covered by this aid to reduce activity is 3 523 121 tonnes annual capacity.

(26) Of the aid of ESP 56 121 million (EUR 337 294 003,1) to Hunosa, ESP 37 989 million (EUR 228 318 488,3) will be granted via SEPI.

(27) The mean selling price to thermal power stations of the 3 523 121 tonnes (2 263 857 tce) of production envisaged in 2000 by the undertakings in receipt of aid to reduce activity is ESP 9 167/tce (EUR 55,1/tce). In the light of the envisaged mean cost of this production in 2000, namely ESP 39 100/tce (EUR 235/tce), the Commission notes that the aid notified corresponds to the difference between the cost of production and the selling price freely agreed between the contracting parties in the light of the conditions prevailing on the world market.

(28) The aid to cover the operating losses sustained by coal undertakings has been entered in the general State budgets for 2000. It is 4 % lower than the aid authorised by the Commission for 1999. Spain sent notification of the Spanish Council of Ministers' decision on the company-by-company allocation of this aid. This decision has been published in Spain's *Boletin Oficial del Estado* [1].

(29) The inclusion of this measure in the modernisation, rationalisation, restructuring and activity-reduction plan notified by Spain, and the reduction in the aid and quantities envisaged for 2000, are in line with the objectives of the first and second indents of Article 2(1) of Decision No 3632/93/ECSC, and in particular the objective to solve the social and regional problems created by developments in the coal industry.

(30) In view of the above, and on the basis of the information provided by Spain, this aid is compatible with Articles 3 and 4 of Decision No 3632/93/ECSC and with the proper functioning of the common market.

[1] BOE No 226, 20.9.2000, p. 32254.

IV

(31) The aid of ESP 55 209 million (EUR 331 812 772,71) which Spain is proposing to grant is intended to cover, with the exception of the costs for the payment of social welfare benefits borne by the State as a special contribution pursuant to Article 56 of the Treaty, compensation paid to workers in Spanish coal undertakings who have lost their jobs or have had to or will have to take early retirement under the modernisation, rationalisation, restructuring and activity-reduction plan for the Spanish coal industry.

(32) Part of this aid, totalling ESP 36 634 million (EUR 220 174 774,3), is to be granted to Hunosa to cover the cost of workers who took early retirement before 1 January 2000 and the 500 workers who will retire in 2000. This part of the aid will be granted to Hunosa via SEPI.

(33) The remaining ESP 18 575 million (EUR 111 637 998,4) is intended to cover compensation for the 5 806 workers in other undertakings in early retirement at the end of 2000 as a result of the modernisation, rationalisation, restructuring and activity reduction measures.

(34) This aid, designed to cover exceptional costs that have arisen or are due to arise from restructuring, has been entered in the general State budgets for 2000.

(35) These financial measures relate to action made necessary by the modernisation, rationalisation and restructuring of the Spanish coal industry and cannot therefore be considered to be related to current production (inherited liabilities).

(36) Pursuant to Article 5 of Decision No 3632/93/ECSC the aid mentioned explicitly in the Annex to the Decision, namely the cost of paying social-welfare benefits resulting from the pensioning-off of workers before they reach statutory retirement age and other exceptional expenditure on workers who lose their jobs as a result of restructuring and rationalisation, may be considered compatible with the common market provided that the amount paid does not exceed such cost.

(37) In view of the above and on the basis of the information provided by Spain, this aid is compatible with Article 5 of Decision No 3632/93/ECSC and with the proper functioning of the common market.

V

(38) The aid of ESP 15 152 million (EUR 91 065 354,06) which Spain proposes to grant is intended to cover the loss of value of the fixed assets of coal undertakings which have to close down totally or partially, and other exceptional costs to enable undertakings to cover the costs that have arisen or are due to arise from the progressive closures connected with the restructuring of the coal industry.

(39) Part of this aid, totalling ESP 5 193 million (EUR 31 210 558,58), will be granted to Hunosa via SEPI. The remaining sum, totalling ESP 9 959 million (EUR 59 854 795,48), will be granted to the other undertakings that are restructuring or reducing their activity.

(40) The aid to cover exceptional costs arising or due to arise from restructuring has been entered in the general State budgets for 2000.

(41) These financial measures relate to action made necessary by the modernisation, rationalisation and restructuring of the Spanish coal industry and cannot therefore be considered to be related to current production (inherited liabilities).

(42) Pursuant to Article 5 of Decision No 3632/93/ECSC, the aid mentioned explicitly in the Annex to the Decision, namely exceptional intrinsic depreciation provided that it results from the restructuring of the industry (without taking account of any revaluation which has occurred since 1 January 1986 and which exceeds the rate of inflation) and other additional work and residual costs arising from closures of installations, can be considered compatible with the common market provided that the amount paid does not exceed such costs.

(43) Spain must ensure that the aid granted to undertakings to cover exceptional costs is in line with the categories of costs specified in the Annex to Decision No 3632/93/ECSC.

(44) In view of the above, and on the basis of the information provided by Spain, this aid is compatible with Article 5 of Decision No 3632/93/ECSC and with the proper functioning of the common market.

VI

(45) The aid granted by Spain to the coal industry is restricted to coal production destined to be used for electricity production. Spain undertakes to ensure that coal sold to the industrial and domestic sectors is sold at prices (exempt from compensation) that cover the costs of production.

(46) Spain must ensure that the aid granted to current production under this Decision does not give rise to any discrimination between coal producers, between purchasers or between users on the Community coal market.

(47) Spain must ensure that, in accordance with the third indent of Article 3(1) of Decision No 3632/93/ECSC, aid to cover the difference between the cost of production and the selling price per tonne does not cause selling prices for Community coal to be lower than those for coal of a similar quality from non-member countries.

(48) Spain must ensure that, within the framework of the provisions of Article 86 of the Treaty, the aid is limited to that which is strictly necessary in the light of the social and regional considerations which characterise the decline of the Community's coal industry. The aid may not give any economic advantage, whether directly or indirectly, to productions for which no aid is authorised or to other activities distinct from coal production. In particular, Spain must ensure that aid granted to undertakings under Article 5 of Decision No 3632/93/ECSC to cover the technical costs of closure is not used by the undertakings as aid for current production (Articles 3 and 4 of the Decision) and that the closure of capacity for which the aid is intended is definitive and that it is carried out in optimum conditions of safety and environmental protection.

(49) In accordance with the second indent of Article 3(1) and with Article 9(2) and (3) of Decision No 3632/93/ECSC the Commission must verify that the aid authorised for current production responds exclusively to the objectives stated in Articles 3 and 4 of the Decision. Spain must notify the Commission, no later than 30 June 2001, of the amount of aid actually paid during 2000, and declare any corrections made to the amounts originally notified. When submitting this annual statement of aid paid, Spain must also supply the Commission with all the information necessary for verification of the criteria set out in the Articles in question.

(50) In approving the aid, the Commission has recognised the need to soften, as far as possible, the social and regional impact of the restructuring of the coal industry, given the economic and social situation surrounding the mines affected.

(51) In view of the above, and on the basis of the information provided by Spain, the measures and the aid proposed for the coal industry are compatible with the objectives of Decision No 3632/93/ECSC and with the proper functioning of the common market,

HAS ADOPTED THIS DECISION:

Article 1

Spain is hereby authorised to pay the following aid in respect of 2000:

(a) operating aid of ESP 48 696 million (EUR 292 668 854,35) under Article 3 of Decision No 3632/93/ECSC;

(b) aid for the reduction of activity of ESP 67 484 million (EUR 405 587 008,52) under Article 4 of Decision No 3632/93/ECSC;

(c) aid of ESP 55 209 million (EUR 331 812 772,71) under Article 5 of Decision No 3632/93/ECSC, to cover exceptional welfare aid for workers who lose their jobs as a result of the measures to modernise, rationalise, restructure and reduce the activity of the Spanish coal industry;

(d) aid of ESP 15 152 million (EUR 91 065 354,06), under Article 5 of Decision No 3632/93/ECSC, to cover the exceptional technical costs of closing down mining installations as a result of the measures to modernise, rationalise, restructure and reduce the activity of the Spanish coal industry.

Article 2

In accordance with Article 86 of the ECSC Treaty, Spain shall adopt all appropriate measures, whether general or particular, to ensure fulfilment of the obligations resulting from this Decision. It shall ensure that the aid authorised is used for the purposes intended and that any unspent, overestimated or incorrectly used aid for any item covered by this Decision is repaid to it.

Article 3

Spain shall notify the Commission, by 30 June 2001 at the latest, of the amount of aid actually paid in respect of 2000.

Article 4

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 13 December 2000.

For the Commission

Philippe BUSQUIN

Member of the Commission

COMMISSION DECISION

of 21 December 2000

on a procedure relating to the application of Council Regulation (EEC) No 2408/92 (Case TREN/AMA/12/00 — Italian traffic distribution rules for the airport system of Milan)

(notified under document number C(2000) 4121)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2001/163/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes [1], as amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 8(3) thereof,

After consulting the Advisory Committee established pursuant to Article 11 of that Regulation,

Whereas:

BACKGROUND

I

(1) The airport system of Milan comprises the airports of Linate, Malpensa and Orio al Serio (Bergamo). Up to 1998 technical and economic reasons had prevented any of the three Milan airports from becoming a major hub airport for national, international and intercontinental flights. Most of the intra-Community traffic was concentrated at Linate airport. As a result the available airport capacity was used inefficiently, Linate airport being overused and Malpensa underused.

(2) To meet the needs of the city of Milan and northern Italy, the Italian authorities decided to reorganise Milan's airport system so as to make Malpensa the main airport of the system and provide adequate airport capacity for the future. That objective was to be achieved by enlarging and upgrading Malpensa airport, and the project was given the name Malpensa 2000. This project was one of the 14 priority projects of the Trans-European Transport Network under Decision No 1692/96/EC of the European Parliament and of the Council [2]. The original plan was to turn Malpensa into a major airport, and it was later decided to turn it into an effective hub as well. To achieve this there has to be a large volume of traffic at Malpensa in order to maintain a critical mass between the waves of aircraft arrivals and departures, and this inevitably means transferring traffic from Linate airport to Malpensa. However, such a transfer could not be left to market forces alone, since passengers generally prefer to use Linate because it is closer to Milan city centre. The Italian authorities therefore decided to adopt mandatory traffic distribution rules so as to secure the transfer of traffic from Linate to Malpensa needed to achieve this objective.

(3) Accordingly, by Decrees No 46-T of 5 July 1996 (hereinafter referred to as 'Decree of 5 July 1996') and No 70-T of 13 October 1997 (hereinafter referred to as 'Decree of 13 October 1997') the Italian authorities provided that from 25 October 1998 onwards all air services to and from Milan would be operated from either Malpensa airport or Orio al Serio airport, apart from general aviation services and flights on routes serving Milan in which total passenger numbers amounted to at least 2 million during the previous year or reached an annual average of 1,75 million over the previous three years. In practice, the only route reaching those thresholds was Milan-Rome, so it was no longer possible to allow any other scheduled air services at Linate.

(4) The Commission decided on 16 September 1998 that Italy could not apply the traffic distribution rules in the Decrees of 5 July 1996 and 13 October 1997 [3]. In its Decision, after recalling among other things the general background to the case, the Commission said that the rules would in practice produce discriminatory effects favouring Alitalia, since:

> 'the criteria set out in Decree No 46-T, by permitting only Alitalia to serve its Rome-Fiumicino hub from Linate airport while other Community air carriers will be obliged to serve their respective hubs from Malpensa airport, will in fact afford Alitalia a

[1] OJ L 240, 24.8.1992, p. 8.
[2] OJ L 228, 9.9.1996, p. 1.
[3] OJ L 337, 12.12.1998, p. 42.

competitive advantage. This competitive advantage will exist as long as Malpensa airport does not enjoy a level of access infrastructures such as to overcome the present situation which leads to consumer reluctance to use Malpensa airport' (recital 45).

It also considered that the rules at issue were incompatible with the principle of proportionality inasmuch as:

'a fully viable and operational hub does not necessarily presuppose the transfer of 11,7 million passengers on 25 October 1998. A postponement of the transfer or a gradual transfer of that volume from 25 October 1998 onwards would be better suited to that objective and would also reduce the effect on freedom to provide air services to and from Milan. Therefore, the Italian rules are not indispensable to secure the objective pursued by the Italian authorities which could be attained with rules less restrictive of the freedom to provide air services' (recital 50).

The conclusion of the Commission Decision was as follows:

'In conclusion, the Commission considers that the traffic distribution rules set out in Decree No 46-T and Decree No 70-T are not compatible with Article 8(1) of Regulation (EEC) No 2408/92 in so far as their application is contrary to both the principle of non-discrimination and the principle of proportionality. It is therefore appropriate to decide, pursuant to Article 8(3) of Regulation (EEC) No 2408/92, that Italy may not apply these rules.

This Decision in no way calls into question the right of Italy to pursue an active airport policy and, more specifically, the objective of creating a fully viable and operational hub at Malpensa airport. However, the traffic distribution rules necessary in order to achieve that objective must comply with the principles of Community law as set out above.

Nor is this Decision incompatible with the fact that the Malpensa 2000 project is a project of common interest and has been identified as a priority project within the framework of the trans-European networks. In this regard, the Commission recalls that actions by Member States in support of priority projects in the framework of the trans-European networks or designed to create the conditions for the achievement of the objectives pursued by such projects must be fully compatible with Community law' (recitals 53, 54 and 55).

(5) On 9 October 1998, taking into account the Commission Decision of 16 September 1998 the Italian Minister for Transport and Shipping adopted a Decree No 101-T (hereinafter referred to as 'Decree of 9 October 1998') laying down transitional measures regarding the distribution of traffic between the airports forming the Milan airport system. This Decree provided that:

— Malpensa 2000 would open on 25 October 1998,

— the Decree of 5 July 1996 concerning the distribution of traffic would not enter fully into force until after the work on improving the access infrastructures to Malpensa airport had been completed,

— from 25 October 1998 up to the date of completion of the work, the Community carriers at Linate would be able to continue operating there 34 % of the flights they had operated in the previous season with a guaranteed minimum of 18 flights per week, provided that they used aircraft of similar capacity on the same routes,

— scheduled and non-scheduled intercontinental, international, intra-Community, national and regional services could be operated at Malpensa and Orio al Serio airports.

(6) The Decree of 9 October 1998 has entered into force and has been put into effect.

(7) The original plan was for the work on improving the access infrastructure to be completed by the end of 2000 and that was to be the end of the transitional period. However, considering that the access infrastructure for Malpensa airport was about to be completed, the Italian authorities decided on 12 October 1999 to transfer the flights concerned from Linate to Malpensa in two stages: the first was to take place on 15 December 1999 and concerned 236 weekly flights; the second, on 15 January 2000, concerned the 230 weekly flights remaining.

(8) On 25 November 1999 the Italian Minister for the Environment issued a Decree (hereinafter referred to as 'Decree of 25 November 1999') on assessment of the impact of Malpensa airport on the environment. From this Decree it can be seen in particular that the noise standards are not being complied with in the municipalities adjacent to the airport and that this situation would be exacerbated by the increased traffic caused by the proposed transfers of flights. Accordingly the Decree provides for various measures to reduce noise pollution, such as traffic restrictions, new procedures for runway use or prohibiting the use of certain types of aircraft. At the same time, the Italian authorities, in line with the wishes of the city of Milan and the Lombardy region, expressed an interest in Linate airport acting as a city-airport in the future, which would eventually mean bringing back flights from Malpensa to Linate.

(9) On 13 December 1999 the Italian Prime Minister adopted a Decree (hereinafter referred to as 'Decree of 13 December 1999'), expressly referring to the Decree of 25 November 1999, in which on the one hand he confirmed the transfer of flights planned to take place as from 15 December 1999 and on the other hand he decided to implement a set of measures to reduce the environmental pollution caused by Malpensa airport. These measures are described in detail in Annexes A (Immediate measures regarding operating conditions), B (Immediate reduction and control measures), C (Later reduction and control measures) and D (Medium-term measures) to the Decree.

(10) On 14 December 1999 the Italian Government decided to suspend the transfer operations *sine die*.

II

(11) On 3 March 2000, the Italian Minister for Transport and Shipping adopted a Decree (hereinafter called 'Decree of 3 March 2000') determining the distribution of traffic between the airports belonging to the airport system of Milan.

(12) In the Decree, the Minister then considers that 'the [Italian] Council of Ministers, at the same meeting on 25 February 2000, reaffirmed the strategic importance of Malpensa's hub infrastructure' and that 'at the aforesaid meeting of the [Italian] Council of Ministers on 25 February 2000, and during the conclusion of the aforesaid programme framework agreement, the requirements set out in points A, B and C of the Annex to the aforementioned Prime Ministerial Decree of 13 December 1999 were endorsed'. He also considers that it is 'expedient to realise the full development potential of the Milan Malpensa hub, and to identify Milan Linate as an infrastructure for point-to-point connections, by virtue of which Ministerial Decree No 46-T, which currently governs the distribution of traffic between the airports belonging to Milan's airport system, needs to be supplemented and amended'.

(13) The operative provisions of the Decree of 3 March 2000 therefore read as follows:

'*Article 1*

1. The provisions of this Decree on the distribution of air traffic within the airport system of Milan, following the endorsement of the requirements set out in points A, B and C of the Annex to the Prime Ministerial Decree of 13 December 1999 referred to in the preamble, shall be applicable as from 20 April 2000.

Article 2

1. Intercontinental, international, intra-Community, national and regional connections, both scheduled and non-scheduled, may be operated from the airports of Malpensa, Linate and Bergamo Orio al Serio, which belong to Milan's airport system, within the limits of those airports' individual operating capacity and in accordance with the provisions of Articles 3 and 4.

Article 3

1. Connections may be operated from Milan Malpensa taking into account the airport's operating arrangements as indicated in the preamble.

Article 4

1. From Linate, Community carriers may, using narrow-body (single-aisle) aircraft, operate point-to-point scheduled connections with other airports in the European Union identified on the basis of passenger traffic volumes, both arriving and departing, registered within Milan's airport system in the calendar year 1999, and not exceeding the limits set out below:

(a) one daily return service per carrier, using two time slots, to airport systems or individual airports with passenger traffic exceeding 350 000 units and not exceeding 700 000 units;

(b) two daily return services per carrier, using four time slots, to airport systems or individual airports with passenger traffic exceeding 700 000 units and not exceeding 1 400 000 units;

(c) three daily return services per carrier, using six time slots, to airport systems or individual airports with passenger traffic exceeding 1 400 000 units and not exceeding 2 800 000 units;

(d) no limit for connections to airport systems or individual airports with passenger traffic in excess of 2 800 000 units.

2. From Linate, Community carriers may, with the arrangements set out in paragraph 1, operate a daily return service using two time slots to airport systems or individual airports located in "Objective 1" regions which in the course of the calendar year 1999 registered passenger traffic of fewer than 350 000 units in Milan's airport system.

3. Linate airport may be used for general aviation.'

(14) It is important to point out that the maximum handling capacity of the Milan region air traffic control centre at the time that the Decree was adopted amounted to 83 movements per hour for Malpensa and Linate airports together.

III

(15) On 16 March 2000 the carriers Air France, Aer Lingus, British Airways, Finnair, Iberia, Lufthansa, Maersk Air, Olympic Airways, Sabena, Scandinavian Airlines System (SAS) and TAP Air Portugal (hereinafter referred to as 'the carriers') submitted to the Commission a joint request asking it to:

— oppose the implementation of the Decree of 3 March 2000 by the Italian authorities,

— declare that all European air carriers must be allowed to operate at Linate airport without restriction,

— in the alternative, require the Italian authorities to apply traffic distribution rules guaranteeing each European carrier at least the right to operate at Linate airport, the possibility of carrying out a sufficient number of flights there to be able to pursue a profitable economic activity, and the freedom to choose those routes on which it wishes to operate the number of flights allowed.

(16) In support of their complaint the carriers maintain that the Decree of 3 March 2000 infringes both Article 8(1) of Regulation (EEC) No 2408/92 and the Decision of 15 July 1997 by which the Commission authorised the recapitalisation of Alitalia [4].

(17) As regards, first, Regulation (EEC) No 2408/92, the carriers assert that the principles of proportionality and non-discrimination are being ignored by the Italian authorities, claiming that the proportionality principle is being disregarded primarily due to Malpensa airport's inability to absorb all of the traffic assigned to it by the Decree of 3 March 2000. In short, they emphasise that:

— it is still unknown what impact the environmental restrictions introduced by the Decree of 25 November 1999 and the Decree of 13 December 1999 will have on the present and future capacity of Malpensa airport,

— even before the Decree of 25 November 1999 imposed environmental restrictions, the Italian Association of Air Traffic Controllers (LICTA) had put the true capacity of Malpensa airport at 58 movements per hour, taking into account safety restrictions. The 'Ente Nazionale per l'Aviazone Civile' (ENAC) and the 'Ente Nazionale di Assistenza al Volo' (ENAV), themselves bodies belonging to the Italian administration, also stated that a capacity of 70 movements per hour depended on a number of conditions being met,

— besides the impact of environmental measures, there are other factors which raise doubts as to Malpensa airport's ability to absorb future traffic volumes. For example, the airport does not have enough boarding gates to deal with peak-time departures and arrivals. Also, the number of aircraft parking areas available is low compared with the airport's claimed capacity of 70 movements per hour. In addition, most of the non-Community carriers previously assigned to Malpensa Terminal 2 to prevent congestion in Terminal 1 have been reassigned to Terminal 1, which can only add to the congestion.

(18) The carriers conclude that the measures restricting the freedom to provide air transport services laid down in the Decree of 3 March 2000 are not necessary to attain the Decree's objective, i.e. 'to realise the full development potential of the Milan Malpensa hub', for one thing because this potential itself is uncertain and disputed and for another because Malpensa airport is already being operated to its maximum capacity.

(19) The carriers claim that the principle of proportionality is being disregarded secondly in that the objective of promoting Malpensa airport clashes with the criteria set out in the Decree of 3 March 2000. The Decree limits the number of flights operated by each carrier on a particular route, but not the total number of flights on the route. The Decree is therefore unlikely to change the total volume of traffic at Linate airport, as is clear from the flood of requests for slots at that airport. The carriers add that in any case the restrictions on operating at Linate airport, in particular the limit to one flight per day and per carrier on certain routes and to use of single-aisle aircraft, are disproportionate to the objective since they are tantamount to a ban on non-Italian companies from operating air services profitably at Linate. The objective could be achieved by rules which take better account of carriers' rights.

(20) With regard to the principle of non-discrimination, the carriers maintain that the disputed distribution rules are designed to allow Alitalia to continue operating the connection between Linate airport and its Fiumicino hub without restriction.

(21) As regards, secondly, the Decision of 15 July 1997, the carriers recall that the Decree of 3 March 2000, in granting Alitalia priority at Linate airport, infringes the provisions of that Decision whereby Alitalia may not be given priority in any way over other Community carriers, in particular as regards traffic rights, slot allocation, ground-handling assistance and access to airport facilities.

(22) The Commission formally acknowledged receipt of this joint request on 29 March 2000.

[4] OJ L 322, 25.11.1997, p. 44.

IV

(23) On 16 March 2000, Austrian Airlines submitted a separate request to the Commission asking it to:

— declare that the rules of traffic distribution between Milan's airports as laid down in the Decree of 3 March 2000 are incompatible with Community law, in particular with Regulation (EEC) No 2408/92,

— decide that the Italian authorities cannot apply these rules in respect of Austrian Airlines and must adopt other rules compatible with Community law,

— order the Italian authorities not to apply these rules in respect of Austrian Airlines at any rate until the Commission had pronounced on the merits of its complaint.

(24) In support of its request, Austrian Airlines claims that the principles of non-discrimination and proportionality are being flouted by the Italian authorities.

(25) As regards discrimination first of all, Austrian Airlines asserts that the rules of distribution laid down in the Decree of 3 March 2000, based on annual passenger thresholds for each destination, actually introduce discrimination between Community carriers. Thus, due to the minimum threshold of 350 000 passengers annually and although it has operated at Linate airport for more than 40 years, Austrian Airlines, together with the carrier SAS, will be the only Community company which can no longer connect Linate to one of its hubs. This is discrimination on grounds of identity of the carrier.

(26) Then as regards proportionality, Austrian Airlines maintains that the thresholds laid down by the Decree of 3 March 2000 lack objectivity and are disproportionate. For example, connections with more than 2,8 million passengers annually can be operated without any restriction on the numbers of flights, with no flights at all allowed on routes with less than 350 000 passengers a year. The criterion favouring Objective 1 regions also lacks objectivity. The disproportionality is aggravated by the fact that the restrictions are fixed by carrier so that the number of flights on a route is potentially higher the more carriers there are present. Incidentally, it is questionable whether, in the light of the environmental measures provided for in the Decrees of 25 November and 13 December 1999, Malpensa airport has sufficient capacity to receive the additional traffic. The proposed reduction in the number of slots available at Linate will cause even more carriers to transfer their operations to Malpensa. In reality there is sufficient room at Linate airport for the traffic to be distributed fairly among all the carriers.

(27) The Commission acknowledged receipt of this request on 29 March 2000.

V

(28) On 11 April 2000, the Italian authorities decided to give priority to Malpensa airport for the allocation of slots. For summer 2000 and winter 2000/2001 the capacity at Malpensa declared by the Assoclearance association, acting as coordinator for Italian airports, was 70 movements per hour. Moreover, as the Italian authorities stated in their letter to the Commission of 5 December 2000, the coordination committee of Linate airport has set the capacity of that airport at 13 movements per hour at peak times and up to 20 movements per hour at other times. In view of the restriction to 83 movements per hour maximum for air traffic in the Milan area and the maximum capacity of 70 movements per hour adopted by the Italian authorities for Malpensa airport, as well as the priority given to the latter airport, the number of slots available at Linate airport is reduced to 13 at peak times.

VI

(29) By letter dated 20 April 2000, the German authorities requested the Commission pursuant to Article 8(3) of Regulation (EEC) No 2408/92 to define its position with regard to the traffic distribution rules laid down in the Decree of 3 March 2000.

(30) The Austrian, Danish and Swedish authorities addressed similar requests to the Commission on 26 April, 9 May and 11 May 2000 respectively. By letter dated 18 May 2000, received by the Commission on the 26 May 2000, the Norwegian authorities stated that they shared the concerns of the Danish and Swedish authorities.

(31) Finally, on 12 July 2000 the Belgian authorities asked the Commission to comment as soon as possible on the complaints lodged by the airline companies.

VII

(32) As part of its examination of this case pursuant to the procedure laid down in Article 8(3) of Regulation (EEC) No 2408/92 and in order to safeguard the rights of defence, on 21 March 2000 the Commission sent the Italian authorities the complaints lodged by the carriers on 16 March 2000, asking them for their comments. For the same purpose, on 14 June 2000 the Commission sent the Italian authorities the requests made by Germany, Austria, Sweden and Norway.

(33) By letter dated 5 April 2000, the Italian authorities sent the Commission their comments on the complaints lodged by the carriers on 16 March 2000. These comments include the following:

— within the framework of its powers pursuant to Article 8(3) of Regulation (EEC) No 2408/92, the Commission may not penalise a failure to comply with the principle of proportionality which is not referred to in paragraph 1 of that Article,

— the arguments developed by the carriers to call into question the capacity of Malpensa airport are unfounded. Thus:

— the model devised for utilisation of Malpensa airport is flexible enough to allow that airport to offer sufficient capacity to cope with the traffic envisaged by the Decree of 3 March 2000. The model may also be gradually improved, especially during the period from 26 March to 20 April 2000,

— the text itself of the Decree of 3 March 2000 indicates that the Decree was adopted after an initial positive examination of the impact of the environmental measures on the capacity of the airport. As regards noise in particular, a powerful mathematical forecast model was prepared,

— introducing the non-specialised use of runways and changing the take-off paths do not adversely affect the capacity of Malpensa airport. There are restrictions on using reverse thrust at most European airports,

— with the new equipment, especially the radar, and the new procedures applicable at Malpensa it will be possible to achieve the target capacity for utilisation of the airport,

— only an insignificant number of flights are affected by the curfew measure imposed at Malpensa and the curfew has no effect on the capacity of the airport,

— the capacity of an airport has to be assessed over a whole day (24 hours) and not by referring to its peak-time capacity. The transfer of certain non-Community companies from Terminal 1 to Terminal 2 does not make the situation any worse since it takes account of the fact that the Decree of 3 March 2000 keeps more traffic at Linate than that of 5 July 1996.

According to the Italian authorities, the principle of proportionality has not been disregarded, especially since there can be no doubt that the traffic distribution measure at issue is indispensable to the development of the Malpensa hub and that it is more favourable to all the air carriers than that previously envisaged by the Decree of 5 July 1996.

— In its Decision of 16 December 1998 concerning the Decree of 5 July 1996, the Commission considered the principle of proportionality to have been infringed solely because the road and rail access infrastructures to the airport had not been completed. This matter has now been resolved and the limitations to market access arising out of the Decree of 3 March 2000 are less severe than those imposed by the Decree of 5 July 1996. The Commission has, incidentally, never criticised the distribution criteria based on traffic thresholds. In fact, the distribution rules in the Decree of 3 March 2000 ensure that an optimum balance is kept between the imperative of developing the Malpensa hub and better utilisation of Linate airport for all European carriers.

— The traffic distribution measure at issue here is not discriminatory at all since the Community carriers enjoy better access to Linate airport than with the previous distribution rules, the work on improving the airport's road and rail access infrastructures has been completed and Alitalia has made Malpensa airport the centre of gravity of its international and intercontinental operations.

— The Commission Decision of 15 July 1997 is not infringed by the distribution rules laid down in the Decree of 3 March 2000 since this Decree does not deal with slot allocation and the Commission has never disputed distribution criteria based on passenger traffic thresholds.

VIII

(34) To enable it to decide on this case in full knowledge of the facts, on 13 June 2000 the Commission sought the assistance of an expert, having previously verified his independence in respect of all the parties to the case. The expert's brief was on the one hand to determine the capacity of Malpensa airport taking into account the impact of the environmental measures resulting from the Decree of 13 December 1999, and on the other hand to ascertain whether the airport capacity so determined was compatible with the likely traffic growth. The expert submitted his report on 26 July 2000. The report basically shows that:

— several of the environmental measures laid down in the Decree of 13 December 1999, such as reducing the take-off thrust of aircraft, restricting the use of reverse thrust of engines and using runways alternately, are not or only partially being complied with in practice,

— reducing the take-off thrust of aircraft, though it may have safety implications, and excluding Chapter 3 aircraft have no effect whatever on the capacity of the airport,

— when no restrictions are placed on it by the environmental measures, in normal weather the capacity of Malpensa airport does not exceed 65 movements per hour during a three-hour period. A threshold of 70 movements per hour may be reached for one hour on one or two days during the summer peak period,

— the theoretical maximum capacity of Linate airport is 32 slots per hour and 8 million passengers annually considering the amount of space available at the airport. Capacity there is currently restricted to 13 movements per hour, due partly to the restrictions affecting the Milan region air traffic control centre and partly to the limited capacity of the terminal building,

— due to the range of choice and the cost of using the terrestrial access infrastructures to Malpensa airport, the location of this airport in relation to the centre of Milan can no longer be considered a handicap or a reason why users should prefer Linate airport,

— the capacity of the Milan region air traffic control centre should increase from 83 to 90/95 movements per hour in the next 12 months.

(35) In order to safeguard the rights of the defence ([5]), on 27 July 2000 the consultant's report was sent to Italy. Those Member States which had requested the Commission to take action and the carriers that had lodged a complaint also received a copy.

(36) By letter dated 4 August 2000, the Italian authorities sent the Commission their comments on the expert's report. These can be summarised as follows:

— in spite of the anti-noise measures taken at Malpensa airport, the delays recorded there are still compatible with those at the other Community airports,

— the present traffic at Malpensa is compatible with the minimum acoustic impact scenario as presented to the Italian Council of Ministers on 25 February 2000. The airport utilisation model is constantly changing to maintain an optimum balance between maximum capacity of the airport and compliance with the anti-noise measures. Other major airports use an alternating runway utilisation model like that at Malpensa. Neither the prohibition of night flights nor the reduction of take-off thrust is affecting airport capacity,

— works to make possible better utilisation of the Malpensa airport infrastructure, in particular the terminal building and air-side infrastructures, are planned at Malpensa over the next four years.

(37) By letter dated 31 August 2000, the carriers Air France, Aer Lingus, British Airways, Finnair, Iberia, Lufthansa, Maersk Air, Olympic Airways, Sabena, Scandinavian Airlines System (SAS) and TAP Air Portugal sent the Commission their comments on the expert's report. On 14 September 2000, Austrian Airlines also communicated to the Commission its comments on the expert's report.

IX

(38) After examining the preceding points and following contact between the Commission and the Italian authorities, the latter informed the Commission, by letter of 4 December 2000, of their intention to instruct the ENAC to increase the capacity at Linate airport to 18 movements per hour, given the increase in processing capacity of the air traffic control centre for the Milan area. The additional frequencies allocated as a result can be subject of code-sharing agreements. In that same letter, the Italian authorities also indicated that they were about to adopt a new decree on air traffic distribution between the airports that make up the Milan airport system. This new decree will amend the decree of 3 March 2000 as follows:

— all European capitals will now have at least one return trip connection per day with Linate,

— Community airports with annual traffic of more than 40 million passengers in 1999 will be connected to Linate by at least two return trips per day,

— by the end of 2001 Italy will check the functioning of the traffic distribution rules within the Milan airport system.

LEGAL ASSESSMENT

X

(39) As regards the distribution of traffic between airports in an airport system, the Commission holds the powers conferred upon it by Article 8(3) of Regulation (EEC) No 2408/92, which reads as follows:

> 'At the request of a Member State or on its own initiative the Commission shall examine the application of paragraphs 1 and 2 and, within one month of receipt of a request and after consulting the Committee referred to in Article 11, decide whether the Member State may continue to apply the measure …'.

([5]) Case T-260/94 *Air Inter* v *Commission* [1997] ECR II-997, paragraph 63.

(40) For the purpose of applying these provisions, the letters addressed to the Commission on 20 April, 26 April, 9 May, 11 May and 12 July 2000 by the German, Austrian, Belgian, Danish and Swedish authorities have to be considered as requests from Member States. Accordingly, the Commission is obliged to examine these requests and to decide whether Italy can be authorised to continue applying the Decree of 3 March 2000 regulating the distribution of traffic within the airport system of Milan.

(41) Moreover, irrespective of the requests submitted by these five Member States, the Commission considers it necessary to use those powers for the same purposes. Where the Commission does so on its own initiative, as explicitly provided for in Article 8(3) of Regulation (EEC) No 2408/92, its examination is no way limited to the requests of the carriers.

(42) Because Regulation (EEC) No 2408/92 was brought within the scope of the EEA Agreement with effect from 1 July 1994 ([6]) by Decision of the EEA Joint Committee No 7/94 ([7]), the Commission's decision must cover all the countries of the European Economic Area. Norway has in any event approached the Commission.

XI

(43) The principle of freedom to operate air services within the Community provided for in Article 3(1) of Regulation (EEC) No 2408/92 generally means the right of Community air carriers to choose between the different airports of an airport system. Member States may, however, restrict the abovementioned freedom on the basis of Article 8(1) of Regulation (EEC) No 2408/92, which reads as follows:

> 'This Regulation shall not affect a Member State's right to regulate without discrimination on grounds of nationality or identity of the air carrier, the distribution of traffic between the airports within an airport system.'

(44) As the Commission has already indicated in Decisions 98/710/EC, 95/259/EC and 94/290/EC ([8]) any restriction adopted under that provision must comply with the principle of non-discrimination and the general principles on the freedom to provide services.

(45) In this context, the Commission has already had occasion to define the scope of Article 8(1) of Regulation (EEC) No 2408/92, stating in its Decision 95/259/EC that:

> 'By allowing Member States to distribute traffic between the airports of an airport system, Article 8(1) of Regulation (EEC) No 2408/92 recognises in principle the legitimacy of an active airport planning policy which complies with the general principles of Community law [...]. Such a planning policy may have regard to a large range of factors considered by the competent authorities to have priority. The concrete measures which must be taken for the implementation of airport planning policy may also differ from one airport system to another. All those implementing measures will, if they are to be effective, restrict to some extent access to the individual airports of the system. It would be inconsistent with those considerations if the scope of Article 8(1) were determined in such a way as to exclude a priori the possibility of pursuing a specific airport policy for a given airport system. For example, a Member State may legitimately wish to promote the development of one airport of an airport system at the expense of the other airports located therein. In such a case, the imposition of restrictions on access to those other airports alone may constitute a reasonable means of pursuing that objective.'

(46) The principle of non-discrimination as explicitly mentioned in Article 8(1) not only prohibits any form of discrimination based on the air carrier's nationality, thus reflecting the principle laid down by Article 6 of the Treaty, but also any form of discrimination on grounds of identity of the air carrier. In adopting Regulation (EEC) No 2408/92, the Council considered that the absence of discrimination on grounds of the carrier's nationality was not sufficient, in view of the structure of air transport in the Community, to ensure the satisfactory working of the internal market in civil air transport and to ensure compliance with the principle of free access to the market laid down in Article 3(1) of that Regulation. Consequently, it added the prohibition of discrimination on grounds of the air carrier's identity, which was expressly referred to by the Court of First Instance of the European Communities in the judgment it delivered on 19 June 1997 (*Air Inter* v *Commission*) ([9]).

XII

(47) Consequently, for the purposes of verifying whether the traffic distribution rules laid down in the Decree of 3 March 2000 comply with Article 8(1) of Regulation (EEC) No 2408/92, it falls first and foremost to the Commission to assess their compatibility with the principle of non-discrimination and with the principle of proportionality.

([6]) OJ C 208, 28.7.1994, p. 7.
([7]) OJ L 160, 28.6.1994, p. 1.
([8]) OJ L 337, 12.12.1998, p. 42 (51-52), OJ L 162, 13.7.1995, p. 25 (30-31) and OJ L 127, 19.5.1994, p. 22 (28-31).
([9]) Case T-260/94 cited in footnote 5, paragraph 112.

(48) The Commission considers that the criteria set out in Article 4 of the Decree of 3 March 2000, based on traffic volumes, are objective criteria which do not distinguish carriers by reference to their nationality or identity since they apply in the same way to all Community air carriers and the intra-Community connections concerned are open to all Community carriers without restriction pursuant to Article 3(1) of Regulation (EEC) No 2408/92. The same applies to the obligation to use only single-aisle aircraft for operating at Linate airport and the exception made by Article 4(2) of the Decree to the benefit of Objective 1 regions.

(49) However, as already stated by the Commission in Decisions 95/259/EC ([10]) and 98/710/EC ([11]), the principle of non-discrimination set out in Article 8(1) also precludes any measure which, even without explicitly making reference to the carrier's nationality or identity, in practice nonetheless produces discriminatory effects, even indirectly.

(50) In order to determine whether the criteria set out in the Decree of 3 March 2000 produce discriminatory effects in practice, it is necessary to examine the effects which will be produced by their application from 20 April 2000 onwards.

(51) In its Decision 98/710/EC ([12]), the Commission considered that the criteria laid down in the Decree of 5 July 1996 gave Alitalia a competitive advantage as the only company able to serve its hub at Rome-Fiumicino from Linate airport due to the differences in access conditions between Linate and Malpensa airports. From that it concluded that the measure at issue would continue to be discriminatory as long as the access infrastructures to Malpensa airport were not sufficient to overcome passengers' reluctance to use Malpensa airport.

(52) The Commission considers that with the road and railway works completed in recent years it can be said that access to Malpensa airport is no longer a handicap for users trying to reach Malpensa. The expert appointed by the Commission also stresses the fact that Linate airport is poorly served by the public transport networks and considers that Malpensa airport's location in relation to Milan city centre is no longer to be regarded as a reason for users to prefer Linate airport. Given the assessment it already made of the situation with the two airports in its previous Decision 98/710/EC, the Commission has no new reasons to justify concluding that conditions for access to Linate airport offer an advantage compared with those for Malpensa.

([10]) OJ L 162, 13.7.1995, p. 25.
([11]) OJ L 337, 12.12.1998, p. 52, recital 30.
([12]) OJ L 337, 12.12.1998, p. 55, recital 45.

(53) Therefore, the Commission considers that the application of the criteria set out in the Decree of 3 March 2000 should not in practice produce any discriminatory effects and that these criteria are compatible with the principle of prohibiting discrimination on grounds of nationality or identity of the air carrier as provided for in Article 8(1) of Regulation (EEC) No 2408/92.

(54) Nonetheless, the proportionality of the measure adopted by the Italian authorities on 3 March 2000 should still be verified. In this respect, it has to be ensured in accordance with settled case law that the provisions at issue are appropriate to ensure achievement of the intended aims and do not go beyond that which is necessary in order to achieve those objectives; in other words, it must not be possible to obtain the same results by less restrictive rules.

(55) It is therefore important to recall the objectives pursued by the rules at issue. In adopting the Decree of 3 March 2000, the Italian authorities, having affirmed 'the strategic importance of Malpensa's hub infrastructure', wished both to 'realise the full development potential of the Milan Malpensa hub, and to identify Milan Linate as an infrastructure for point-to-point connections'. They therefore deemed it necessary to amend the rules laid down in the Decree of 5 July 1996, the sole purpose of which was to ensure the viability of the Malpensa hub in the framework of the Malpensa 2000 project.

(56) As recalled above, the Commission recognised in its Decision 95/259/EC of 14 March 1995, that Article 8(1) of Regulation (EEC) No 2408/92 confirms the legitimacy of an active airport planning policy. Such a planning policy may have regard to a large range of factors considered by the competent authorities to have priority. The transformation of Malpensa airport into a fully operational and viable hub ([13]) and the promotion of Linate airport as a privileged infrastructure for point-to-point connections are certainly objectives which can legitimise traffic distribution rules. This principle needs to be examined in the light of the two objectives in turn.

(57) As a preliminary, rules establishing access thresholds based on traffic volumes may be needed to reduce the level of traffic at Linate and thus to meet the objective of promoting Malpensa as an economically viable hub while allowing Linate to be converted into an airport specialising in 'point-to-point' connections. As stated above, the Commission has already recognised, in its Decision 95/259/EC, the compatibility of such an approach with Regulation (EEC) No 2408/92.

([13]) On this point, see Decision 98/710/EC, (OJ L 337, 12.12.1998, p. 57).

(58) As regards, first of all, the transformation of Malpensa airport into a fully operational and viable hub, there is a need to look at whether the measures laid down in the Decree of 3 March 2000 are necessary for realising this objective on account of the restrictions on the number of slots available imposed at Linate airport. For the summer 2000 and winter 2000/2001 seasons, the maximum capacity of Linate is set at 20 movements per hour and even reduced to 13 at peak times. The number of slots used per hour at Malpensa airport is currently around 60 on average, and could rise to 70 at peak times. The disproportion between the number of slots used at Linate and Malpensa respectively, together with the preference given to Malpensa with regard to peak-time slots, could at first sight be sufficient to guarantee the development of Malpensa airport. In addition, if it is true that the study carried out by the independent expert appointed by the Commission indicates that the limitation in frequencies at Linate foreseen by the Decree of 3 March 2000 bears the risk that Malpensa airport will reach saturation point, the Italian authorities in their letter of 4 December 2000 confirmed that the capacity at Malpensa was established at 70 movements per hour in the current phase of the development of the hub.

(59) Following the modifications to which the Italian authorities made reference in their letter to the Commission of 4 December 2000, the new draft rules modify this first appreciation. In fact, 18 slots an hour will be guaranteed from now at Linate, including peak periods. This makes it necessary to establish criteria for the distribution of traffic because this increase in traffic would put the development of the Malpensa hub in jeopardy if this increase was not accompanied by other forms of restrictions.

(60) It follows from the above that the restrictions on the freedom to provide services imposed on Linate airport by the measure at issue will respond to the objective of exploiting fully the potential for the development of Malpensa hub when they have been modified in the manner indicated by the Italian authorities in their letter of 4 December 2000.

(61) Independently of this observation, nothing prevents the Italian authorities from wanting to reserve Linate airport mainly for certain categories of traffic, in particular point-to-point traffic, and laying down distribution rules accordingly.

(62) As regards, secondly, promoting Linate airport as a privileged infrastructure for point-to-point connections, the Commission accepts that to reach this objective there may have to be criteria limiting the number of flights per route on the basis of traffic thresholds, such as those laid down in the Decree of 3 March 2000.

(63) On a first examination, those criteria do not appear to the Commission, on the basis of their practical application, to be wholly adequate for achieving this objective. As the complaining carriers point out, the minimum traffic threshold of 350 000 passengers laid down in Article 4 of the Decree of 3 March 2000 does not allow arrivals or departures from Community airports as large as Vienna or Copenhagen to be handled at Linate airport. In addition, such an important airport as Frankfurt is only linked by one flight a day per carrier while no limit on the number of frequencies per carrier is foreseen on liaisons where traffic exceeds 2,8 million passengers.

(64) However, the modifications to which the Italian authorities refer in their letter of 4 December 2000 have the effect of lifting the previous obstacles and are now in proportion to the objective of making Linate a destination for point-to-point traffic since the increase in the number of slots available will favour services to destinations other than Rome. In addition, these modifications will also mean that Vienna and Copenhagen will, from now on, be linked to Linate and the number of daily liaisons to Community airports with annual traffic of more than 40 million passengers in 1999 will be at least two. They therefore make the measure in question appreciably more adequate to satisfy the objective of making Linate a point-to-point destination linked to the principal destinations. Finally, the fact that the traffic distribution rules will be re-examined before the end of 2001 would allow account to be taken of the evolution of the situation at Linate and at Malpensa, and especially the future increase in the handling of capacity at the air traffic control centre in the Milan area. This makes the whole of the package proportionate to this evolution.

(65) In these conditions, the Commission considers that the traffic distribution rules within the airport system of Milan, as amended in accordance with the measures announced by the Italian authorities in their letter of 4 December 2000, can be regarded as proportionate to the objectives sought. The Commission takes note of the commitment by Italy to reevaluate the situation before the end of 2001.

XIII

Conclusion

(66) In conclusion, the Commission considers that the traffic distribution rules set out in the Decree of 3 March 2000, if they are amended as indicated in the Italian authorities' letter of 4 December 2000, are compatible with Article 8(1) of Council Regulation (EEC) No 2408/92. It is therefore appropriate to decide, pursuant to Article 8(3) of Regulation (EEC) No 2408/92, that Italy may apply those rules as thus amended,

HAS ADOPTED THIS DECISION:

Article 1

Italy may apply the traffic distribution rules for the airport system of Milan set out in the Decree of the Italian Minister for Transport and Shipping of 3 March 2000 on condition that these rules are modified, within fifteen days following the notification of this Decision, as indicated in the letter of 4 December 2000 from the Italian authorities to the Commission.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 21 December 2000.

For the Commission

Loyola DE PALACIO

Vice-President

COMMISSION DECISION

of 15 February 2001

amending Decision 1999/283/EEC concerning the animal health conditions and veterinary certification for imports of fresh meat from certain African countries to take account of the animal health situation in South Africa and Swaziland

(notified under document number C(2001) 379)

(Text with EEA relevance)

(2001/164/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 72/462/EEC of 12 December 1972 on health and veterinary inspection problems on importation of bovine, ovine and caprine animals and swine, fresh meat or meat products from third countries [1], as last amended by Directive 97/79/EC [2], in paticular Articles 14(3) and 22 thereof,

Whereas:

(1) The animal health conditions and veterinary certification for imports of fresh meat from certain African countries are laid down by Commission Decision 1999/283/EC [3].

(2) Imports of fresh meat from South Africa are only possible from a part of the territory of this country which has been recognised by the European Community as officially free of foot-and-mouth disease.

(3) On 30 November 2000 an outbreak of foot-and-mouth disease was confirmed in South Africa in the province of Mpumalanga, in the free region.

(4) The situation is liable to seriously endanger Community livestock in view of imports of products of biungulate animals.

(5) The competent authorities of South Africa have provided sufficient guarantees with regard to the measures taken to control the movement of animals of susceptible species within and out of the infected area, in particular by declaring around the outbreak in the Province of Mpumalanga, a control area with vaccination for foot-and-mouth disease.

(6) It is therefore necessary to redefine the territory of South Africa from which imports into the Community of fresh meat are authorised.

(7) On 30 November 2000 an outbreak of foot-and-mouth disease was confirmed in bovine animals originating in South Africa at an EC-approved slaughterhouse in Swaziland.

(8) According to Directive 72/462/EEC a non-member country may continue to be considered as having been free of foot-and-mouth disease for at least two years, even if a limited number of outbreaks of the disease have been recorded on a limited part of its territory, on conditions that such outbreaks were stamped out within a period of less than three months.

(9) The competent authorities of Swaziland have provided sufficient guarantees with regard to the measures taken to control the outbreak of foot-and-mouth disease and restrictions on the slaughterhouse were lifted on 23 December 2000.

(10) Therefore imports into the EC of meat from Swaziland may be resumed from 1 March 2001 however it is appropriate to provide for a specific footnote in the relevant certificate to clarify this.

(11) Decision 1999/283/EC must be amended accordingly.

(12) The present Decision shall be reviewed in the light of the evolution of the disease situation.

(13) The measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

HAS ADOPTED THIS DECISION:

Article 1

Annex I to Commission Decision 1999/283/EC is replaced by the Annex to this Decision

Article 2

Annex III to Decision 1999/283/EC the animal health certificate model A is amended until the 1 December 2001 by the addition of footnote 5 in the health attestation at the end of paragraph 1 as follows '([5]) In the case of Swaziland, notwithstanding the outbreak of foot-and-mouth disease confirmed in the slaughterhouse on 30 November 2000, the country may be regarded as being free of foot-and-mouth for at least 12 months from 1 March 2001.'

[1] OJ L 302, 31.12.1972, p. 28.
[2] OJ L 24, 30.1.1998, p. 31.
[3] OJ L 110, 28.4.1999, p. 16.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 15 February 2001.

For the Commission
David BYRNE
Member of the Commission

ANNEX

'ANNEX I

DESCRIPTION OF TERRITORIES OF CERTAIN AFRICAN COUNTRIES ESTABLISHED FOR ANIMAL HEALTH CERTIFICATION PURPOSES

Country	Territory code	Version	Description of territory
Botswana	BW	01/99	The whole country
	BW-01	01/99	Veterinary disease control zones, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 18
Morocco	MA	01/99	The whole country
Madagascar	MG	01/99	The whole country
Namibia	NA	01/99	The whole country
	NA-01	01/00	South of the cordon fences which extends from Palgrave Point in the west to Gam in the east
Swaziland	SZ	01/99	The whole country
	SZ-01	01/99	Area west of the "red line" fences which extends northwards from the river Usutu to the frontier with South Africa west of Nkalashane
South Africa	ZA	01/99	The whole country
	ZA-01	01/01	Republic of South Africa excluding: the part of the foot-and-mouth disease control area situated in the veterinary region Northern and Eastern Transvaal, in the district of Ingwavuma of the veterinary region of Natal and in the border area with Botswana east of longitude 28 °, and the districts of Camperdown, Pietermaritzburg, Lions River, New Hanover, Umvoti, Kranskop, Mapumulo, Ndwedwe, Lower Tugela, Inanda, Pinetown, Durban, (including the metropolitan area of Durban), Chatswoth, Umzali, Umbumbulu and Richmond in the province of KwaZulu-Natal the province of Mpumalanga
Zimbabwe	ZW	01/99	The whole country
	ZW-01	01/99	Veterinary regions of Mashonaland West province, Mashonaland East province (including Chikomba district), Mashonaland Central province, Manicaland province (including only Makoni district), Midlands province (including only the Gweru, Kwekwe, Shurugwi, Chirimanzu and Zvishavane districts), Masvingo province (including only the districts of Gutu and Masvingo), Matabeleland South province (including only the Insiza, Bullimamangwe, Umzingwamange, Gwanda and West Nicholson districts) and Matabeleland north province (including only the districts of Bubi and Umgusa)'

COMMISSION DECISION

of 27 February 2001

amending as regards hydrolysed proteins Decision 2001/9/EC concerning control measures required for the implementation of Council Decision 2000/766/EC concerning certain protection measures with regard to transmissible spongiform encephalopathies and the feeding of animal protein

(notified under document number C(2001) 462)

(Text with EEA relevance)

(2001/165/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market [1], as last amended by Directive 92/118/EEC [2], and in particular Article 9(4) thereof,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market [3], as last amended by Directive 92/118/EEC [4], and in particular Article 10(4) thereof,

Having regard to Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries [5], and in particular Article 22 thereof,

Whereas:

(1) Council Decision 2000/766/EC of 4 December 2000 concerning certain protection measures with regard to transmissible spongiform encephalopathies and the feeding of animal protein [6], prohibits the feeding of processed animal proteins to certain farmed animals. This prohibition does not apply to certain processed animal proteins subject to conditions, which have been established by Decision 2001/9/EC.

(2) The recent developments of the BSE situation in the Community have led some Member States to take additional unilateral safeguard measures.

(3) In the light of that situation, the Council has invited on 4 December 2000 the Commission to request the Scientific Steering Committee (SSC) to evaluate the unilateral, temporary safeguard measures taken by some Member States, and to take appropriate action accordingly.

(4) The SSC adopted on 12 January 2001 an opinion on 'the questions submitted by EC services following a request of 4 December 2000 by the EU Council of Agricultural Ministers regarding the safety with regard to BSE of cerain tissues and certain animal-derived products'. This opinion addresses the safety of hydrolysed proteins derived from animal material other than hides and skin. In order to take account of that scientific opinion within the framework of Decision 2000/766/EC, it is necessary to lay down requirements for the production of hydrolysed proteins.

(5) Uncertainties on the interpretation of Article 2 of Decision 2001/9/EC have led to difficulties in implementing its provisions. Therefore, it is appropriate to clarify the provision of this Article and modify Article 1 accordingly.

(6) The measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2001/9/EC is amended as follows:

1. In paragraphs 1, 2 and 3 of Article 1, the words 'to animals' are replaced by 'to farmed animals referred to in Article 2(1) of Decision 2000/766/EC'.

2. Article 2 is replaced by the following:

'*Article 2*

Member States shall ensure that feedingstuffs, including pet food, destined to animals other than farmed animals referred to in Article 2(1) of Decision 2000/766/EC, which contain processed animal proteins as defined by that Decision are not manufactured in plants which prepare feed for farmed animals.

[1] OJ L 395, 30.12.1989, p. 13.
[2] OJ L 62, 15.3.1993, p. 49.
[3] OJ L 224, 18.8.1990, p. 29.
[4] OJ L 62, 15.3.1993, p. 49.
[5] OJ L 24, 30.1.1998, p. 9.
[6] OJ L 306, 7.12.2000, p. 32.

However, where those feedingstuffs are produced with no other processed animal proteins than fishmeal, dicalcium phosphate and hydrolysed proteins, they may be manufactured in plants which prepare feed for farmed animals other than ruminants in accordance with Annex I point 6, Annex II point 3 and Annex III point 2, as appropriate.'

3. Point 1 of Annex III is replaced by the following:

'1. Hydrolysed proteins derived from fish, feather and hides and skins shall:

— be produced in a processing plant dedicated only to hydrolysed proteins production, which are approved for this purpose by the competent authority in accordance with Article 5(2) of Directive 90/667/EEC;

— be sampled after processing and found to have a molecular weight below 10 000 Dalton.

In addition, hydrolysed proteins from hides and skins shall:

— be derived from hides and skins obtained from animals which have been slaughtered in a slaughterhouse and whose carcasses have been found fit for human consumption following ante and post mortem inspection;

— be produced by a production process which involves appropriate measures to minimise contamination of hides and skins, preparation of the raw material by brining, liming and intensive washing followed by exposure of the material to a pH of > 11 for more than three hours at a temperature of more than 80 °C and followed by heat treatment at a temperature of more than 140 °C for 30 minutes at more than 3,6 bar; or by an equivalent production process approved in accordance with the procedure of Article 17 of Directive 89/662/EEC.'

4. In the title of the health certificate laid down in Annex IV, the words 'from hides and skins' are deleted.

Article 2

This Decision shall apply from 1 March 2001.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 27 February 2001.

For the Commission

David BYRNE

Member of the Commission