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EN

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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 431/2002

of 8 March 2002

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 9 March 2002.

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

Done at Brussels, 8 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

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

ANNEX

to the Commission Regulation of 8 March 2002 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	182,9
	204	170,2
	212	129,8
	624	226,0
	999	177,2
0707 00 05	052	175,4
	068	109,7
	204	64,5
	220	196,3
	999	136,5
0709 90 70	052	137,8
	204	69,0
	999	103,4
0805 10 10, 0805 10 30, 0805 10 50	052	64,8
	204	48,2
	212	48,2
	220	45,0
	421	29,6
	600	59,5
	624	70,2
	999	52,2
0805 50 10	052	45,5
	600	61,3
	999	53,4
0808 10 20, 0808 10 50, 0808 10 90	060	40,7
	388	111,0
	400	120,6
	404	97,2
	508	83,1
	512	91,0
	528	107,0
	720	124,1
	728	132,3
	999	100,8
0808 20 50	204	204,9
	388	79,2
	400	105,4
	512	80,4
	528	78,6
	720	66,2
	999	102,5

(1) Country nomenclature as fixed by Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 432/2002
of 8 March 2002
suspending the buying-in of butter in certain Member States

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products [1], as last amended by Regulation (EC) No 1670/2000 [2],

Having regard to Commission Regulation (EC) No 2771/1999 of 16 December 1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream [3], as last amended by Regulation (EC) No 1614/2001 [4], and in particular Article 2 thereof,

Whereas:

(1) Article 2 of Regulation (EC) No 2771/1999 lays down that buying-in by invitation to tender is to be opened or suspended by the Commission in a Member State, as appropriate, once it is observed that, for two weeks in succession, the market price in that Member State is below or equal to or above 92 % of the intervention price.

(2) Commission Regulation (EC) No 237/2002 suspending the buying-in of butter in certain Member States [5] establishes the most recent list of Member States in which intervention is suspended. This list must be adjusted as a result of the market prices communicated by the United Kingdom under Article 8 of Regulation (EC) No 2771/1999. In the interests of clarity, the list in question should be replaced and Regulation (EC) No 237/2002 should be repealed,

HAS ADOPTED THIS REGULATION:

Article 1

Buying-in of butter by invitation to tender as provided for in Article 6(1) of Regulation (EC) No 1255/1999 is hereby suspended in Denmark, Greece, the Netherlands, Austria and Sweden.

Article 2

Regulation (EC) No 237/2002 is hereby repealed.

Article 3

This Regulation shall enter into force on 9 March 2002.

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

Done at Brussels, 8 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

(1) OJ L 160, 26.6.1999, p. 48.
(2) OJ L 193, 29.7.2000, p. 10.
(3) OJ L 333, 24.12.1999, p. 11.
(4) OJ L 214, 8.8.2001, p. 20.
(5) OJ L 39, 9.2.2002, p. 3.

COMMISSION REGULATION (EC) No 433/2002

of 8 March 2002

amending Regulation (EC) No 713/2001 on the purchase of beef under Regulation (EC) No 690/2001

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal [1], as last amended by Regulation (EC) No 2345/2001 [2],

Having regard to Commission Regulation (EC) No 690/2001 of 3 April 2001 on special market support measures in the beef sector [3], as amended by Regulation (EC) No 2595/2001 [4], and in particular Article 2(2),

Whereas:

(1) Regulation (EC) No 690/2001 provides in its Article 2(2) in particular for the opening or the suspension of tendering for purchase of beef depending on the average market prices for the reference class during the two most recent weeks with price quotations preceding the tender.

(2) The application of Article 2 referred to above results in the opening of purchase by tender in a number of Member States. Commission Regulation (EC) No 713/2001 [5], as last amended by Regulation (EC) No 342/2002 [6], on the purchase of beef under Regulation (EC) No 690/2001 should be amended accordingly.

(3) Since this Regulation should be applied immediately it is necessary to provide for its entry into force on the day of its publication,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 713/2001 is replaced by the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 9 March 2002.

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

Done at Brussels, 8 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

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(1) OJ L 160, 26.6.1999, p. 21.
(2) OJ L 315, 1.12.2001, p. 29.
(3) OJ L 95, 5.4.2001, p. 8.
(4) OJ L 345, 29.12.2001, p. 33.
(5) OJ L 100, 11.4.2001, p. 3.
(6) OJ L 53, 23.2.2002, p. 18.

ANEXO — BILAG — ANHANG — ΠΑΡΑΡΤΗΜΑ — ANNEX — ANNEXE — ALLEGATO — BIJLAGE — ANEXO — LIITE — BILAGA

Estado miembro Medlemsstat Mitgliedstaat Κράτος μέλος Member State État membre Stati membri Lidstaat Estado-Membro Jäsenvaltiot Medlemsstat
Belgique/België
Deutschland
Nederland
España
France
Luxembourg
Ireland

COMMISSION REGULATION (EC) No 434/2002

of 8 March 2002

amending Regulation (EC) No 94/2002 laying down detailed rules for applying Council Regulation (EC) No 2826/2000 on information and promotion actions for agricultural products on the internal market

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2826/2000 of 19 December 2000 on information and promotion actions for agricultural products on the internal market [1], and in particular Articles 12 and 16 thereof,

Whereas:

(1) Commission Regulation (EC) No 94/2002 [2], as amended by Regulation (EC) No 305/2002 [3], lays down detailed rules for applying Regulation (EC) No 2826/2000.

(2) Article 5(1) of Regulation (EC) No 94/2002 sets 15 June and in the first instance 15 March 2002 as the deadline for presentation to the Member State concerned of programmes submitted by trade federations and interbranch organisations.

(3) On account of the late publication of the guidelines for the various sectors and in particular for cut flowers and live plants, the first year's deadline for the presentation of programmes to the Member State concerned should be put back to 31 March.

(4) The measures provided for in this Regulation are in accordance with the opinion delivered at the joint meeting of the management committees on agricultural product promotion,

HAS ADOPTED THIS REGULATION:

Article 1

The first sentence of Article 5(1) of Regulation (EC) No 94/2002 is hereby replaced by the following:

'With a view to implementing measures contained in programmes as referred to in Article 6 of Regulation (EC) No 2826/2000, the Community trade federations or interbranch organisations that are representative of the sector(s) concerned shall submit programmes in response to calls for proposals issued by the Member States concerned before 31 March the first time and before 15 June thereafter.'

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, 8 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 328, 21.12.2000, p. 2.
[2] OJ L 17, 19.1.2002, p. 20.
[3] OJ L 47, 19.2.2002, p. 12.

COMMISSION REGULATION (EC) No 435/2002

of 8 March 2002

fixing the maximum export refund on wholly milled round grain rice in connection with the invitation to tender issued in Regulation (EC) No 2007/2001

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ([1]), as last amended by Regulation (EC) No 1987/2001 ([2]), and in particular Article 13(3) thereof,

Whereas:

(1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2007/2001 ([3]).

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

(3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled round grain rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2007/2001 is hereby fixed on the basis of the tenders submitted from 1 to 7 March 2002 at 193,00 EUR/t.

Article 2

This Regulation shall enter into force on 9 March 2002.

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

Done at Brussels, 8 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

([1]) OJ L 329, 30.12.1995, p. 18.
([2]) OJ L 271, 12.10.2001, p. 5.
([3]) OJ L 272, 13.10.2001, p. 13.
([4]) OJ L 61, 7.3.1975, p. 25.
([5]) OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 436/2002

of 8 March 2002

fixing the maximum export refund on wholly milled medium grain and long grain A rice to be exported to certain European third countries, in connection with the invitation to tender issued in Regulation (EC) No 2008/2001

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice [1], as last amended by Regulation (EC) No 1987/2001 [2], and in particular Article 13(3) thereof,

Whereas:

(1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2008/2001 [3].

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

(3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled medium grain and long grain A rice to be exported to certain European third countries pursuant to the invitation to tender issued in Regulation (EC) No 2008/2001 is hereby fixed on the basis of the tenders submitted from 1 to 7 March 2002 at 212,00 EUR/t.

Article 2

This Regulation shall enter into force on 9 March 2002.

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

Done at Brussels, 8 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 329, 30.12.1995, p. 18.
[2] OJ L 271, 12.10.2001, p. 5.
[3] OJ L 272, 13.10.2001, p. 15.
[4] OJ L 61, 7.3.1975, p. 25.
[5] OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 437/2002

of 8 March 2002

fixing the maximum export refund on wholly milled round grain, medium grain and long grain A rice to be exported to certain third countries in connection with the invitation to tender issued in Regulation (EC) No 2009/2001

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [1], as last amended by Regulation (EC) No 1987/2001 [2], and in particular Article 13(3) thereof,

Whereas:

(1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2009/2001 [3].

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

(3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled grain, medium grain and long grain A rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2009/2001 is hereby fixed on the basis of the tenders submitted from 1 to 7 March 2002 at 203,00 EUR/t.

Article 2

This Regulation shall enter into force on 9 March 2002.

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

Done at Brussels, 8 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 329, 30.12.1995, p. 18.
[2] OJ L 271, 12.10.2001, p. 5.
[3] OJ L 272, 13.10.2001, p. 17.
[4] OJ L 61, 7.3.1975, p. 25.
[5] OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 438/2002

of 8 March 2002

fixing the maximum export refund on wholly milled long grain rice in connection with the invitation to tender issued in Regulation (EC) No 2010/2001

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ([1]), as last amended by Regulation (EC) No 1987/2001 ([2]), and in particular Article 13(3) thereof,

Whereas:

(1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2010/2001 ([3]).

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

(3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled long grain rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2010/2001 is hereby fixed on the basis of the tenders submitted from 1 to 7 March 2002 at 301,00 EUR/t.

Article 2

This Regulation shall enter into force on 9 March 2002.

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

Done at Brussels, 8 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

([1]) OJ L 329, 30.12.1995, p. 18.
([2]) OJ L 271, 12.10.2001, p. 5.
([3]) OJ L 272, 13.10.2001, p. 19.
([4]) OJ L 61, 7.3.1975, p. 25.
([5]) OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 439/2002

of 8 March 2002

fixing the maximum subsidy on exports of husked long grain rice to Réunion pursuant to the invitation to tender referred to in Regulation (EC) No 2011/2001

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [1], as last amended by Regulation (EC) No 1987/2001 [2], and in particular Article 10(1) thereof,

Having regard to Commission Regulation (EEC) No 2692/89 of 6 September 1989 laying down detailed rules for exports of rice to Réunion [3] as amended by Regulation (EC) No 1453/1999 [4], and in particular Article 9(1) thereof,

Whereas:

(1) Commission Regulation (EC) No 2011/2001 [5] opens an invitation to tender for the subsidy on rice exported to Réunion.

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

A maximum subsidy on exports to Réunion of husked long grain rice falling within CN code 1006 20 98 is hereby set on the basis of the tenders lodged from 4 to 7 March 2002 at 310,00 EUR/t pursuant to the invitation to tender referred to in Regulation (EC) No 2011/2001.

Article 2

This Regulation shall enter into force on 9 March 2002.

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

Done at Brussels, 8 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

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(1) OJ L 329, 30.12.1995, p. 18.
(2) OJ L 271, 12.10.2001, p. 5.
(3) OJ L 261, 7.9.1989, p. 8.
(4) OJ L 167, 2.7.1999, p. 19.
(5) OJ L 272, 13.10.2001, p. 21.

COMMISSION REGULATION (EC) No 440/2002
of 8 March 2002
on the issue of import licences for high-quality fresh, chilled or frozen beef and veal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 936/97 of 27 May 1997 opening and providing for the administration of tariff quotas for high-quality fresh, chilled and frozen beef and for frozen buffalo meat ([1]), as last amended by Regulation (EC) No 361/2002 ([2]),

Whereas:

(1) Regulation (EC) No 936/97 provides in Articles 4 and 5 the conditions for applications and for the issue of import licences for meat referred to in Article 2(f).

(2) Article 2(f) of Regulation (EC) No 936/97 fixes the amount of high-quality fresh, chilled or frozen beef and veal originating in and imported from the United States of America and Canada which may be imported on special terms for the period 1 July 2001 to 30 June 2002 at 11 500 t.

(3) It should be recalled that licences issued pursuant to this Regulation will, throughout the period of validity, be open for use only in so far as provisions on health protection in force permit,

HAS ADOPTED THIS REGULATION:

Article 1

1. All applications for import licences from 1 to 5 March 2002 for high-quality fresh, chilled or frozen beef and veal as referred to in Article 2(f) of Regulation (EC) No 936/97 shall be granted in full.

2. Applications for licences may be submitted, in accordance with Article 5 of Regulation (EC) No 936/97, during the first five days of April 2002 for 8 891,434 t.

Article 2

This Regulation shall enter into force on 11 March 2002.

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

Done at Brussels, 8 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

([1]) OJ L 137, 28.5.1997, p. 10.

([2]) OJ L 58, 28.2.2002, p. 5.

COMMISSION REGULATION (EC) No 441/2002
of 8 March 2002
determining the world market price for unginned cotton

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Protocol 4 on cotton, annexed to the Act of Accession of Greece, as last amended by Council Regulation (EC) No 1050/2001 [1],

Having regard to Council Regulation (EC) No 1051/2001 of 22 May 2001 on production aid for cotton [2], and in particular Article 4 thereof,

Whereas:

(1) In accordance with Article 4 of Regulation (EC) No 1051/2001, a world market price for unginned cotton is to be determined periodically from the price for ginned cotton recorded on the world market and by reference to the historical relationship between the price recorded for ginned cotton and that calculated for unginned cotton. That historical relationship has been established in Article 2(2) of Commission Regulation (EC) No 1591/2001 of 2 August 2001 [3]. Where the world market price cannot be determined in this way, it is to be based on the most recent price determined.

(2) In accordance with Article 5 of Regulation (EC) No 1051/2001, the world market price for unginned cotton is to be determined in respect of a product of specific characteristics and by reference to the most favourable offers and quotations on the world market among those considered representative of the real market trend. To that end, an average is to be calculated of offers and quotations recorded on one or more European exchanges for a product delivered cif to a port in the Community and coming from the various supplier countries considered the most representative in terms of international trade. However, there is provision for adjusting the criteria for determining the world market price for ginned cotton to reflect differences justified by the quality of the product delivered and the offers and quotations concerned. Those adjustments are specified in Article 3(2) of Regulation (EC) No 1591/2001.

(3) The application of the above criteria gives the world market price for unginned cotton determined hereinafter,

HAS ADOPTED THIS REGULATION:

Article 1

The world price for unginned cotton as referred to in Article 4 of Regulation (EC) No 1051/2001 is hereby determined as equalling EUR 21,816/100 kg.

Article 2

This Regulation shall enter into force on 9 March 2002.

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

Done at Brussels, 8 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

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(1) OJ L 148, 1.6.2001, p. 1.
(2) OJ L 148, 1.6.2001, p. 3.
(3) OJ L 210, 3.8.2001, p. 10.

DIRECTIVE 2002/3/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 12 February 2002

relating to ozone in ambient air

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission ([1]),

Having regard to the opinion of the Economic and Social Committee ([2]),

Having regard to the opinion of the Committee of the Regions ([3]),

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([4]), in light of the joint text approved by the Conciliation Committee on 10 December 2001,

Whereas:

(1) On the basis of principles enshrined in Article 174 of the Treaty, the Fifth Environmental Action Programme, approved by the Resolution of the Council and the Representatives of the Governments of the Member States meeting within the Council of 1 February 1993 on a European Community programme of policy and action in relation to the environment and sustainable development ([5]) and supplemented by Decision No 2179/98/EC ([6]) envisages, in particular, amendments to existing legislation on air pollutants. The said programme recommends the establishment of long-term air quality objectives.

(2) Pursuant to Article 4(5) of Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management ([7]), the Council is to adopt the legislation provided for in paragraph 1 and the provisions laid down in paragraphs 3 and 4 of that Article.

(3) It is important to ensure effective protection against harmful effects on human health from exposure to ozone. The adverse effects of ozone on vegetation, ecosystems and the environment as a whole should be reduced, as far as possible. The transboundary nature of ozone pollution requires measures to be taken at Community level.

(4) Directive 96/62/EC provides that numerical thresholds are to be based on the findings of work carried out by international scientific groups active in the field. The Commission is to take account of the most recent scientific research data in the epidemiological and environmental fields concerned and of the most recent advances in metrology with a view to re-examining the elements on which such thresholds are based.

(5) Directive 96/62/EC requires limit and/or target values to be set for ozone. In view of the transboundary nature of ozone pollution, target values should be set at Community level for the protection of human health and for the protection of vegetation. Those target values should relate to the interim objectives derived from the Community integrated strategy to combat acidification and ground-level ozone, which also form the basis of Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants ([8]).

(6) In accordance with Directive 96/62/EC, plans and programmes should be implemented in respect of zones and agglomerations within which ozone concentrations exceed target values in order to ensure that target values are met as far as possible by the date specified. Such plans and programmes should to a large extent refer to control measures to be implemented in accordance with relevant Community legislation.

(7) Long-term objectives should be set with the aim of providing effective protection of human health and the environment. Long-term objectives should relate to the ozone and acidification abatement strategy and its aim of closing the gap between current ozone levels and the long-term objectives.

(8) Measurements should be mandatory in zones with exceedances of the long-term objectives. Supplementary means of assessment may reduce the required number of fixed sampling points.

(9) An alert threshold for ozone should be set for the protection of the general population. An information threshold should be set to protect sensitive sections of the population. Up-to-date information on concentrations of ozone in ambient air should be routinely made available to the public.

([1]) OJ C 56 E, 29.2.2000, p. 40, and OJ C 29 E, 30.1.2001, p. 291.
([2]) OJ C 51, 23.2.2000, p. 11.
([3]) OJ C 317, 6.11.2000, p. 35.
([4]) Opinion of the European Parliament of 15 March 2000 (OJ C 377, 29.12.2000, p. 154), Council Common Position of 8 March 2001 (OJ C 126, 26.4.2001, p. 1) and Decision of the European Parliament of 13 June 2001 (not yet published in the Official Journal). Decision of the European Parliament of 17 January 2002 and Decision of the Council of 19 December 2001.
([5]) OJ C 138, 17.5.1993, p. 1.
([6]) OJ L 275, 10.10.1998, p. 1.
([7]) OJ L 296, 21.11.1996, p. 55.
([8]) OJ L 309, 27.11.2001, p. 22.

(10) Short-term action plans should be drawn up where the risk of exceedances of the alert threshold can be reduced significantly. The potential for reducing the risk, duration and severity of exceedances should be investigated and assessed. Local measures should not be required where examination of benefits and costs shows them to be disproportionate.

(11) The transboundary nature of ozone pollution may require some coordination between neighbouring Member States in drawing up and implementing plans, programmes and short-term action plans and in informing the public. Where appropriate, Member States should pursue cooperation with third countries, with particular emphasis on early involvement of accession candidate countries.

(12) As a basis for regular reports, information on measured concentrations should be submitted to the Commission.

(13) The Commission should review the provisions of this Directive in the light of the most recent scientific research concerning, in particular, the effects of ozone on human health and the environment. The Commission's report should be presented as an integral part of an air quality strategy designed to review and propose Community air quality objectives and develop implementing strategies to ensure achievement of those objectives. In this context, the report should take into account the potential to achieve the long-term objectives within a specified time period.

(14) The measures necessary for the implementation of this Directive 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 [1].

(15) Since the objectives of the proposed action ensuring effective protection against harmful effects on human health from ozone and reducing the adverse effect of ozone on vegetation, ecosystems and the environment as a whole cannot be sufficiently achieved by the Member States because of the transboundary nature of ozone pollution and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(16) Council Directive 92/72/EEC of 21 September 1992 on air pollution by ozone [2] should be repealed,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Objectives

The purpose of this Directive is:

(a) to establish long-term objectives, target values, an alert threshold and an information threshold for concentrations of ozone in ambient air in the Community, designed to avoid, prevent or reduce harmful effects on human health and the environment as a whole;

(b) to ensure that common methods and criteria are used to assess concentrations of ozone and, as appropriate, ozone precursors (oxides of nitrogen and volatile organic compounds) in ambient air in the Member States;

(c) to ensure that adequate information is obtained on ambient levels of ozone and that it is made available to the public;

(d) to ensure that, with respect to ozone, ambient air quality is maintained where it is good, and improved in other cases;

(e) to promote increased cooperation between the Member States, in reducing ozone levels, use of the potential of transboundary measures and agreement on such measures.

Article 2

Definitions

For the purposes of this Directive:

1. 'ambient air' means outdoor air in the troposphere, excluding work places;

2. 'pollutant' means any substance introduced directly or indirectly by man into the ambient air and likely to have harmful effects on human health and/or the environment as a whole;

3. 'ozone precursor substances', means substances which contribute to the formation of ground-level ozone, some of which are listed in Annex VI;

4. 'level' means the concentration of a pollutant in ambient air or the deposition thereof on surfaces in a given time;

5. 'assessment' means any method used to measure, calculate, predict or estimate the level of a pollutant in the ambient air;

6. 'fixed measurements' means measurements taken in accordance with Article 6(5) of Directive 96/62/EC;

7. 'zone' means part of the territory of a Member State as delimited by it;

[1] OJ L 184, 17.7.1999, p. 23.
[2] OJ L 297, 13.10.1992, p. 1.

8. 'agglomeration' means a zone with a population concentration in excess of 250 000 inhabitants or, where the population concentration is 250 000 inhabitants or less, a population density per km^2 which for the Member State justifies the need for ambient air quality to be assessed and managed;

9. 'target value' means a level fixed with the aim, in the long term, of avoiding harmful effects on human health and/or the environment as a whole, to be attained where possible over a given period;

10. 'long-term objective' means an ozone concentration in the ambient air below which, according to current scientific knowledge, direct adverse effects on human health and/or the environment as a whole are unlikely. This objective is to be attained in the long term, save where not achievable through proportionate measures, with the aim of providing effective protection of human health and the environment;

11. 'alert threshold' means a level beyond which there is a risk to human health from brief exposure for the general population and at which immediate steps shall be taken by the Member States as laid down in Articles 6 and 7;

12. 'information threshold' means a level beyond which there is a risk to human health from brief exposure for particularly sensitive sections of the population and at which up-to-date information is necessary;

13. 'volatile organic compounds' (VOC) means all organic compounds from anthropogenic and biogenic sources, other than methane, that are capable of producing photochemical oxidants by reactions with nitrogen oxides in the presence of sunlight.

Article 3

Target values

1. The target values for 2010 in respect of ozone concentrations in ambient air are those set out in Section II of Annex I.

2. Member States shall draw up a list of zones and agglomerations in which the levels of ozone in ambient air, as assessed in accordance with Article 9, are higher than the target values referred to in paragraph 1.

3. For the zones and agglomerations referred to in paragraph 2, Member States shall take measures to ensure, in accordance with the provisions of Directive 2001/81/EC, that a plan or programme is prepared and implemented in order to attain the target value, save where not achievable through proportionate measures, as from the date specified in Section II of Annex I.

Where, in accordance with Article 8(3) of Directive 96/62/EC, plans or programmes must be prepared or implemented in respect of pollutants other than ozone, Member States shall, where appropriate, prepare and implement integrated plans or programmes covering all the pollutants concerned.

4. The plans or programmes, referred to in paragraph 3, shall incorporate at least the information listed in Annex IV to Directive 96/62/EC and shall be made available to the public and to appropriate organisations such as environmental organisations, consumer organisations, organisations representing the interests of sensitive population groups and other relevant health care bodies.

Article 4

Long-term objectives

1. The long-term objectives for ozone concentrations in ambient air are those set out in Section III of Annex I.

2. Member States shall draw up a list of the zones and agglomerations in which the levels of ozone in ambient air, as assessed in accordance with Article 9, are higher than the long-term objectives referred to in paragraph 1 but below, or equal to, the target values set out in Section II of Annex I. For such zones and agglomerations, Member States shall prepare and implement cost-effective measures with the aim of achieving the long-term objectives. The measures taken shall, at least, be consistent with all plans or programmes specified in Article 3(3). Furthermore, they shall build upon measures taken under the provisions of Directive 2001/81/EC and other relevant existing and future EC legislation.

3. Community progress towards attaining the long-term objectives shall be subject to successive reviews, as part of the process set out in Article 11 and in connection with Directive 2001/81/EC, using the year 2020 as a benchmark and taking account of progress towards attaining the national emission ceilings set out in the said Directive.

Article 5

Requirements in zones and agglomerations where ozone levels meet the long-term objectives

Member States shall draw up a list of zones and agglomerations in which ozone levels meet the long-term objectives. In so far as factors including the transboundary nature of ozone pollution and meteorological conditions permit, they shall maintain the levels of ozone in those zones and agglomerations below the long-term objectives and shall preserve through proportionate measures the best ambient air quality compatible with sustainable development and a high level of environmental and human health protection.

Article 6

Information to the public

1. Member States shall take appropriate steps to:

(a) ensure that up-to-date information on concentrations of ozone in ambient air is routinely made available to the public as well as to appropriate organisations such as environmental organisations, consumer organisations, organisations representing the interests of sensitive population groups and other relevant health care bodies.

This information shall be updated on at least a daily basis and, wherever appropriate and practicable, on an hourly basis.

Such information shall at least indicate all exceedances of the concentrations in the long-term objective for the protection of health, the information threshold and the alert threshold for the relevant averaging period. It should also provide a short assessment in relation to effects on health.

The information threshold and the alert threshold for concentrations of ozone in ambient air are given in Section I of Annex II;

(b) make available to the public and to appropriate organisations such as environmental organisations, consumer organisations, organisations representing the interests of sensitive population groups and other relevant health care bodies comprehensive annual reports which shall at least indicate, in the case of human health, all exceedances of concentrations in the target value and the long-term objective, the information threshold and the alert threshold, for the relevant averaging period, and in the case of vegetation, any exceedance of the target value and the long-term objective, combined with, as appropriate, a short assessment of the effects of these exceedances. They may include, where appropriate, further information and assessments on forest protection, as specified in section I of Annex III. They may also include information on relevant precursor substances, in so far as these are not covered by existing Community legislation;

(c) ensure that timely information about actual or predicted exceedances of the alert threshold is provided to health care institutions and the population.

The information and reports referred to above shall be published by appropriate means, depending on the case, for example the broadcasting media, the press or publications, information screens or computer network services, such as the internet.

2. Details supplied to the public in accordance with Article 10 of Directive 96/62/EC when either threshold is exceeded shall include the items listed in Section II of Annex II. Member States shall, where practicable, also take steps to supply such information when an exceedance of the information threshold or alert threshold is predicted.

3. Information supplied under paragraphs 1 and 2 shall be clear, comprehensible and accessible.

Article 7

Short-term action plans

1. In accordance with Article 7(3) of Directive 96/62/EC, Member States shall draw up action plans, at appropriate administrative levels, indicating specific measures to be taken in the short term, taking into account particular local circumstances, for the zones where there is a risk of exceedances of the alert threshold, if there is a significant potential for reducing that risk or for reducing the duration or severity of any exceedance of the alert threshold. Where it is found that there is no significant potential for reducing the risk, duration or severity of any exceedance in the relevant zones, Member States shall be exempt from the provisions of Article 7(3) of Directive 96/62/EC. It is for Member States to identify whether there is significant potential for reducing the risk, duration or severity of any exceedance, taking account of the national geographical, meteorological and economic conditions.

2. The design of short-term action plans, including trigger levels for specific actions, is the responsibility of Member States. Depending on the individual case, the plans may provide for graduated, cost-effective measures to control and, where necessary, reduce or suspend certain activities, including motor vehicle traffic, which contribute to emissions which result in the alert threshold being exceeded. These may also include effective measures in relation to the use of industrial plants or products.

3. When developing and implementing the short-term action plans, Member States shall consider examples of measures (the effectiveness of which has been assessed), which should be included in the guidance referred to in Article 12.

4. Member States shall make available to the public and to appropriate organisations such as environmental organisations, consumer organisations, organisations representing the interests of sensitive population groups and other relevant health care bodies both the results of their investigations and the content of specific short-term action plans as well as information on the implementation of these plans.

Article 8

Transboundary pollution

1. Where ozone concentrations exceeding target values or long-term objectives are due largely to precursor emissions in other Member States, the Member States concerned shall cooperate, where appropriate, in drawing up joint plans and programmes in order to attain the target values or long-term objectives, save where not achievable through proportionate measures. The Commission shall assist in those efforts. In carrying out its obligations under Article 11, the Commission shall consider, taking into account Directive 2001/81/EC, in particular Article 9 thereof, whether further action should be taken at Community level in order to reduce precursor emissions responsible for such transboundary ozone pollution.

2. Member States shall, if appropriate according to Article 7, prepare and implement joint short-term action plans covering neighbouring zones in different Member States. Member States shall ensure that neighbouring zones in different Member States, which have developed short-term action plans, receive all appropriate information.

3. Where exceedances of the information threshold or alert threshold occur in zones close to national borders, information should be provided as soon as possible to the competent authorities in the neighbouring Member States concerned in order to facilitate the provision of information to the public in those States.

4. In drawing up the plans and programmes referred to in paragraph 1 and 2 and in informing the public as referred to in paragraph 3, Member States shall, where appropriate, pursue cooperation with third countries, with particular emphasis on accession candidate countries.

Article 9

Assessment of concentrations of ozone and precursor substances in ambient air

1. In zones and agglomerations where, during any of the previous five years of measurement, concentrations of ozone have exceeded a long-term objective, fixed continuous measurement is mandatory.

Where fewer than five years' data are available, Member States may, to determine exceedances, combine measurement campaigns of short duration at times and locations likely to be typical of the highest pollution levels with results obtained from emission inventories and modelling.

Annex IV sets out criteria for determining the location of sampling points for the measurement of ozone.

Section I of Annex V sets out the minimum number of fixed sampling points for continuous measurement of ozone in each zone or agglomeration within which measurement is the sole source of information for assessing air quality.

Measurements of nitrogen dioxide shall also be made at a minimum of 50 % of the ozone sampling points required by Section I of Annex V. Measurement of nitrogen dioxide shall be continuous, except at rural background stations, as defined in section I of Annex IV, where other measurement methods may be used.

For zones and agglomerations within which information from sampling points for fixed measurement is supplemented by information from modelling and/or indicative measurement, the total number of sampling points specified in Section I of Annex V may be reduced, provided that:

(a) the supplementary methods provide an adequate level of information for the assessment of air quality with regard to target values, information and alert thresholds;

(b) the number of sampling points to be installed and the spatial resolution of other techniques are sufficient for the concentration of ozone to be established in accordance with the data quality objectives specified in Section I of Annex VII and lead to assessment results as specified in Section II of Annex VII;

(c) the number of sampling points in each zone or agglomeration amounts to at least one sampling point per two million inhabitants or one sampling point per 50 000 km^2, whichever produces the greater number of sampling points;

(d) each zone or agglomeration contains at least one sampling point, and

(e) nitrogen dioxide is measured at all remaining sampling points except at rural background stations.

In this case, the results of modelling and/or indicative measurement shall be taken into account for the assessment of air quality with respect to the target values.

2. In zones and agglomerations where, during each of the previous five years of measurement, concentrations are below the long-term objectives, the number of continuous measurement stations shall be determined in accordance with Section II of Annex V.

3. Each Member State shall ensure that at least one measuring station to supply data on concentrations of the ozone precursor substances listed in Annex VI is installed and operated in its territory. Each Member State shall choose the number and siting of the stations at which ozone precursor substances are to be measured, taking into account the objectives, methods and recommendations laid down in the said Annex.

As part of the guidance developed under Article 12, guidelines for an appropriate strategy to measure ozone precursor substances shall be laid down, taking into account existing requirements in Community legislation and the cooperative programme for monitoring and evaluation of the long-range transmission of air pollutants in Europe (EMEP).

4. Reference methods for analysis of ozone are set out in Section I of Annex VIII. Section II of Annex VIII provides for reference modelling techniques for ozone.

5. Any amendments necessary to adapt this Article and Annexes IV to VIII to scientific and technical progress shall be adopted in accordance with the procedure laid down in Article 13(2).

Article 10

Transmission of information and reports

1. When forwarding information to the Commission under Article 11 of Directive 96/62/EC, Member States shall also, and, for the first time, for the calendar year following the date referred to in Article 15(1):

(a) send to the Commission for each calendar year no later than 30 September of the following year the lists of zones and agglomerations referred to in Article 3(2), Article 4(2) and Article 5;

(b) send to the Commission a report giving an overview of the situation as regards exceedance of the target values as laid down in section II of Annex I. This report shall provide an explanation of annual exceedances of the target value for the protection of human health. The report shall also contain the plans and programmes referred to in Article 3(3). The report shall be sent no later than two years after the end of the period during which exceedances of the target values for ozone were observed;

(c) inform the Commission every three years of the progress of any such plan or programme.

2. Furthermore, Member States shall, for the first time, for the calendar year following the date referred to in Article 15(1):

(a) for each month from April to September each year, send to the Commission, on a provisional basis,

(i) by no later than the end of the following month, for each day with exceedance(s) of the information and/or the alert threshold, the following information: date, total hours of exceedance, maximum 1 h ozone value(s);

(ii) by no later than 31 October each year, any other information specified in Annex III;

(b) for each calendar year no later than 30 September of the following year, send to the Commission the validated information specified in Annex III and the annual average concentrations for that year of the ozone precursor substances specified in Annex VI;

(c) forward to the Commission every three years, within the framework of the sectoral report referred to in Article 4 of Council Directive 91/692/EEC [1], and no later than 30 September following the end of each three-year period:

(i) information reviewing the levels of ozone observed or assessed, as appropriate, in the zones and agglomerations referred to in Articles 3(2), Article 4(2) and Article 5;

(ii) information on any measures taken or planned under Article 4(2), and

(iii) information regarding decisions on short-term action plans and concerning the design and content, and an assessment of the effects, of any such plans prepared in accordance with Article 7.

3. The Commission shall:

(a) ensure that the information submitted pursuant to paragraph 2(a) is promptly made available by appropriate means and is transmitted to the European Environment Agency;

(b) publish annually a list of the zones and agglomerations submitted pursuant to paragraph 1(a) and, by 30 November each year, a report on the ozone situation during the current summer and the preceding calendar year, aiming to provide overviews, in a comparable format, of each Member State's situation, taking into account the different meteorological conditions and transboundary pollution, and an overview of all the exceedances of the long-term objective in the Member States;

(c) check regularly the implementation of the plans or programmes submitted pursuant to paragraph 1(b) by examining their progress and the trends in air pollution, taking account of meteorological conditions and the origin of the ozone precursors (biogenic or anthropogenic);

(d) take into account the information provided under paragraphs 1 and 2 in preparing three-yearly reports on ambient air quality in accordance with Article 11(2) of Directive 96/62/EC;

(e) arrange appropriate exchange of information and experience forwarded in accordance with paragraph 2(c)(iii) regarding the design and implementation of short-term action plans.

4. When carrying out the tasks referred to in paragraph 3, the Commission shall, as necessary, call upon the expertise available in the European Environment Agency.

5. The date by which Member States shall inform the Commission of the methods used for the preliminary assessment of air quality under Article 11(1)(d) of Directive 96/62/EC shall be no later than 9 September 2003.

Article 11

Review and reporting

1. The Commission shall submit to the European Parliament and the Council by 31 December 2004, at the latest, a report based on experience of the application of this Directive. It shall report, in particular, on:

(a) the findings of the most recent scientific research, in the light of the World Health Organisation's Guidelines, into the effects of exposure to ozone on the environment and human health, specifically taking into account sensitive population groups; the development of more accurate models shall be taken into account;

(b) technological developments, including progress achieved in methods of measuring and otherwise assessing concentrations and evolution of ozone concentrations throughout Europe;

(c) comparison of model predictions with actual measurements;

(d) the setting of, and levels for, long-term objectives, for target values, for information and alert thresholds;

(e) the results on the effects of ozone on crops and natural vegetation of the International Cooperative Programme under UN/ECE Convention on Long-range Transboundary Air Pollution.

2. The report shall be presented as an integral part of an air quality strategy designed to review and propose Community air quality objectives and develop implementing strategies to ensure achievement of those objectives. In this context the report shall take into account:

(a) the broad scope for making further reductions in polluting emissions across all relevant sources, taking account of technical feasibility and cost-effectiveness;

[1] OJ L 377, 31.12.1991, p. 48.

(b) relationships between pollutants, and opportunities for combined strategies to achieve Community air quality and related objectives;

(c) the potential for further action to be taken at Community level in order to reduce precursor emissions;

(d) the progress in implementing the target values in Annex I, including the plans and programmes developed and implemented in accordance with Articles 3 and 4, the experience in implementing short-term action plans under Article 7 and the conditions, as laid down under Annex IV, under which air quality measurement has been carried out;

(e) the potential to achieve the long-term objectives, set out in Section III of Annex I, within a specified time period;

(f) current and future requirements for informing the public and for the exchange of information between Member States and the Commission;

(g) the relationship between this Directive and expected changes resulting from measures to be taken by the Community and Member States in order to fulfil commitments relating to climate change;

(h) transport of pollution across national boundaries taking account of measures taken in accession candidate countries.

3. The report shall also include a review of the provisions of this Directive in the light of its findings and it shall be accompanied, if appropriate, by proposals to amend this Directive, paying special attention to the effects of ozone on the environment and on human health, with particular reference to sensitive population groups.

Article 12

Guidance

1. The Commission shall develop guidance for implementing this Directive by 9 September 2002. In so doing, it will call upon the expertise available in the Member States, the European Environment Agency and other expert bodies, as appropriate and taking into account existing requirements in Community legislation and EMEP.

2. The guidance shall be adopted in accordance with the procedure laid down in Article 13(2). Such guidance shall not have the effect of modifying the target values, long-term objectives, alert threshold or information threshold either directly or indirectly.

Article 13

Committee procedure

1. The Commission shall be assisted by the committee established by Article 12(2) of Directive 96/62/EC.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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

3. The committee shall adopt its rules of procedure.

Article 14

Penalties

Member States shall determine the penalties applicable to breaches of the national provisions adopted pursuant to this Directive. The penalties shall be effective, proportionate and dissuasive.

Article 15

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 9 September 2003.They shall forthwith inform the Commission thereof.

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

2. Member States shall communicate to the Commission the text of the main provisions of national law, which they adopt in the field covered by this Directive.

Article 16

Repeal

Directive 92/72/EEC shall be repealed from 9 September 2003.

Article 17

Entry into force

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

Article 18

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 12 February 2002.

For the European Parliament	*For the Council*
The President	*The President*
P. COX	J. PIQUÉ I CAMPS

ANNEX I

DEFINITIONS, TARGET VALUES AND LONG-TERM OBJECTIVES FOR OZONE

I. Definitions

All values are to be expressed in µg/m³. The volume must be standardised at the following conditions of temperature and pressure: 293 K and 101,3 kPa. The time is to be specified in Central European Time.

AOT40 (expressed in (µg/m³)·hours) means the sum of the difference between hourly concentrations greater than 80 µg/m³ (= 40 parts per billion) and 80 µg/m³ over a given period using only the 1 hour values measured between 8:00 and 20:00. Central European Time each day [1].

In order to be valid, the annual data on exceedances used to check compliance with the target values and long-term objectives below must meet the criteria laid down in Section II of Annex III.

II. Target values for ozone

	Parameter	Target value for 2010 (a) [1]
1. Target value for the protection of human health	Maximum daily 8-hour mean (b)	120 µg/m³ not to be exceeded on more than 25 days per calender year averaged over three years (c)
2. Target value for the protection of vegetation	AOT40, calculated from 1 h values from May to July	18 000 µg/m³·h averaged over five years (c)

(a) Compliance with target values will be assessed as of this value. That is, 2010 will be the first year the data for which is used in calculating compliance over the following three or five years, as appropriate.

(b) The maximum daily 8-hour mean concentration shall be selected by examining 8-hour running averages, calculated from hourly data and updated each hour. Each 8-hour average so calculated shall be assigned to the day on which it ends. i.e. the first calculation period for any one day will be the period from 17:00 on the previous day to 01:00 on that day; the last calculation period for any one day will be the period from 16:00 to 24:00 on the day.

(c) If the three or five year averages cannot be determined on the basis of a full and consecutive set of annual data, the minimum annual data required for checking compliance with the target values will be as follows:
— for the target value for the protection of human health: valid data for one year,
— for the target value for the protection of vegetation: valid data for three years.

[1] These target values and permitted exceedance are set without prejudice to the results of the studies and of the review, provided for in Article 11, which will take account of the different geographical and climatic situations in the European Community.

III. Long-term objectives for ozone

	Parameter	Long-term objective (a)
1. Long-term objective for the protection of human health	Maximum daily 8-hour mean within a calender year	120 µg/m³
2. Long-term objective for the protection of vegetation	AOT40, calculated from 1 h values from May to July	6 000 µg/m³·h

(a) Community progress towards attaining the long-term objective using the year 2020 as a benchmark shall be reviewed as part of the process set out in Article 11.

[1] Or the appropriate time for ultra-peripheral regions.

ANNEX II

INFORMATION AND ALERT THRESHOLDS

I. Information and alert thresholds for ozone

	Parameter	Threshold
Information threshold	1 hour average	180 µg/m³
Alert threshold	1 hour average (a)	240 µg/m³

(a) For the implementation of Article 7, the exceedance of the threshold is to be measured or predicted for three consecutive hours.

II. Minimum details to be supplied to the public when the information or alert threshold is exceeded or exceedance is predicted

Details to be supplied to the public on a sufficiently large scale as soon as possible should include:

1. information on observed exceedance(s):
   - location or area of the exceedance,
   - type of threshold exceeded (information or alert),
   - start time and duration of the exceedance,
   - highest 1-hour and 8-hour mean concentration;
2. forecast for the following afternoon/day(s):
   - geographical area of expected exceedances of information and/or alert threshold,
   - expected change in pollution (improvement, stabilisation or deterioration);
3. information on type of population concerned, possible health effects and recommended conduct:
   - information on population groups at risk,
   - description of likely symptoms,
   - recommended precautions to be taken by the population concerned,
   - where to find further information;
4. information on preventive action to reduce pollution and/or exposure to it:

   indication of main source sectors; recommendations for action to reduce emissions.

ANNEX III

Information submitted by Member States to the Commission and criteria for aggregating data and calculating statistical parameters

I. **Information to be submitted to the Commission**

The following table stipulates the type and amount of data Member States are to submit to the Commission:

	Type of station	Level	Averaging/ accumulation time	Provisional data for each month from April to September	Report for each year
Information threshold	Any	180 µg/m³	1 hour	— for each day with exceedance(s): date, total hours of exceedance, maximum 1 hour ozone and related NO_2 values when required, — monthly 1 hour maximum ozone	— for each day with exceedance(s): date, total hours of exceedance, maximum 1 hour ozone and related NO_2 values, when required
Alert threshold	Any	240 µg/m³	1 hour	— for each day with exceedance(s): date, total hours of exceedance, maximum 1 hour ozone and related NO_2 values, when required	— for each day with exceedance(s): date, total hours of exceedance, maximum 1 hour ozone and related NO_2 values when required
Health protection	Any	120 µg/m³	8 hours	— for each day with exceedance(s): date, 8 hours maximum (b)	— for each day with exceedance(s): date, 8 hours maximum (b)
Vegetation protection	Suburban, rural, rural background	AOT40 (a) = 6 000 µg/m³·h	1 hour, accumulated from May to July	—	Value
Forest protection	Suburban, rural, rural background	AOT40 (a) = 20 000 µg/m³·h	1 hour, accumulated from April to September	—	Value
Materials	Any	40 µg/m³ (c)	1 year	—	Value

(a) Se definition of AOT40 in Section I of Annex I.
(b) Maximum daily 8-hour mean (see section II of Annex I note (a)).
(c) Value to be reviewed, pursuant to Article 11(3), in the light of developing scientific knowledge.

As part of the yearly reporting, the following must also be provided, if all available hourly data for ozone, nitrogen dioxide and nitrogen oxides of the year in question have not already been delivered under the framework of Council Decision 97/101/EC ([1]):

— for ozone, nitrogen dioxide, nitrogen oxides and the sums of ozone and nitrogen dioxide (added as parts per billion and expressed in µg/m³ ozone) the maximum, 99.9th, 98th, 50th percentile and annual average and number of valid data from hourly series,

— the maximum, 98th, 50th percentile and annual average from series of daily 8-hour ozone maxima.

Data submitted in the monthly reports are considered provisional and are to be updated, if necessary, in subsequent submissions.

([1]) OJ L 35, 5.2.1997, p. 14.

II. **Criteria for aggregating data and calculating statistical parameters**

Percentiles are to be calculated using the method specified in Council Decision 97/101/EC.

The following criteria are to be used for checking validity when aggregating data and calculating statistical parameters:

Parameter	Required proportion of valid data
1 hour values	75 % (i.e. 45 minutes)
8 hours values	75 % of values (i.e. 6 hours)
Maximum daily 8 hours mean from hourly running 8 hours averages	75 % of the hourly running 8 hours averages (i.e. 18 8 hours averages per day)
AOT40	90 % of the 1 hour values over the time period defined for calculating the AOT40 value (a)
Annual mean	75 % of the 1 hour values over summer (April to September) and winter (January to March, October to December) seasons separately
Number of exceedances and maximum values per month	90 % of the daily maximum 8 hours mean values (27 available daily values per month) 90 % of the 1 hour values between 8:00 and 20:00 Central European Time
Number of exceedances and maximum values per year	five out of six months over the summer season (April to September)

(a) In cases where all possible measured data are not available, the following factor shall be used to calculated AOT40 values:

$$\text{AOT40 [estimate]} = \text{AOT40}_{\text{measured}} \times \frac{\text{total possible number of hours *}}{\text{number of measured hourly values}}$$

* being the number of hours within the time period of AOT40 definition, (i.e. 08:00 to 20:00 h CET from 1 May to 31 July each year, for vegetatin protection and from 1 April to 30 September each year for forest protection).

ANNEX IV

CRITERIA FOR CLASSIFYING AND LOCATING SAMPLING POINTS FOR ASSESSMENTS OF OZONE CONCENTRATIONS

The following considerations apply to fixed measurements:

I. **Macroscale siting**

Type of station	Objectives of measurement	Representativeness (a)	Macroscale siting criteria
Urban	**Protection of human health**: to assess the exposure of the urban population to ozone, i.e. where population density and ozone concentration are relatively high and representative of the exposure of the general population	A few km^2	Away from the influence of local emissions such as traffic, petrol stations, etc.; Vented locations where well mixed levels can be measured; Locations such as residential and commercial areas of cities, parks (away from the trees), big streets or squares with very little or no traffic, open areas characteristic of educational, sports or recreation facilities
Suburban	**Protection of human health and vegetation**: to assess the exposure of the population and vegetation located in the outskirts of the agglomeration, where the highest ozone levels, to which the population and vegetation is likely to be directly or indirectly exposed, occur	Some tens of km^2	At a certain distance from the area of maximum emissions, downwind following the main wind direction/directions during conditions favourable to ozone formation; Where population, sensitive crops or natural ecosystems located in the outer fringe of an agglomeration are exposed to high ozone levels; Where appropriate, some suburban stations also upwind of the area of maximum emissions, in order to determine the regional background levels of ozone
Rural	**Protection of human health and vegetation**: to assess the exposure of population, crops and natural ecosystems to sub-regional scale ozone concentrations	Sub-regional levels (a few km^2)	Stations can be located in small settlements and/or areas with natural ecosystems, forests or crops; Representative for ozone away from the influence of immediate local emissions such as industrial installations and roads; At open area sites, but not on higher mountain-tops
Rural background	**Protection of vegetation and human health**: to assess the exposure of crops and natural ecosystems to regional-scale ozone concentrations as well as exposure of the population	Regional/national/continental levels (1 000 to 10 000 km^2)	Station located in areas with lower population density, e.g. with natural ecosystems, forests, far removed from urban and industrial areas and away from local emissions; Avoid locations which are subject to locally enhanced formation of ground-near inversion conditions, also summits of higher mountains; Coastal sites with pronounced diurnal wind cycles of local character are not recommended.

(a) Sampling points should also, where possible, be representative of similar locations not in their immediate vicinity.

For rural and rural background stations, consideration should be given, where appropriate, to coordination with the monitoring requirements of Commission Regulation (EC) No 1091/94 [1] concerning protection of the Community's forests against atmospheric pollution.

[1] OJ L 125, 18.5.1994, p. 1.

II. Microscale siting

The following guidelines should be followed, as far as practicable:

1. The flow around the inlet sampling probe should be unrestricted (free in an arc of at least 270°) without any obstructions affecting the air flow in the vicinity of the sampler, i.e. away from buildings, balconies, trees and other obstacles by more than twice the height the obstacle protrudes above the sampler.
2. In general, the inlet sampling point should be between 1.5 m (the breathing zone) and 4 m above the ground. Higher positions are possible for urban stations in some circumstances and in wooded areas.
3. The inlet probe should be positioned well away from such sources as furnaces and incineration flues and more than 10 m from the nearest road, with distance increasing as a function of traffic intensity.
4. The sampler's exhaust outlet should be positioned so as to avoid recirculation of exhaust air to the sampler inlet.

The following factors may also be taken into account:

1. interfering sources;
2. security;
3. access;
4. availability of electrical power and telephone communications;
5. visibility of the site in relation to its surroundings;
6. safety of public and operators;
7. the desirability of colocating sampling points for different pollutants;
8. planning requirements.

III. Documentation and review of site selection

Site selection procedures should be fully documented at the classification stage by such means as compass point photographs of the surroundings and a detailed map. Sites should be reviewed at regular intervals with repeated documentation to ensure that selection criteria are still being met.

This requires proper screening and interpretation of the monitoring data in the context of the meteorological and photochemical processes affecting the ozone concentrations measured at the respective site.

ANNEX V

CRITERIA FOR DETERMINING THE MINIMUM NUMBER OF SAMPLING POINTS FOR FIXED MEASUREMENT OF CONCENTRATIONS OF OZONE

I. Minimum number of sampling points for fixed continuous measurements to assess air quality in view of compliance with the target values, long-term objectives and information and alert thresholds where continuous measurement is the sole source of information

Population (× 1 000)	Agglomerations (urban and suburban) (a)	Other zones (suburban and rural) (a)	Rural background
< 250		1	1 station/50 000 km² as an average density over all zones per country (b)
< 500	1	2	
< 1 000	2	2	
< 1 500	3	3	
< 2 000	3	4	
< 2 750	4	5	
< 3 750	5	6	
> 3 750	1 additional station per 2 million inhabitants	1 additional station per 2 million inhabitants	

(a) At least 1 station in suburban areas, where the highest exposure of the population is likely to occur. In agglomerations at least 50 % of the stations should be located in suburban areas.

(b) 1 station per 25 000 km² for complex terrain is recommended.

II. Minimum number of sampling points for fixed measurements for zones and agglomerations attaining the long-term objectives

The number of sampling points for ozone must, in combination with other means of supplementary assessment such as air quality modelling and colocated nitrogen dioxide measurements, be sufficient to examine the trend of ozone pollution and check compliance with the long-term objectives. The number of stations located in agglomerations and other zones may be reduced to one-third of the number specified in Section I. Where information from fixed measurement stations is the sole source of information, at least one monitoring station should be kept. If, in zones where there is supplementary assessment, the result of this is that a zone has no remaining station, coordination with the number of stations in neighbouring zones must ensure adequate assessment of ozone concentrations against long-term objectives. The number of rural background stations should be 1 per 100 000 km².

ANNEX VI

MEASUREMENTS OF OZONE PRECURSOR SUBSTANCES

Objectives

The main objectives of such measurements are to analyse any trend in ozone precursors, to check the efficiency of emission reduction strategies, to check the consistency of emission inventories and to help attribute emission sources to pollution concentration.

An additional aim is to support the understanding of ozone formation and precursor dispersion processes, as well as the application of photochemical models.

Substances

Measurement of ozone precursor substances must include at least nitrogen oxides, and appropriate volatile organic compounds (VOC). A list of volatile organic compounds recommended for measurement is given below.

	1-Butene	Isoprene	Ethyl benzene
Ethane	trans-2-Butene	n-Hexane	m+p-Xylene
Ethylene	cis-2-Butene	i-Hexane	o-Xylene
Acetylene	1.3-Butadiene	n-Heptane	1,2,4-Trimeth. benzene
Propane	n-Pentane	n-Octane	1,2,3-Trimeth. benzene
Propene	i-Pentane	i-Octane	1,3,5-Trimeth. benzene
n-Butane	1-Pentene	Benzene	Formaldehyde
i-Butane	2-Pentene	Toluene	Total non-methane hydrocarbons

Reference methods

The reference method specified in Directive 1999/30/CE [1] or in subsequent Community legislation will apply for nitrogen oxides.

Each Member State must inform the Commission of the methods it uses to sample and measure VOC. The Commission must carry out inter-comparison exercises as soon as possible and investigate the potential for defining reference methods for precursor sampling and measurement in order to improve the comparability and precision of measurements for the review of this Directive in accordance with Article 11.

Siting

Measurements should be taken in particular in urban and suburban areas at any monitoring site set up in accordance with the requirements of Directive 96/62/EC and considered appropriate with regard to the above monitoring objectives.

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[1] OJ L 163, 29.6.1999, p. 41.

ANNEX VII

DATA QUALITY OBJECTIVES AND COMPILATION OF THE RESULTS OF AIR QUALITY ASSESMENT

I. Data quality objectives

The following data quality objectives, for allowed uncertainty of assessment methods, and of minimum time coverage and of data capture of measurement are provided to guide quality-assurance programmes.

	For ozone, NO and NO_2
Continuous fixed measurement	
Uncertainty of individual measurements	15 %
Minimum data capture	90 % during summer 75 % during winter
Indicative measurement	
Uncertainty of individual measurements	30 %
Minimum data capture	90 %
Minimum time coverage	> 10 % during summer
Modelling	
Uncertainty	
1 hour averages (daytime)	50 %
8 hours daily maximum	50 %
Objective estimation	
Uncertainty	75 %

The uncertainty (on a 95 % confidence interval) of the measurement methods will be evaluated in accordance with the principles of the ISO 'Guide to the Expression of Uncertainty in Measurement' (1993), or the methodology of ISO 5725-1 'Accuracy (trueness and precision) of measurement methods and results' (1994) or equivalent. The percentages for uncertainty in the table are given for individual measurements, averaged over the period for calculating target values and long-term objectives, for a 95 % confidence interval. The uncertainty for continuous fixed measurements should be interpreted as being applicable in the region of the concentration used for the appropriate threshold.

The uncertainty for modelling and objective estimation is defined as the maximum deviation of the measured and calculated concentration levels, over the period for calculating the appropriate threshold, without taking into account the timing of the events.

'Time coverage' is defined as the percentage of the time considered for setting the threshold value during which the pollutant is measured.

'Data capture' is defined as the ratio of the time for which the instrument produces valid data, to the time for which the statistical parameter or aggregated value is to be calculated.

The requirements for minimum data capture and time coverage do not include losses of data due to the regular calibration or normal maintenance of the instrumentation.

II. Results of air quality assessment

The following information should be compiled for zones or agglomerations within which sources other than measurement are employed to supplement information from measurement:

— a description of the assessment activities carried out,

— specific methods used, with references to descriptions of the method,

— sources of data and information,
— a description of results, including uncertainties and, in particular, the extent of any area within the zone or agglomeration over which concentrations exceed long-term objectives or target values,
— for long-term objectives or target values whose object is the protection of human health, the population potentially exposed to concentrations in excess of the threshold.

Where possible, Member States should compile maps showing concentration distributions within each zone and agglomeration.

III. Standardisation

For ozone the volume must be standardised at the following conditions of temperature and pressure: 293 K, 101,3 kPa. For nitrogen oxides the standardisation specified in Directive 1999/30/EC will apply.

ANNEX VIII

REFERENCE METHOD FOR ANALYSIS OF OZONE AND CALIBRATION OF OZONE INSTRUMENTS

I. Reference method for analysis of ozone and calibration of ozone instruments

— Analysis method: UV photometric method (ISO FDIS 13964),
— Calibration method: Reference UV photometer (ISO FDIS 13964, VDI 2468, B1.6).

This method is being standardised by the European Committee for Standardisation (CEN). Once the latter has published the relevant standard, the method and techniques described therein will constitute the reference and calibration method in this Directive.

A Member State may also use any other method which it can demonstrate gives results equivalent to the above method.

II. Reference modelling technique for ozone

Reference modelling techniques cannot be specified at present. Any amendments to adapt this point to scientific and technical progress will be adopted in accordance with the procedure laid down in Article 13(2).

DIRECTIVE 2002/6/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 18 February 2002

on reporting formalities for ships arriving in and/or departing from ports of the Member States of the Community

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas:

(1) The Community has an established policy to encourage sustainable transport, such as shipping, and, in particular, to promote short sea shipping.

(2) Facilitation of maritime transport is an essential objective for the Community to further strengthen the position of shipping in the transport system as an alternative and complement to other transport modes in a door-to-door transport chain.

(3) The documentary procedures required in maritime transport have caused concern and have been considered to hamper the development of the mode to its full potential.

(4) The International Maritime Organisation's Convention on Facilitation of International Maritime Traffic adopted by the International Conference on Facilitation of Maritime Travel and Transport on 9 April 1965, as subsequently amended (hereinafter 'the IMO FAL Convention'), has provided a set of models for standardised facilitation forms for ships to fulfil certain reporting formalities when they arrive in or depart from a port.

(5) Most Member States use these facilitation forms but do not apply the models provided under the auspices of the IMO in a uniform manner.

(6) Uniformity in the format of the forms required for a ship arriving in and departing from a port should facilitate the documentary procedures for port calls and be beneficial to the development of Community shipping.

(7) Consequently, it is opportune to introduce the recognition of the IMO facilitation forms (hereinafter 'IMO FAL forms') at Community level. The Member States should recognise the IMO FAL forms and the categories of information in them as sufficient proof that a ship has fulfilled the reporting formalities these forms are intended for.

(8) However, the recognition of certain IMO FAL forms, in particular the cargo declaration and – for passenger ships — the passenger list, would add to the complexity of reporting formalities either because those forms cannot contain all necessary information or because well-established facilitation practices already exist. Consequently, obligatory recognition of those forms should not be introduced.

(9) Maritime transport is a global activity and the introduction of the IMO FAL forms in the Community could pave the way towards their intensified application around the world.

(10) Since the objectives of the proposed action, namely to facilitate maritime transport, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(11) The measures necessary for the implementation of this Directive 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 [4],

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Purpose

The purpose of this Directive is to facilitate maritime transport by providing for standardisation of reporting formalities.

[1] OJ C 180 E, 26.6.2001, p. 85.
[2] OJ C 221, 7.8.2001, p. 149.
[3] Opinion of the European Parliament of 25 October 2001 (not yet published in the Official Journal) and Council Decision of 7 December 2002.
[4] OJ L 184, 17.7.1999, p. 23.

Article 2

Scope

This Directive shall apply to the reporting formalities on arrival in and/or departure from ports of the Member States of the Community, as set out in Annex I, Part A, relating to a ship, its stores, its crew's effects, its crew list and, in the case of a ship certified to carry 12 passengers or fewer, its passenger list.

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply:

(a) 'IMO FAL Convention' means the International Maritime Organisation's Convention on Facilitation of International Maritime Traffic adopted by the International Conference on Facilitation of Maritime Travel and Transport on 9 April 1965;

(b) 'IMO FAL forms' means A4 size standardised IMO model facilitation forms provided for under the IMO FAL Convention;

(c) 'reporting formality' means the information that, when required by a Member State, must be provided for administrative and procedural purposes when a ship arrives in or departs from a port;

(d) 'ship' means a seagoing vessel of any type operating in the marine environment;

(e) 'ship's stores' means goods for use in the ship, including consumable goods, goods carried for sale to passengers and crew members, fuel and lubricants, but excluding ship's equipment and spare parts;

(f) 'ship's equipment' means articles other than ship's spare parts which are on board a ship for use thereon and are removable but not of a consumable nature, including accessories, such as lifeboats, life-saving devices, furniture, ship's apparel and similar items;

(g) 'ship's spare parts' means articles of a repair or replacement nature for incorporation into the ship in which they are carried;

(h) 'crew's effects' means clothing, items in everyday use and other articles, which may include currency, belonging to the crew and carried on the ship;

(i) 'crew member' means any person actually employed for duties on board during a voyage in the working or service of a ship and included in the crew list.

Article 4

Acceptance of forms

Member States shall accept that the reporting formalities referred to in Article 2 are satisfied when the information submitted is in accordance with:

(a) the respective specifications set out in Annex I, Parts B and C, and

(b) the corresponding model forms set out in Annex II with their categories of data.

Article 5

Amendment procedure

Any amendments of Annexes I and II to this Directive and references to IMO instruments in order to bring them into line with Community or IMO measures which have entered into force shall be adopted in accordance with the regulatory procedure referred to in Article 6(2), in so far as such amendments do not broaden the scope of this Directive.

Article 6

Committee

1. The Commission shall be assisted by the committee set up pursuant to Article 12(1) of Council Directive 93/75/EEC [1].

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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

3. The Committee shall adopt its rules of procedure.

Article 7

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 9 September 2003. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

[1] OJ L 247, 5.10.1993, p. 19. Directive as last amended by Commission Directive 98/74/EC (OJ L 276, 13.10.1998, p. 7).

Article 8

Entry into force

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

Article 9

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 18 February 2002.

For the European Parliament	*For the Council*
The President	*The President*
P. COX	J. PIQUÉ I CAMPS

ANNEX I

PART A

List of reporting formalities referred to in Article 2 in respect of ships arriving in and/or departing from ports of the Member States of the Community

1. *IMO FAL form 1, general declaration*

   The general declaration shall be the basic document on arrival and departure providing information required by the authorities of a Member State relating to the ship.

2. *IMO FAL form 3, ship's stores declaration*

   The ship's stores declaration shall be the basic document on arrival and departure providing information required by the authorities of a Member State relating to a ship's stores.

3. *IMO FAL form 4, crew's effects declaration*

   The crew's effects declaration shall be the basic document providing information required by the authorities of a Member State relating to the crew's effects. It shall not be required on departure.

4. *IMO FAL form 5, crew list*

   The crew list shall be the basic document providing the authorities of a Member State with the information relating to the number and composition of the crew on the arrival and departure of a ship. Where the authorities require information about the crew of a ship on its departure, a copy of the crew list, presented on arrival, shall be accepted on departure if signed again and endorsed to indicate any change in the number or composition of the crew or to indicate that no such change has occurred.

5. *IMO FAL form 6, passenger list*

   For ships certified to carry 12 passengers or fewer, the passenger list shall be the basic document providing the authorities of a Member State with information relating to passengers on the arrival and departure of a ship.

PART B

Signatories

1. *IMO FAL form 1, general declaration*

   The authorities of the Member State shall accept a general declaration either dated and signed by the master, the ship's agent or some other person duly authorised by the master, or authenticated in a manner acceptable to the authority concerned.

2. *IMO FAL form 3, ship's stores declaration*

   The authorities of the Member State shall accept a ship's stores declaration either dated and signed by the master or by some other ship's officer duly authorised by the master and having personal knowledge of the facts regarding the ship's stores, or authenticated in a manner acceptable to the authority concerned.

3. *IMO FAL form 4, crew's effects declaration*

   The authorities of the Member State shall accept a crew's effects declaration either dated and signed by the master or by some other ship's officer duly authorised by the master, or authenticated in a manner acceptable to the authority concerned. The authorities of the Member State may also require each crew member to place his signature, or, if he is unable to do so, his mark, against the declaration relating to his effects.

4. *IMO FAL form 5, crew list*

   The authorities of a Member State shall accept a crew list either dated and signed by the master or by some other ship's officer duly authorised by the master, or authenticated in a manner acceptable to the authority concerned.

5. *IMO FAL form 6, passenger list*

For ships certified to carry 12 passengers or fewer, the authorities of a Member State shall accept a passenger list either dated and signed by the master, the ship's agent or some other person duly authorised by the master, or authenticated in a manner acceptable to the authority concerned.

PART C

Technical specifications

1. The formats of the IMO FAL forms shall follow the proportions of the models shown in Annex II as closely as technically possible. They shall be printed on separate A4 size paper sheets (210 mm × 297 mm) with portrait orientation. At least one third of the verso side of the forms shall be reserved for official use by the authorities of the Member States.

   For the purposes of the recognition of IMO FAL forms, the formats and layouts of the standardised facilitation forms recommended and reproduced by the IMO based on the IMO FAL Convention as in force on 1 May 1997 shall be considered equivalent to the formats reproduced in Annex II.

2. The authorities of the Member State shall accept information conveyed by any legible and understandable medium, including forms filled in ink or indelible pencil or produced by automatic data processing techniques.

3. Without prejudice to methods of transmitting data by electronic means, when a Member State accepts the provision of ship's reporting information in electronic form, it shall accept the transmission of that information when produced by electronic data processing or interchange techniques that conform with international standards, provided it is in legible and understandable form and contains the required information.

   Member States may subsequently process the acquired data in any format they consider appropriate.

ANNEX II

Models of IMO FAL forms referred to in Article 4 and Annex I

IMO GENERAL DECLARATION

☐ Arrival ☐ Departure

<table>
<tr><td colspan="2">1. Name and description of ship</td><td>2. Port of arrival/departure</td><td>3. Date - time of arrival/departure</td></tr>
<tr><td>4. Nationality of ship</td><td>5. Name of master</td><td colspan="2">6. Port arrived from/port of destination</td></tr>
<tr><td colspan="2">7. Certificate of registry (port; date; number)</td><td colspan="2" rowspan="3">8. Name and address of ship's agent</td></tr>
<tr><td>9. Gross tonnage</td><td>10. Net tonnage</td></tr>
<tr><td colspan="2">11. Position of the ship in the port (berth or station)</td></tr>
<tr><td colspan="4">12. Brief particulars of voyage (previous and subsequent ports of call; underline where remaining cargo will be discharged)</td></tr>
<tr><td colspan="4">13. Brief description of the cargo</td></tr>
<tr><td>14. Number of crew (incl. master)</td><td>15. Number of passengers</td><td colspan="2" rowspan="3">16. Remarks</td></tr>
<tr><td colspan="2">Attached documents
(indicate number of copies)</td></tr>
<tr><td>17. Cargo declaration</td><td>18. Ship's stores declaration</td></tr>
<tr><td>19. Crew list</td><td>20. Passenger list</td><td colspan="2" rowspan="2">21. Date and signature by master, authorised agent or officer</td></tr>
<tr><td>22. Crew's effects declaration (*)</td><td>23. Maritime declaration of health (*)</td></tr>
</table>

For official use

IMO Convention on Facilitation of International Maritime Traffic

IMO FAL
Form 1

(*) Only on arrival.

IMO SHIP'S STORES DECLARATION

	Arrival	Departure	Page No

1. Name of ship		2. Port of arrival/departure	3. Date of arrival/departure
4. Nationality of ship		5. Port arrived from/port of destination	
6. Number of persons on board	7. Period of stay	8. Place of storage	

9. Name of article	10. Quantity	11. For official use

12. Date and signature by master, authorised agent or officer

IMO Convention on Facilitation of International Maritime Traffic

IMO FAL Form 3

IMO CREW'S EFFECTS DECLARATION

Page No

1. Name of ship		2. Effects which are dutiable or subject to prohibitions or restrictions (*)	
3. Nationality of ship			
4. No 5. Family name, given names	6. Rank or rating		7. Signature

IMO Convention on Facilitation of International Maritime Traffic

IMO FAL Form 4

8. Date and signature by master, authorised agent or officer

(*) E.g. wines, spirits, cigarettes, tobacco, etc.

IMO CREW LIST

IMO Convention on Facilitation of International Maritime Traffic

☐ Arrival ☐ Departure

Page No

1. Name of ship		2. Port of arrival/departure		3. Date of arrival/departure
4. Nationality of ship		5. Port arrived from		6. Nature and No of identity document (seaman's passport)
7. No 8. Family name, given names	9. Rank or rating	10. Nationality	11. Date and place of birth	

IMO FAL Form 5

12. Date and signature by master, authorised agent or officer

IMO PASSENGER LIST

☐ Arrival ☐ Departure

				Page No
1. Name of ship		2. Port of arrival/departure	3. Date of arrival/departure	
4. Nationality of ship				
5. Family name, given names	6. Nationality	7. Date and place of birth	8. Port of embarkation	9. Port of disembarkation

10. Date and signature by master, authorised agent or officer

IMO Convention on Facilitation of International Maritime Traffic

IMO FAL Form 6

DIRECTIVE 2002/7/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 18 February 2002

amending Council Directive 96/53/EC laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Having regard to the opinion of the Committee of the Regions [3],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [4],

Whereas:

(1) Directive 96/53/EC [5] established, in the framework of the common transport policy, harmonised maximum vehicle dimensions for the circulation of road vehicles transporting goods.

(2) There is a need for harmonised maximum authorised vehicle dimensions for the circulation of road vehicles transporting passengers. Differences between standards in force in the Member States with regard to the dimensions of passenger road vehicles could have an adverse effect on the conditions of competition and constitute an obstacle to traffic between Member States.

(3) Since the objective of the harmonisation of the maximum authorised vehicle dimensions for road vehicles transporting passengers cannot be sufficiently achieved by the Member States and can therefore by reason of the scale or effects of the proposed action be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(4) In the implementation of the internal market, the scope of Directive 96/53/EC should be extended to national transport in so far as it concerns characteristics that significantly affect the conditions of competition in the transport sector and in particular the values relating to the maximum authorised length and width of vehicles intended for the carriage of passengers.

(5) Harmonised rules on maximum weights and dimensions of vehicles should remain stable in the long term. Thus, the amendments laid down in this Directive should not create a precedent for the maximum authorised weights and dimensions of buses and other categories of motor vehicle.

(6) For reasons of road safety, buses should meet performance criteria as regards their manoeuvrability.

(7) For reasons of road safety linked to the state of their infrastructure Portugal and the United Kingdom should be authorised, for a transitional period, to refuse the use on their territory of buses which do not satisfy certain manoeuvrability criteria.

(8) Buses which were registered or put into circulation before the date of implementation of this Directive and which do not comply with the dimension characteristics laid down in this Directive, owing to previously differing national provisions or methods of measurement, should be allowed for a transitional period to continue to provide transport services within the Member State in which the vehicle is registered or put into circulation.

(9) Directive 96/53/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 96/53/EC is hereby amended as follows:

1. in Article 1:

   (a) paragraph 1(a) shall be replaced by the following:

   '(a) the dimensions of motor vehicles in categories M2 and M3 and their trailers in category 0 and motor vehicles in categories N2 and N3 and their trailers in categories 03 and 04, as defined in Annex II to Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type approval of motor vehicles and their trailers [1];

   [1] OJ L 42, 23.2.1970, p. 1. Directive as last amended by Directive of the European Parliament and of the Council 2000/40/EC (OJ L 203, 10.8.2000, p. 9).';

[1] OJ C 274 E, 26.9.2000, p. 32.
[2] OJ C 123, 25.4.2001, p. 76.
[3] OJ C 144, 16.5.2001, p. 15.
[4] Opinion of the European Parliament of 3 October 2000 (OJ C 178, 22.6.2001, p. 60), Council Common Position of 27 September 2001 (OJ C 360, 15.12.2001, p. 7) and Decision of the European Parliament of 17 January 2002.
[5] OJ L 235, 17.9.1996, p. 59.

(b) the following paragraph shall be added:

'3. This Directive shall not apply to articulated buses comprising more than one articulated section.';

2. in Article 3(1), the second indent shall be replaced by the following:

'— in national traffic, of vehicles registered or put into circulation in any other Member State for reasons relating to their dimensions;';

3. Article 4 shall be amended as follows:

(a) paragraphs 1 and 2 shall be replaced by the following:

'1. Member States shall not authorise the normal circulation within their territories:

(a) of vehicles or vehicle combinations for the national transport of goods which are not in conformity with the characteristics set out in points 1.1, 1.2, 1.4, 1.5, 1.6, 1.7, 1.8, 4.2 and 4.4 of Annex I;

(b) of vehicles for national passenger transport, which are not in conformity with the characteristics set out in points 1.1, 1.2, 1.4a, 1.5 and 1.5a of Annex I.

2. Member States may nonetheless authorise the circulation within their territories:

(a) of vehicles or vehicle combinations for the national transport of goods which are not in conformity with the characteristics set out in points 1.3, 2, 3, 4.1 and 4.3 of Annex I;

(b) of vehicles for national passenger transport, which are not in conformity with the characteristics set out in points 1.3, 2, 3, 4.1 and 4.3 of Annex I.';

(b) paragraph 4 shall be amended as follows:

(i) in the first subparagraph, the terms 'vehicles or vehicle combinations used for goods transport which...' shall be replaced by 'vehicles or vehicle combinations used for transport which...';

(ii) in the third subparagraph, the terms 'the circulation in its territory, in national goods transport operations, of vehicles...' shall be replaced by 'the circulation in its territory, in national transport operations, of vehicles...'

(c) the following paragraph shall be added:

'7. Until 31 December 2020 Member States may authorise buses that were registered or put into circulation before the implementation of this Directive but the dimensions of which exceed those laid down in points 1.1, 1.2, 1.5 and 1.5a of Annex I to circulate within their territories.';

4. Article 7 shall be replaced by the following text:

'*Article 7*

This Directive shall not preclude the application of road traffic provisions in force in each Member State which permit the weight and/or dimensions of vehicles on certain roads or civil engineering structures to be limited, irrespective of the State of registration of such vehicles or the State where such vehicles were put into circulation.

This includes the possibility to impose local restrictions on maximum authorised dimensions and/or weights of vehicles that may be used in specified areas or on specified roads, where the infrastructure is not suitable for long and heavy vehicles, such as city centres, small villages or places of special natural interest.';

5. the following Article shall be inserted:

'*Article 8a*

Portugal and the United Kingdom may refuse or prohibit the use on their territory until 9 March 2005 of the buses referred to in point 1.1 of Annex I unless they satisfy the following manoeuvrability criteria:

— when the bus is stationary and has its steered wheels so directed that if the vehicle moved, its outermost forward point would describe a circle of 12,50 m in radius, a vertical plane tangential to the side of the vehicle which faces outwards from the circle must be established by marking a line on the ground. In the case of an articulated bus the two rigid portions must be aligned with the plane,

— when the bus moves forward on either side following the circle of 12,50 m in radius, no part of it may move outside the vertical plane by more than 0,80 m in the case of a rigid bus of up to 12 m in length or by more than 1,20 m in the case of either a rigid bus of over 12 m in length or an articulated bus.';

6. the following Article shall be inserted:

'*Article 10a*

With regard to Annex I, point 1.5a, the Commission shall, by 9 March 2005 at the latest, present a report on the feasibility of reducing the value of 0,60 m referred to in the second subparagraph of this point to improve the safety conditions related to the manoeuvrability of long buses. If appropriate, the report shall be accompanied by a legislative proposal to amend this Directive accordingly.';

7. Annex I shall be amended as follows:

(a) point 1.1 shall be replaced by the following:

'1.1 maximum length:

— motor vehicle other than a bus 12,00 m	12,00 m
— trailer	12,00 m
— articulated vehicle	16,50 m
— road train	18,75 m
— articulated bus	18,75 m
— bus with two axles	13,50 m
— bus with more than two axles	15,00 m
— bus + trailer	18,75 m'

(b) the following point shall be inserted:

'1.4a If any removable attachments such as ski-boxes are fitted to a bus, its length, including the attachments, must not exceed the maximum length laid down in point 1.1';

(c) the following point shall be inserted:

'1.5a *Additional requirements for buses*

With the vehicle stationary, a vertical plane tangential to the side of the vehicle and facing outwards from the circle shall be established by marking a line on the ground. In the case of an articulated vehicle, the two rigid portions shall be aligned with the plane.

When the vehicle moves from a straight line approach into the circular area described in point 1.5, no part of it shall move outside of that vertical plane by more than 0,60 m.'

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 9 March 2004 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate the provisions of national law which they adopt in the field covered by this Directive to the Commission.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 18 February 2002.

For the European Parliament	*For the Council*
The President	*The President*
P. COX	J. PIQUÉ I CAMPS

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 3 July 2001

on State aid which Spain has implemented and is planning to implement for the restructuring of Babcock Wilcox España SA

(notified under document number C(2001) 1780)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2002/200/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 66(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter of 12 March 1997, Spain notified the Commission of a capital injection of ESP 10 000 million (EUR 60,1 million) which the wholly state-owned holding company Sociedad Estatal de Participaciones Industriales ('SEPI') planned to make into its subsidiary Babcock Wilcox España SA ('BWE'). The notification also contained information about another increase of ESP 10 000 million (EUR 60,1 million) that TENEO, SEPI's predecessor, had made in BWE's capital in 1994.

(2) By letter of 2 June 1998, the Commission informed Spain that it had decided to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the above measures.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [1]. The Commission invited interested parties to submit their comments on the capital injections.

(4) By letter of 16 June 1999, Spain notified the Commission of a further capital injection of ESP 41 000 million (EUR 246,4 million) into BWE.

(5) By letter of 23 July 1999, the Commission informed Spain that it had decided to extend the Article 88(2) procedure to include the new capital increase in the formal investigation.

(6) The Commission decision to extend the procedure was published in the *Official Journal of the European Communities* [2]. The Commission invited interested parties to submit their comments on the new measure.

(7) By letter of 25 April 2000, Spain notified the Commission of the arrangements that had been decided for privatising BWE.

(8) By letter of 7 July 2000, the Commission informed Spain that it had decided to extend the Article 88(2) procedure to the aid elements identified in the privatisation arrangements.

(9) The Commission decision to extend the procedure was published in the *Official Journal of the European Communities* [3]. The Commission invited interested parties to submit their comments on the aid involved in the privatisation arrangements.

[1] OJ C 249, 8.8.1998, p. 3.
[2] OJ C 280, 2.10.1999, p. 22.
[3] OJ C 232, 12.8.2000, p. 2.

(10) The Commission received comments from interested parties regarding the privatisation arrangements. It forwarded them to the Spanish authorities by letter of 4 October 2000, giving them the opportunity to react. Spain's comments were received by letter of 31 October 2000.

II. BABCOCK WILCOX ESPAÑA SA

(11) Established in 1918, BWE is an engineering and construction company in the capital goods sector; it is a wholly owned subsidiary of SEPI. BWE is based in the Basque Country; its head office is located in Bilbao and its production plants are in Galindo (Vizcaya) near Bilbao.

(12) In 1978, in the middle of Spain's transition to democracy, BWE suspended payments and was bought by the Spanish State with a workforce of 5 600. Under State ownership, BWE went through a steady restructuring process that drastically scaled down its activities in an orderly manner. BWE abandoned the production of rolling stock, hot-rolled steel, steel castings and large parts. As a result, its workforce fell from 5 600 in 1978 to 1 512 in 1993. Its turnover halved over the same period, falling to ESP 36 966 million (EUR 222,17 million) in 1993, with ordinary losses of ESP 519 million (EUR 3,12 million) and a net positive income of ESP 275 million (EUR 1,65 million).

(13) During the first half of the 1990s, the process of restructuring BWE slowed down and the company began to accumulate debts. The ensuing loss of competitiveness forced BWE to adopt further restructuring measures, the estimated costs of which were entered into the 1996 accounts. As a result, the moderate profits recorded by BWE during the early 1990s gave way to heavy losses. In 1996 BWE employed 1 516 workers and generated turnover of ESP 44 009 million (EUR 264,5 million) with final losses of ESP 29 030 million (EUR 174,47 million), after computing extraordinary costs of ESP 29 030 million (EUR 174,43 million). BWE exported 51 % of its production.

III. THE AID MEASURES UNDER FORMAL INVESTIGATION

a) The 1994 and 1997 capital injections

(14) The capital increase of ESP 10 000 million (EUR 60,1 million) notified in 1997 was intended to finance an early retirement scheme affecting 423 workers. This workforce reduction formed part of a broad restructuring programme aimed at restoring the viability of BWE, consolidating its competitive position in the marketplace and preparing it for privatisation. In this latter respect, the Spanish Government informed the Commission of its decision to privatise BWE, according to the plan for the modernisation of the Spanish public sector. The privatisation process started in the last quarter of 1997 with the selection by SEPI of an adviser and the dispatch of invitations to tender to all potential purchasers.

(15) Following the payment by SEPI of the notified capital increase in breach of the prohibition in Article 88(3) of the Treaty, the Commission decided to initiate the Article 88(2) procedure on 7 April 1998.

(16) The procedure was also opened in respect of another previous capital injection of ESP 10 000 million (EUR 60,1 million) into BWE in 1994 that the Commission had discovered in the financial statements transmitted with the notification.

b) The 1999 capital injection

(17) Following discussions with the companies that had expressed an interest in buying BWE, SEPI signed a Memorandum of Understanding with the Norwegian group Kvaerner on 2 April 1998. The subsequent negotiations with Kvaerner came to a standstill due to the serious financial difficulties experienced at the time by that group. Consequently, in November 1998 SEPI decided to close the negotiations with Kvaerner and reopened the privatisation process.

(18) In December 1998, SEPI shortlisted three other potential purchasers, to which it supplied the relevant information.

(19) By letter of 16 June 1999, the Spanish authorities notified a further capital injection into BWE of ESP 41 000 million (EUR 246,4 million). These funds were aimed at increasing BWE's capital, which had been eroded by losses, and financing a further workforce reduction of 500 people required by the three potential purchasers.

(20) On 8 July 1999 the Commission decided to extend the Article 88(2) procedure to include this new capital injection in the formal investigation.

(21) SEPI made two illegal partial payments of the notified capital increase in breach of the provisions of Article 88(3). On 3 June 1999 it injected ESP 10 250 million (EUR 61,60 million) into BWE, followed by a further ESP 14 025 million (EUR 84,29 million) on 28 September 2000. These payments brought the equity of BWE up to the minimum level required under Spanish commercial law for continuing in business.

c) The privatisation arrangements

(22) On 9 February 2000 SEPI signed a contract with Babcock Borsig AG for the sale of BWE.

(23) By letter of 25 April 2000, the Spanish authorities notified the arrangements for privatising BWE. Under those arrangements, SEPI is to sell to Babcock Borsig AG ('BB') at a price of EUR 45 million the shares in a new company to be created, NewCo, to which certain selected assets of BWE are to be transferred. BWE is also to transfer 650 workers to NewCo. Subsequently, BWE is to be liquidated. The contract was made conditional on, *inter alia*, authorisation by the Commission of the aid previously received by BWE, as well as of any transaction in the privatisation arrangements that could be regarded as constituting State aid.

(24) On 13 June 2000 the Commission decided to extend the Article 88(2) procedure for the second time in order to include in the formal investigation the following aid elements identified in the privatisation arrangements:

(a) cash injections into NewCo amounting to EUR 55 million;

(b) the payment to NewCo of EUR 100 million for the costs of adapting the activities transferred to it;

(c) the payment to NewCo of EUR 95 million for investments and training to be carried out according to the investment plan presented by BB;

(d) the coverage of any losses incurred under pre-existing contracts transferred to NewCo, at an estimated cost of ESP 8 000 million (EUR 48,1 million);

(e) the coverage of costs incurred through any claims against NewCo for any harm or economic damage resulting from events occurring prior to the sale in relation to environmental, labour, tax or social security issues and obligations arising from pension plans. The maximum liability to be borne by SEPI is limited to EUR 18 million. However, the Spanish authorities consider that there will not be any compensation payable under this heading;

(f) the coverage of the deficit in the liquidation of BWE, at an estimated cost of ESP 35 000 million (EUR 210,4 million), and

(g) any potential aid element involved in the decision to set the purchase price for the shares in NewCo at EUR 45 million, that figure being the book value of the selected assets transferred to it.

IV. COMMENTS FROM INTERESTED PARTIES

(25) The Commission received observations from third parties only with respect to the second extension of the Article 88(2) procedure.

(26) By letter of 12 September 2000, the Provincial Council of Vizcaya, the province of the Basque Country where BWE is located, drew the Commission's attention to the difficult conditions in which business activity is carried on in the Basque Country as a result of the terrorist violence. The Provincial Council of Vizcaya claimed that the prevailing climate was seriously threatening the industrial base and therefore called on the Commission to take a favourable view of aid aimed at maintaining jobs in those exceptional circumstances.

(27) By letter of 12 September 2000, Duro Felguera, a Spanish competitor of BWE located in Asturias, urged the Commission to prohibit the aid to BWE on the grounds that it created an undue advantage for the restructuring of one of the largest Spanish producers in the sector. Duro Felguera stressed in particular the serious harmful effects of aid intended to help the restructured company set up a commercial network.

V. COMMENTS FROM SPAIN

(28) Spain submitted its observations on the formal investigation by letters of 6 October 1998, 17 February 1999, 7 April 1999, 21 September 2000, 25 September 2000, 8 November 2000, 10 November 2000 and 30 January 2001.

a) The 1994 capital injection

(29) The Spanish authorities claimed that the 1994 capital injection should be regarded as existing aid within the meaning of Article 88(1) of the Treaty.

(30) According to the evidence submitted by the Spanish authorities, that capital injection was intended to offset the operating deficit of a separate fund used for administering the pension rights of workers in early retirement. The deficit in question related to 1 025 workers that had left the company over the period 1983 to 1987 under an early retirement scheme negotiated with the trade unions in 1983 and signed on 15 February 1984, almost two years before Spain's accession to the European Communities. The agreement was given prior authorisation on 14 February 1984 by the Spanish public holding company Instituto Nacional de Industria (INI), the predecessor of TENEO and SEPI, which took responsibility for financing the costs connected with this specific measure. For that purpose, the INI registered in its financial planning an initial contribution of ESP 12 000 million (EUR 72,12 million). At the time, BWE was virtually insolvent, showing a negative equity in its balance sheet.

(31) A separate fund, entrusted to an insurance company, was created on 14 January 1986 to administer the pension rights. The INI then contributed to the fund a sum of ESP 12 559 million (EUR 75,48 million) corresponding to the initial estimate made by the insurer of the costs of the early retirement scheme agreed in 1984. That estimate was based on the average circumstances of the workers that could join the scheme.

(32) Later in the year, the insurance company announced that the final calculation of the contribution necessary to operate the fund, based on the individual circumstances of the workers that had joined the scheme, gave a figure of ESP 19 661 million (EUR 118,16 million). On account of its financial priorities, the INI decided not to cover the deficit of ESP 7 102 million (EUR 41,68 million) at that time.

(33) In 1992 the INI was transformed into a public undertaking and renamed TENEO. In 1993 TENEO clarified a number of financial commitments entered into by its predecessor and therefore decided to cover the fund's deficit that INI had not yet paid. To that end, TENEO asked the insurance company to recalculate the deficit. The recalculation for the 1 025 workers covered by the early retirement scheme agreed in 1984 showed a deficit of ESP 10 860 million (EUR 65,27 million). The increase in the deficit was due to changes to the technical parameters for the operation of pension funds made by the relevant legislation. In particular, unlike the original calculation of the deficit in 1986, the recalculation made use of new mortality tables reflecting longer life expectancy in Spain and a lower technical interest in line with the decreasing trend in market rates.

(34) In order to cover the deficit, on 29 July 1994 TENEO paid BWE the ESP 10 000 million (EUR 60,1 million) capital injection under formal investigation and BWE simultaneously transferred the same amount to the pension fund.

b) **The restructuring**

(35) The notification of the 1997 capital injection included an extensive industrial restructuring programme for BWE. According to that programme, BWE has carried out a new strategic reorientation of its entire manufacturing and commercial activity that will lead to its privatisation.

(36) The strategic plan was based on a detailed analysis of the situation and prospects for the power generation market and of the outlook for BWE in that context. The strategic assessment of the future of BWE concluded that the company should concentrate on supply on a turnkey basis, positioning itself on the market as an integral supplier of complex systems essentially for the power equipment sector, and concentrate on markets outside the Community.

(37) On this basis, BWE decided to:

(a) consolidate its position as a turnkey plants supplier, promoting this activity and reducing its activities in other traditional areas of the company's business;

(b) refocus its entire manufacturing and commercial activity towards a new product mix in which the main activity would be supply on a turnkey basis;

(c) implement immediately a number of drastic measures and adopt a series of urgent policies in each area of the company's operations in order to adjust production capacity to the targets of the strategic plan, reduce costs and improve competitiveness.

(38) The restructuring measures involved a large reduction in production capacity (around 23 %) and a reduction in the workforce of 28 %. The workforce cutback was achieved by means of an early retirement scheme affecting 423 persons that were laid off between 1997 and 1999. Simultaneous measures to reduce personnel costs and increase productivity were implemented, including the freezing of wages, rigorous control of financial compensations, maintenance of the number of annual working days, application at every level of the principles of flexibility, internal mobility, multiskilling and retraining, introduction of work based on functional groups, etc. In addition, BWE adopted a new policy for the optimisation of procurement processes, developed a quality plan aimed at introducing total quality management (TQM) in the medium term, and set up a specific department for the financial management of contracts, with a view to reducing the financial burden associated with them. BWE also conducted an organic and functional reorganisation of management and of the company structure, which was streamlined and rationalised.

(39) The cost of the workforce reduction was ESP 11 651 million (EUR 70 million) and was partly covered by the10 000 million (EUR 60,1 million) capital injection.

(40) An essential element in the strategic plan for the restructuring of BWE was the privatisation of the company, to which the Spanish Government had committed itself when it notified the 1997 capital injection.

(41) In accordance with that commitment, the Spanish authorities proceeded to privatise BWE in the last quarter of 1997. However, the privatisation schedule was substantially delayed following the withdrawal of the initial candidate for the purchase, the Kvaerner group, when the purchase contract was about to be signed. In April 1998 SEPI had signed a Memorandum of Understanding with Kvaerner. Following negotiations,

the group then agreed to sign the purchase contract in July 1998. In July, Kvaerner asked for a postponement until September and then refused to sign. Kvaerner's financial difficulties did not become clear until April 1999, when the group announced a wide-ranging reorganisation that involved withdrawals from several markets. Faced with this setback, the Spanish authorities reopened without delay the privatisation process in November 1998.

(42) According to the Spanish authorities, the further capital increase of ESP 41 000 million (EUR 246,4 million) notified in 1999 constitutes an interim measure that SEPI had to implement to make the privatisation and restructuring of BWE possible. This measure was intended to restore BWE's equity, eroded by losses, to the minimum level required under national commercial law to continue operating and to finance a further workforce reduction of 500 workers required by the three potential purchasers shortlisted after the reopening of the privatisation process.

(43) The delay in the privatisation process had weakened BWE's financial position and the state of its order books had deteriorated. At the end of 1998, BWE's balance sheet showed a negative equity of ESP 15 300 million (EUR 91,95 million) after a provision of ESP 16 509 million (EUR 99,22 million) for extra costs connected with past labour force reductions had been entered in the 1998 accounts. For its part, the cost of the new workforce reduction of 500 workers was estimated at ESP 24 500 million (EUR 147,25 million).

(44) Following negotiations with the shortlisted bidders, in February 2000 the Spanish authorities decided to sell BWE to Babcock Borsig AG (BB). On 9 February 2000 SEPI signed a contract with BB.

(45) As part of its purchase bid, BB presented to the Spanish authorities an Industrial Plan that supplemented the restructuring measures undertaken by BWE so far. According to this plan, the business transferred to NewCo would deepen the restructuring by concentrating on a narrower service and product portfolio and geographic focus, as well as reducing capacity still further ([4]).

(46) NewCo is to be integrated into the global strategy of Babcock Borsig Power GmbH (BBP), which is the subsidiary within the Babcock Borsig group active in the power generation and environmental equipment business. NewCo will operate under the name of Babcock Borsig Power España (BBPE). BBPE will act as the Regional Centre of Competence (RCC) for the markets in the Iberian Peninsula, Latin America and North Africa.

(47) The Industrial Plan is based on a market survey of demand from the abovementioned business regions and a detailed assessment of the competitive position of BWE/NewCo prior to the acquisition. NewCo/BBPE will have access to BBP's entire range of products and technology. To match the local market demand, NewCo/BBPE will no longer depend on licences from other companies as hitherto, but will be able to work with and rely on its own group's technology.

(48) The new product portfolio will focus on the construction and management of turnkey projects. The main products for the RCC in Spain will be:

[…] (*)

Most of these products will be handled on a turnkey basis, others in joint ventures or under cooperative agreements.

(49) BBP has worked out a five-year investment plan for the relaunch of the business transferred to NewCo. Its total budget amounts to EUR 135,5 million, broken down under four main headings: business relaunch, information technology, real estate and machinery, and venture capital investment ([5]).

(50) According to estimates of the market share attainable per product line in the regions covered by the RCC in Spain, NewCo is expected to generate annual turnover of EUR 250 million in a typical year, broken down as follows:

[…]

The overall export rate will be 20 %. With this turnover, NewCo/BBPE will employ 650 workers.

([4]) The capacity reduction is described in detail in recital 122.
(*) Business secret.
([5]) The Investment Plan is described in detail in recital 111.

(51) The five-year forecast of order intake and profits and losses for NewCo/BBPE is the following:

Table 1

(EUR million)

Year	1	2	3	4	5
Order intake	[...]	[...]	[...]	[...]	[...]
Sales	[...]	[...]	[...]	[...]	[...]
Changes in inventories	[...]	[...]	[...]	[...]	[...]
Income from operations	[...]	[...]	[...]	[...]	[...]
Costs of materials	[...]	[...]	[...]	[...]	[...]
Personnel costs	[...]	[...]	[...]	[...]	[...]
Depreciation	[...]	[...]	[...]	[...]	[...]
Other operating expenses	[...]	[...]	[...]	[...]	[...]
Operating expenses	[...]	[...]	[...]	[...]	[...]
EBIT (earnings before interest and taxes) BEFORE STATE MEASURES	[...]	[...]	[...]	[...]	[...]
EBITDA (earnings before interest, taxes, depreciation and amortisation) (operating cash flow) BEFORE STATE MEASURES	[...]	[...]	[...]	[...]	[...]

Table 1 shows the EBITDA that NewCo/BBPE is expected to generate before the payments for adaptation costs and training and investment, respectively of EUR 100 million and EUR 95 million, committed by SEPI under the privatisation arrangements.

(52) Table 2 below shows the operating cash flow that NewCo/BBPE is expected to generate before and after the abovementioned state measures:

Table 2

(EUR million)

Year	1	2	3	4	5
EBITDA (operating cash flow) BEFORE STATE MEASURES	[...]	[...]	[...]	[...]	[...]
Expenses in the Investment Plan [1]	[...]	[...]	[...]	[...]	[...]
(Payments by SEPI) [2]	*[...]*	*[...]*	*[...]*		
Application of payments from SEPI to results [3]	[...]	[...]	[...]	[...]	[...]
(Remainder entered in the balance sheet) [4]	*[...]*	*[...]*	*[...]*	*[...]*	*[...]*

(EUR million)

Year	1	2	3	4	5
EBITDA (operating cash flow) AFTER STATE MEASURES	[...]	[...]	[...]	[...]	[...]
Depreciation	[...]	[...]	[...]	[...]	[...]
EBIT (operating result) AFTER STATE MEASURES	[...]	[...]	[...]	[...]	[...]
Net financial income	[...]	[...]	[...]	[...]	[...]
EBT (earnings before tax) AFTER STATE MEASURES	[...]	[...]	[...]	[...]	[...]

(1) This reflects the items in the Investment Plan which are operating costs totalling EUR 16,5 million.
(2) This heading is shown here for comparison purposes only. The rows below reflect the actual application of the payments to results. The sum of the payments adds up to the EUR 195 million that SEPI has undertaken to pay under the privatisation arrangements, broken down as follows: EUR 95 million to assist the Investment Plan for NewCo totalling EUR 135,5 million (EUR 119 million off which is investment entered in the balance sheet and the remaining EUR 16,5 million is costs) and EUR 100 million for offsetting the negative cash flows over the first three years of operations.
(3) The payments for adaptation costs (coverage of negative cash flow) are applied directly in the profit and loss account whereas the investment grants are applied pro rata with the depreciation of the relevant assets.
(4) This heading is shown here for comparison purposes only.

VI. ASSESSMENT OF THE AID

a) Summary of the measures

(53) The funds involved in the measures covered by the formal investigation under Article 88(2) of the Treaty amount to a total of EUR 875,1 million.

Table 3 below summarises these measures, indicating their nature and value and the extent to which they have been implemented.

Table 3

Measures	Amount (EUR million)	Amount (ESP million)	Implementation
Capital injections	**366,6**	**61 000**	
1994	60,1	10 000	fully paid
1997	60,1	10 000	fully paid
1999	246,4	41 000	ESP 10 250 million paid on 3.6.1999 ESP 14 025 million paid on 28.9.2000 ESP 16 725 million pending
Privatisation arrangements (net of sale price)	**463,5**	**77 110**	

Measures	Amount (EUR million)	Amount (ESP million)	Implementation
Cash payments by SEPI	*155*	*25 790*	Not yet implemented
Investment grants	*95*	*15 807*	Not yet implemented
Price of the shares in NewCo	*(45)*	*(7 487)*	Not yet implemented
Net cash payments	205	34 110	
Coverage of liquidation deficit	210,4	35 000	Not yet implemented
Ultimate loss under contracts transferred (estimate)	48,1	8 000	Not yet implemented
(Potential claims) ([1])]	(Max. 18)	(Max. 2 995)	Not yet implemented
Total	830,1	138 110	

([1]) The maximum risk borne by the State has not been added in total because at present no payment is expected to be made under this heading.

b) **Aid within the meaning of Article 87(1) of the Treaty**

(54) The former owner of BWE in 1994, TENEO, and its subsequent and present shareholder, SEPI, are holding companies wholly owned by the Spanish State. Their financial resources are therefore state resources.

(55) The Commission uses the market economy private investor principle as a benchmark to determine whether any public funds granted to public undertakings involve elements of State aid within the meaning of Article 87(1) of the Treaty and, if so, to quantify them.

The provision of public funds to companies in the form of capital injections may involve elements of State aid if those funds are provided in circumstances that would not be acceptable to a private investor operating under normal market conditions. This is the case, among other things, where the financial position of the company, and particularly the structure and volume of its debt, is such that a normal return (in dividends or capital gains) cannot be expected within a reasonable time from the capital invested. The Commission set out this position in its communication of 13 November 1993 ([6]) on the application of Articles 92 and 93 of the Treaty and Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector ([7]), in which it reminded Member States of the principles it uses in determining whether aid is involved in such state measures.

The Court of Justice of the European Communities has upheld these principles repeatedly. In order to determine whether a capital injection is State aid, the Court has held that it is necessary to examine whether the company in question could have obtained the finance on the capital market. Where the evidence suggests that the beneficiary could not have survived without public funds because it could not have raised the capital required on the open market from a private investor, it is right to conclude that the payment constitutes State aid.

(56) The information in the Commission's possession shows that the publicly owned holding companies TENEO and SEPI decided to make the relevant public funds available to BWE without regard for any prospects of adequate return and that BWE would have been unable to raise these funds on the capital market.

(57) The 1994 capital injection was made to finance supplementary costs stemming from a workforce reduction agreed in 1984 that BWE could not bear on its own because of its delicate financial position. A private investor would not have made these funds available to BWE in the absence of drastic restructuring measures capable of restoring its viability. At that time, such measures had not yet been determined. The decision on how to restructure BWE was only adopted by its ultimate shareholder, the Spanish State, late in 1997 when it presented to the Commission a restructuring programme involving as a key element the privatisation of the company.

(58) The subsequent capital injections made in 1997 and 1999, as well as the funds committed under the privatisation arrangements, were decided to assist the restructuring of BWE and facilitate its privatisation. These new measures also deviated from the market investor principle because the Spanish State could not expect any normal return from its new investments in BWE. A private investor operating under normal market conditions would not have contributed money to a business

([6]) OJ C 307, 13.11.1993, p. 3.
([7]) OJ L 195, 29.7.1980, p. 35.

intended for sale that, in view of its extreme financial difficulties, was on the verge of bankruptcy and that, consequently, was likely to be priced at a negative value by the market. In these circumstances, a private investor would have let BWE go into bankruptcy.

(59) In spite of this, on account of the special circumstances surrounding BWE and with a view to facilitating its sale and restructuring outside bankruptcy proceedings, TENEO, SEPI and its ultimate shareholder, the Spanish State, decided to provide funds to assist its restructuring and make the privatisation possible. In the absence of these funds, BWE would have had to bear all the restructuring costs on its own and, in view of its insolvency, would have gone bankrupt.

(60) In order to determine the aid element involved in the privatisation arrangements, the Commission notes that the only return that could be expected from the cash payments committed by the Spanish State was the offer presented by the purchaser of NewCo for its share capital. Both the cash payments by the Spanish State and the price to be paid by the buyer are thus interrelated. Babcock Borsig would not have undertaken to pay EUR 45 million for the shares in NewCo if the Spanish State had not committed itself to providing cash payments to NewCo of EUR 250 million. Consequently, the price of EUR 45 million for the shares in NewCo has to be deducted from the higher cash payments that the Spanish State will make to NewCo after its creation in order to determine the net aid involved in the privatisation arrangements.

(61) Finally, it is to be noted that the Commission cannot find any further aid element in the setting of a nominal price of EUR 45 million for the shares in NewCo. The net price of minus EUR 463,5 million for the ongoing business of BWE was set in a tender process where no other party was willing to offer the Spanish State better conditions in net terms. All other bids for the business of BWE were costlier for the Spanish State.

(62) Therefore, the aid that Spain has implemented and is planning to implement for BWE amounts to a total of EUR 830,1 million.

(63) Competition is strong in the power generation and environmental equipment sector, notably in the turnkey project segment, where companies compete worldwide for large orders. BWE was the largest producer in Spain in this sector and exported around 50 % of its production in competition with other Community producers. For its part, NewCo, integrated into the Babcock Borsig group, will continue being a leading producer in Spain and will also compete in foreign markets where it plans to export around 20 % of its turnover.

(64) Accordingly, the net state assistance under assessment, amounting to EUR 830,1 million, constitutes aid within the meaning of Article 87(1) of the Treaty.

c) **The legal status of the 1994 capital injection**

(65) The information supplied by the Spanish authorities demonstrates that the 1994 capital injection constitutes a supplementary payment to honour a commitment entered into by the INI in 1984, almost two years before the entry into force of the Treaty in Spain, and only partially paid in 1986.

(66) Accordingly, the 1994 capital injection constitutes existing aid within the meaning of Article 88(1) of the Treaty.

d) **The restructuring of BWE: a single prolonged process**

(67) The Commission is assessing in this case a series of state measures implemented over several years. It is therefore necessary to determine whether the Commission is faced with a sequence of independent and separate restructuring measures or, instead, with a single prolonged restructuring process. In other words, the Commission must consider whether to split the assessment or to assess the state measures globally.

(68) This case originates in the notification by the Spanish authorities in 1997 of an increase in BWE's capital that was accompanied by an extensive industrial restructuring programme. Under that programme, BWE was to carry out a new strategic reorientation of its entire manufacturing and commercial activity to concentrate on the supply of turnkey systems and reduce its activities in the company's other traditional areas of business. A series of drastic measures to adjust production capacity to the targets of the strategic plan and to improve competitiveness were proposed. In addition, as an essential element in the strategic plan the Commission was informed of the Spanish Government's formal decision to privatise BWE in accordance with the Plan for the Modernisation of the Spanish Public Sector.

(69) In accordance with the notification, the Spanish authorities proceeded to privatise BWE by means of an international tender. At the same time, BWE implemented a reorientation of its activity and reduced its capacity. However, the privatisation was substantially delayed following the unexpected withdrawal of the bidder initially selected by the Spanish authorities. Faced with this setback, the Spanish authorities reopened the privatisation process without delay.

(70) The 1999 capital increase constitutes an interim measure, only partly paid out to the extent necessary to restore BWE's equity to the minimum legally required, that has allowed BWE to continue operating during the period necessary to find another purchaser and complete the privatisation.

(71) For their part, the aid elements identified in the privatisation arrangements constitute the additional assistance required to privatise BWE and complete its restructuring according to the original plan notified in 1997. It is to be noted that the restructuring plan presented by BWE is in line with and constitutes the continuation of the preliminary industrial measures implemented by SEPI since 1997. After its purchase by Babcock Borsig, NewCo will concentrate on a narrower product and service portfolio and geographic focus, as well as reducing capacity still further.

(72) Accordingly, the Commission finds that the 1997 and 1999 capital increases and the privatisation arrangements are in line with the concept of industrial restructuring notified in 1997 and form part of a single restructuring process that has lasted longer than originally expected for reasons beyond the Spanish authorities' control. Therefore, the compatibility of the abovementioned State measures that have assisted the same restructuring process must be assessed globally.

(73) It is to be noted that the first extension of the procedure to cover the 1999 capital injection expressly referred to this overall assessment. In particular, in recital 12 of that decision the Commission stated:

'This new aid appears at this stage incompatible with the common market. Even though the new capital injection will be used to finance measures designed to adapt BWE's labour force to levels commensurate with reasonable prospects for its future reduced market presence, such measures alone do not appear capable of restoring its long-term viability. Viability can only be ensured if complementary measures in the commercial, industrial and technological fields are taken. These measures are in the present case dependent upon the restructuring programme that the purchaser of BWE will put into place after the sale of the company by the State. Consequently, the ultimate compatibility of this new capital injection, as well as of the aid already covered by the initial opening of the procedure, will be assessed in the light of the characteristics of the restructuring programme that the purchaser of BWE will implement.'

(74) Furthermore, in the second extension of the procedure in 2000 to cover the privatisation arrangements, the Commission reiterated its view that the measures had to be assessed globally. In particular, in the last recital of the decision the Commission stated:

'Spain is reminded that one of the essential elements in assessing the ultimate compatibility of this aid as well as of the previous aid covered by the procedure is the restructuring programme for BWE's activities that the purchaser will implement. Consequently, Spain is requested to submit to the Commission the final terms of the restructuring programme that is still under negotiation.'

e) **The relevant assessment framework**

(75) The aid under assessment is intended to assist the restructuring of a company in difficulty. Its compatibility must therefore be assessed in the light of the principles set out in the Community guidelines on State aid for rescuing and restructuring firms in difficulty.

(76) In October 1999 the Commission published new rescuing and restructuring aid guidelines ([8]) replacing the 1994 version ([9]).

(77) Some of the state measures under assessment were adopted before the new guidelines were published. It is therefore necessary to establish at this point which version applies in respect of each of the measures.

The original decision initiating the Article 88(2) procedure in respect of the 1994 and 1997 capital injections and the first decision extending the procedure to cover the 1999 capital injection were adopted under the 1994 guidelines. The decision extending the procedure for a second time to cover the privatisation arrangements was adopted under the 1999 guidelines, since that version was already in force when the privatisation arrangements were notified.

(78) Nevertheless, section 7.5, point 101, of the 1999 guidelines states that:

'The Commission will examine the compatibility with the common market of any rescue and restructuring aid granted without its authorisation and therefore in breach of Article 88(3) EC of the Treaty:

(a) on the basis of these guidelines if some or all of the aid is granted after their publication in the *Official Journal of the European Communities*;

(b) on the basis of the guidelines in force at the time the aid is granted in all other cases.'

(79) In the case of BWE, 34 % (ESP 14 025 million) of the 1999 capital injection was illegally paid on 28 September 2000, that is to say almost a year after the entry into force of the 1999 guidelines on 9 October 1999. Given that, as found in the previous section, all the state measures in this case constitute aid for a single prolonged restructuring process, the partial payment of the 1999 capital injection after the publication of the 1999 guidelines means that the whole series of state measures must be assessed under those new guidelines.

([8]) OJ C 288, 9.10.1999, p. 2.
([9]) OJ C 368, 23.12.1994, p. 12. Guidelines extended by notices published in OJ C 74, 10.3.1998, p. 31 and OJ C 67, 10.3.1999, p. 11.

(80) Accordingly, the compatibility of the 1997 and 1999 capital increases as well as of the aid elements identified in the privatisation arrangements must be assessed under the 1999 guidelines on State aid for rescuing and restructuring firms in difficulty.

(81) Although the basic compatibility criteria for restructuring aid are the same in both the 1994 and 1999 guidelines, the 1999 version incorporates two new additional principles that represent a tightening of Commission policy in this field. These new principles are: the 'one time, last time' condition and the ban on restructuring aid for newly created companies.

(82) As the 1999 capital increase is combined with previous restructuring aid granted in 1997, and the privatisation arrangements provide for the creation of NewCo and the grant of further restructuring aid to the company, it is necessary at this point to examine to what extent the above new principles apply in this case.

f) **The 'one time, last time' condition**

(83) Section 3.2.3, point 48, of the 1999 guidelines states that:

'Where less than 10 years have elapsed since the restructuring period came to an end or implementation of the plan has been halted, the Commission will normally allow further restructuring aid only in exceptional and unforeseeable circumstances for which the company is not responsible.'

(84) As previously established in section (d) above, the measures decided by the Spanish authorities since 1997 form part of a single prolonged restructuring process. Consequently, the restructuring to which the above condition refers has not yet come to an end and the 'one time, last time' condition does not apply in the case of BWE.

g) **The ban on aid to a new company**

(85) The privatisation arrangements involve the creation of NewCo, the transfer to it of BWE's assets connected with its ongoing business and the grant to NewCo of substantial restructuring aid. It is therefore necessary to examine to what extent the abovementioned prohibition applies in this case.

(86) The ban on aid to a newly created company was introduced in the 1999 guidelines, point 7 of which provides that:

'For the purposes of these guidelines, a newly created firm is not eligible for rescue or restructuring aid, even if its initial financial position is insecure. This is the case, for instance, where a new firm emerges from the liquidation of a previous firm or merely takes over such firm's assets.'

(87) The Commission considers that the above prohibition does not apply in the present case because the State measures under assessment and the proposed restructuring constitute elements of a single operation to be assessed as a whole. The 1997 and 1999 capital increases as well as the privatisation arrangements are in line with the concept of industrial restructuring notified in 1997 and form part of a single restructuring process. On the other hand, the aid elements identified in the privatisation arrangements constitute the additional assistance required to privatise BWE and complete its restructuring according to the original plan notified in 1997.

(88) Furthermore, the ban on aid to a newly created company did not appear in the guidelines in force when the Commission adopted in 1998 the original decision initiating the Article 88(2) procedure, nor in 1999 when it extended the procedure for the first time.

(89) The Commission furthermore took this view in the preparatory instruments prior to this Decision.

(90) In the first extension of the Article 88(2) procedure, the Commission stated that the compatibility of the aid granted for restructuring BWE would be assessed globally in the light of the characteristics of the restructuring programme that the purchaser had to present [10].

(91) In the second extension of the Article 88(2) procedure the Commission decided to consider that BWE and NewCo formed a single entity the purposes of assessing the state aid.

The Commission took this position on account of the very specific factual and procedural circumstances of this case.

(92) In particular, in the second extension, in spite of the fact that the guidelines including the ban on aid to a new company were already in force, the Commission reiterated its position that the compatibility of the aid proposed under the privatisation arrangements, including the restructuring aid to NewCo, was to be assessed together with the aid previously granted, taking into account the characteristics of the restructuring programme that the purchaser of the ongoing business of BWE had presented [11].

(93) In addition, the Commission also considered that any compensation for the potential undue effects of the aid received in the past by BWE or proposed under the privatisation arrangements was to be the responsibility of the ongoing business of BWE. In particular, in recital 16 of its decision, the Commission stated:

'The Commission must also note at this point of the assessment that the artificial transfer to NewCo of the ongoing activities of BWE, which will remain as a shell company with its outstanding debts for liquidation purposes only, should not be used by the Spanish authorities to circumvent and escape the full application of the State aid rules. Consequently, NewCo will be

[10] See recital 73.
[11] See recital 74.

considered to be liable for any recovery order the Commission might decide in respect of aid covered by the original Article 88(2) procedure and its first extension which identified BWE at that moment as its beneficiary. The assessment of the compatibility of this aid cannot be detached from that of the new aid measures, all of them having been designed to assist the ongoing business to be transferred to NewCo.'

h) **Compliance with the general conditions for the authorisation of restructuring aid**

(94) The Commission considers that restructuring aid contributes to the development of economic activities without adversely affecting trade to an extent contrary to the Community interest within the meaning of Article 87(3)(c) of the Treaty where it fulfils the compatibility conditions set out in the guidelines on state aid for rescuing and restructuring firms in difficulty. In particular, the Commission may authorise restructuring aid only if the following strict criteria are met:

(i) restoration of viability;

(ii) aid limited to the minimum;

(iii) avoidance of undue distortions of competition, and

(iv) significant contribution from the beneficiary.

i) *Restoration of viability*

(95) According to the 1999 guidelines ([12]), the aid must be linked to the implementation by the beneficiary of a restructuring plan based on realistic assumptions and capable of restoring viability within a reasonable timescale.

(96) The purchaser selected by the Spanish authorities to take over the business of BWE is one of the leading engineering and capital goods supplier firms in the world. Babcock Borsig AG (BB) has annual sales of about EUR 7 500 million and employs more than 44 000 people. Its shareholders provide this group with a sound financial base. Preussag AG, one of the largest industrial and services groups in Germany, owns 33 % of BB's capital. A further 10 % shareholding is in the hands of Westdeutsche Landesbank, which also owns 30 % of Preussag. The power generation and environmental equipment business is developed within the Babcock Borsig group by its subsidiary Babcock Borsig Power GmbH (BBP). Following the acquisition of its former competitors, Steinmüller (Germany), Austrian Energy (Austria) and the NEM group (the Netherlands), BBP has become the fifth largest supplier of generation and environmental equipment in the world after ABB, General Electric, Siemens/Westinghouse and MHI. Its annual sales amount to around EUR 2 500 million and it employs around 10 000 people.

(97) Following its purchase by BB, NewCo, renamed Babcock Borsig Power España (BBPE) and backed by the financial and technological strength of its parent group, will progressively regain customer confidence. According to the Industrial and Business Plan prepared by BB ([13]), NewCo's order book will grow from EUR 150 million during the first year to a level in a typical year of EUR 250 million from the third year after privatisation. Sales will also gradually develop over the restructuring period from EUR 65 million during the first year to reach the target volume of EUR 250 million four years after privatisation. This will allow NewCo/BBPE to break even from the third year of operations and restore its financial ratios within a reasonable timescale.

(98) NewCo's restructuring plan is based on a thorough assessment of its positioning in the sector in which it will operate. Its forecasts are based on realistic assumptions and are reasonably attainable. They are based on a drastic and immediate scaling-down of the existing business of BWE that will substantially reduce production capacity and consequently former fixed costs. Another essential target in the short term is commercial. To become viable, NewCo/BBPE must stabilise the moderate and diminishing position that BWE has in the Spanish market (8 %) and continue to develop its presence in South America and North Africa. The integration of NewCo within BB does not appear an expansionary project since it will redistribute production within the Babcock Borsig Power group that will now serve Spain through NewCo, freeing production capacity to serve other non-European markets. The industrial concept designed by BB for NewCo/BBPE aims at providing NewCo with the technology offered by its parent group in order to address the new heat recovery steam generators segment and to achieve an attractive positioning in this market which is currently emerging in Spain.

(99) Apart from technological support, the parent group will provide NewCo/BBPE with the financial means required to face up to the difficulties inherent in its restructuring and become viable. In particular, BB has undertaken in the privatisation arrangements to make any cash contributions that may be necessary for NewCo to maintain, at all times, over a five-year period the level of equity required for developing the restructuring programme. The arrangements provide that the minimum equity level to be maintained in NewCo/BBPE shall be EUR 20 million.

(100) The Commission accordingly takes the view that the restructuring plan for BWE/NewCo satisfies the viability criterion.

([12]) See recital 31 to 34.

([13]) See recital 51 and 52.

ii) *Aid limited to the minimum*

(101) The amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken ([14]).

(102) The open, transparent and unconditional tender procedure followed by the Spanish authorities for selling BWE has ensured that the aid proposed under the privatisation arrangements is the minimum cost that could be incurred by the Spanish State for restructuring BWE. The information submitted by the Spanish authorities concerning the tender process demonstrates that all companies that might have had an interest in buying BWE were given the opportunity to bid and that BWE was sold to the highest bidder.

(103) The Commission has also verified that the 1997 and 1999 capital injections prior to the privatisation arrangements have covered or will cover no more costs than those related to a series of drastic cutbacks in the BWE workforce without which viability would not be restored.

(104) It should lastly be noted in this respect that a large proportion of the aid under examination in this case is intended to cover the social costs of restructuring. Of the EUR 748,56 million that the Spanish State will spend from 1997 to assist the restructuring, EUR 306,5 million (40,9 %) has basically financed early retirement schemes ([15]).

(105) As set out in the 1999 guidelines ([16]), the Commission has a positive approach to aid covering the social costs of restructuring because it brings economic benefits above and beyond the interests of the firm concerned, in particular in respect of the workers affected by the restructuring measures. This aid should be disregarded for the purposes of determining the extent of any measures that should be adopted for avoiding undue distortions of competition ([17]).

iii) *Avoidance of undue distortions of competition*

(106) When assessing the potential compatibility of restructuring aid, the Commission must carefully examine whether it is liable to produce adverse effects on competitors ([18]).

This examination must consider any potential inadmissible effects of the aid measures both individually and in overall terms. Where appropriate, the Commission may impose measures to mitigate as far as possible potential undue effects of the aid on competitors.

Effects of the individual aid measures

(107) The sale of NewCo to the highest bidder in an open, transparent and unconditional tender procedure has ensured that the aid granted in that framework is limited to the minimum required to make the privatisation and restructuring possible. However, such a procedure does not ensure that the aid does not assist measures with undue effects when examined individually.

(108) Apart from the capital injections into BWE totalling EUR 366,6 million (44,2 % of the overall aid under assessment) ([19]) that have basically covered or will cover the social costs of the restructuring, the Spanish authorities intend to spend EUR 258,5 million (31,1 %) to cover the liquidation deficit of BWE and contingencies related to past contracts. Such aid, intended to offset the past financial burden of BWE, will be paid either to BWE in liquidation, which will be a shell company without operations, or to NewCo on provision of proof of losses originating in past contracts. In these circumstances, this individual aid measure does not appear liable to produce undue collateral effects on competitors.

(109) In addition, grants of EUR 110 million (13,3 %) will be paid to NewCo to partly finance the working capital required to start operations (EUR 10 million) and to offset its negative operating cash flow during the first three years of operations (EUR 100 million).

In order to prevent this aid measure having undue effects, its effective payment should not exceed the level of negative operating cash flows actually recorded by NewCo. Consequently, the Commission considers it necessary to make payment of this aid conditional on the provision by NewCo of proof that the anticipated negative cash flows have been actually recorded.

(110) Lastly, the privatisation arrangements provide that the Spanish authorities are to pay EUR 95 million (11,4 %) in grants to assist investments to be made by NewCo.

([14]) See points 40 and 41 of the 1999 guidelines.
([15]) See Table 7 in recital 128.
([16]) See points 56 to 63 of the 1999 guidelines.
([17]) See point 62 of the 1999 guidelines.
([18]) See points 35 to 39 of the 1999 guidelines.
([19]) See Table 3 in recital 53.

(111) Table 4 below shows the five-year Investment Plan amounting to EUR 135,5 million that BB has undertaken to carry out under the privatisation contract, as finally agreed between the parties, broken down by investment objective:

Table 4

Objective	Budget (EUR million)
I. **Business relaunch** (all items under this heading are expenses except those marked with *, which will be entered in NewCo's balance sheet)	23,5
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
II. **Information technology**	19,5
[...]	[...]
[...]	[...]
[...]	[...]
III. **Real estate and machinery**	43,5
[...]	[...]
[...]	[...]
[...]	[...]
IV. **Other investments**	32,5
[...]	[...]
Total	135,5

(112) A detailed assessment of the Investment Plan indicates that the assisted expenditure under the 'Business relaunch', 'Information technology' and 'Real estate and machinery' headings is basically intended to restructure NewCo's industrial base. However, the EUR 32,5 million expenditure under the 'Other investments' heading includes financial investments that NewCo intends to make in equity to create joint ventures through which it intends to conclude the project contracts that will form its future turnover.

(113) In the capital goods sector, the turnkey project business is one of the most dynamic subsectors and one in which NewCo intends to generate 32 % of its expected turnover. For administering these projects, contractors normally create joint ventures that carry out multiple functions over the various phases of the project: negotiations with potential customers, bidding, placing of orders, financing of the construction, guarantee period, and in some cases, depending on the order type, the maintenance and operation of the project which is the object of the contract. These joint ventures, which may take different corporate forms (temporary consortia, commercial interest groupings, etc.), are normally established and controlled by the project's main contractor and may count on the participation of suppliers and subcontractors.

(114) Unlike the other aided items in the Investment Plan, the expenditure of NewCo in equity of joint ventures is a disbursement very close to the market. The joint ventures in question form part of the commercial policy of the company and are designed to acquire business and administer the projects won. Aid granted by the Spanish State to finance these investments would give NewCo an undue commercial advantage over its competitors since this aid could easily be used by NewCo to undercut bids made by its competitors and exclude competition.

(115) Accordingly, the Commission cannot authorise the aid proposed under the privatisation contract for investments in venture capital in view of the very high risk that it would create a serious distortion of competition.

(116) The privatisation contract provides that grants amounting to EUR 95 million will be awarded in respect of the EUR 135,5 million investments scheduled in the Investment Plan. However, this commitment is made globally and the amount of aid corresponding to each of the items in the investment plan is not specified.

The Commission must therefore proceed to calculate the aid corresponding to the investments in venture capital on the basis of the following assumptions.

(117) In this case, the aid to a specific investment item in the Plan cannot be calculated in proportion to its budget. Such an approach would implicitly assume that the total aid is distributed evenly amongst all the items; it would, however, penalise certain items included in the Investment Plan, like training expenditure, for which the Commission normally allows comparatively higher aid intensities than for investments.

(118) Under Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid ([20]), the exempted intensity for aid for general training under schemes for large firms established in areas eligible for regional aid pursuant to Article 82(3)(c), such as the Basque Country, is 55 %. The 'Business relaunch' heading of the Investment Plan includes general training measures totalling EUR […] million in the fields of Technology implementation, Project management, Certification and Language. Training constitutes a decisive element for the success of the restructuring in view of the special needs for improvement and updating of the skills of BWE's workforce. The Commission therefore considers it reasonable in this case to accept the financing of the costs of the abovementioned general training measures for the 650 workers that NewCo will re-employ at 100 % in gross terms for the purposes of calculating the incompatible aid.

(119) The Investment Plan also provides for expenditure of EUR […] million on measures aimed at regaining customer confidence. These include information sessions and workshops with workers, management, suppliers and subcontractors in which the Babcock Borsig group, its products and technology will be presented. They also include an advertising campaign in the specialised press presenting the new company and its projects. The Commission considers that these measures constitute a prerequisite for the success of the restructuring and can, therefore, also accept that they are eligible for aid at 100 % in gross terms without producing undue effects on competition.

(120) The remaining measures in the Investment Plan totalling EUR […] million (= […] − […]) constitute normal investments that will be entered in NewCo's balance sheet. Consequently, the Commission considers that the remaining proposed aid of EUR 78,5 million (= […] − […]) should be distributed evenly amongst them in order to calculate the aid corresponding to the EUR 32,5 million investment in joint ventures.

(121) On the above assumptions, the incompatible aid to venture capital amounts to EUR 21,44 million, which the Spanish authorities should refrain from paying to NewCo.

([20]) OJ L 10, 13.1.2001, p. 20.

Overall effect of the assisted restructuring

(122) Table 5 below summarises the evolution of BWE/NewCo's capacity over the restructuring process assisted by the Spanish State:

Table 5

	As of 31.12.1996	After 1997 workforce reduction	Reduction compared with 31.12.1996	NewCo after completion of restructuring	Reduction compared with 31.12.1996
Direct workers	[...]	[...]		[...]	
Direct employees	[...]	[...]		[...]	
Total direct jobs	[...]	[...]		[...]	
Workshop capacity	[...]	[...]	[...] %	[...]	[...] %
Engineering capacity	[...]	[...]	[...] %	[...]	[...] %
Total capacity (hours)	[...]	[...]	[...] %	[...]	[...] %
Indirect jobs (workers + structure + engineers)	[...]	[...]		[...]	
Total jobs	[...]	[...]	[...] %	[...]	[...] %

(123) The workforce reduction and the accompanying industrial measures implemented at BWE in 1997 produced a substantial reduction in its capacity. When compared with the situation as of the end of 1996, these measures reduced its workforce by 27 % and its production capacity by 31 %. For its part, the industrial concept that BB will implement within NewCo will involve a further reduction in BWE's workforce and capacity by 41 % and 20 % respectively.

In overall terms, after completion of its Industrial Plan, NewCo will be 57 % smaller than BWE in terms of employment and 45 % smaller in terms of production capacity.

(124) The above figures reflect the elimination of idle capacity and the abandonment of loss-making activities in the following fields: desalination, water treatment, equipment for the steel sector, piping, gearing, cranes, valve components, high-pressure vessels, heat exchangers, pyro-tubular boilers, medium and low pressure liquid and gas containers, metal structures, light boilers, airport equipment, etc. As a result, a workshop area of 49 700 m^2 will be abandoned and the relevant machinery and equipment will be either scrapped or sold.

(125) NewCo's market presence will also be lower than that of BWE before restructuring. Table 6 below shows the evolution of BWE's workforce and sales and the forecast turnover of NewCo over its five-year Industrial Plan:

Table 6

Year	1994	1995	1996	1997	1998	1999	1	2	3	4	5
Income (EUR million)	332	384	300	201	189	152	100	[...]	[...]	[...]	250
Workforce	1 520	1 503	1 516	1 329	1 187	1 119	650	650	650	650	650

(126) Accordingly, the Commission finds that the proposed restructuring of BWE/NewCo involves a substantial reduction of capacity and a limitation of market presence that will mitigate the adverse effects of the aid on competitors. The Commission therefore considers that there is no need to impose further specific measures in this respect.

iv) *Significant contribution from the beneficiary*

(127) Lastly, in accordance with the rescue and restructuring aid guidelines, the aid beneficiary and its purchaser are expected to make a significant contribution to the restructuring plan from their own resources ([21]).

(128) Table 7 below shows the cost of the restructuring measures that have been or will be necessary to restore BWE's business viability. It also shows the respective contributions that both the Spanish State/SEPI and Babcock Borsig/NewCo will make to finance these measures.

Table 7

Measures	Cost (EUR million)	Spanish State	NewCo/BB
Workforce reductions	306,5	306,5	
Initial funds	55	10	45
Negative cash flows	102	100	2
Investments	135,5	95 – 21,44 = 73,56	40,5 + 21,44 = 61,94
Liquidation costs	210,4	210,4	
Contracts	48,1	48,1	
Technology	40,4		40,4
Central services	17,3		17,3
Creation of the Regional Competence Centre	20		20
Total	935,2	748,56	186,64 (19,96 %)

(129) The first row of Table 7 represents the costs of the workforce reductions financed by the 1997 and 1999 capital injections totalling ESP 51 000 million (EUR 306,5 million).

(130) NewCo requires initial funds of EUR 55 million. Under the privatisation arrangements, BB will pay EUR 45 million for the shares in NewCo. The Spanish State will supplement this amount with a further EUR 10 million that it will make over to NewCo as initial funds ([22]).

(131) NewCo will record a total negative cash flow of EUR 102 million during the first three years of operations that will be covered by the Spanish State by means of EUR 100 million in grants committed by SEPI under the privatisation arrangements.

(132) The Industrial Plan for NewCo provides for a minimum of EUR 135,5 million in investments, of which EUR 95 million would be financed by grants from the Spanish State and EUR 40,5 million by Babcock Borsig. However, the present Decision prohibits the grant of EUR 21,44 million corresponding to the aid to investments in venture capital. This amount should therefore be deducted from the state contribution and added to the costs that BB will necessarily have to finance. It is to be noted that the investments in this field are of vital importance for NewCo since it is the channel through which it intends to generate its future turnover in its target market segment of turnkey projects.

([21]) See point 40 of the 1999 guidelines.
([22]) See recital 60.

(133) The Spanish State will wholly finance any deficit in the liquidation of BWE after the transfer to NewCo of the selected assets and 650 workers. The estimated deficit excluding the dismissal of the remaining workers already computed above is EUR 210,4 million.

(134) The Spanish State will also finance any final loss under the contracts transferred to NewCo, at an initially estimated cost of EUR 48 million ([23]).

(135) Under the heading of technology, the table reflects the estimated value in terms of licences and royalties of the transfer of technology which, according to the privatisation arrangements, Babcock Borsig will have to make available to NewCo freely, at least during the first five years of operations, and which will replace contracts with other groups that have hitherto provided the technological knowhow for BWE's production ([24]).

(136) In addition, during the same five-year period the central headquarters of BB in Germany will provide free services to NewCo, at an estimated cost to itself of EUR 17,3 million. Lastly, the creation of the Regional Competence Centre in Spain will require investments in NewCo of EUR 20 million in addition to those originally committed under the Investment Plan.

(137) The above commitments mean that, in overall terms, the restructuring of BWE's activities has already required or will require funds totalling EUR 935,2 million to be invested in BWE/NewCo, of which EUR 748,56 million have been or will be borne by the Spanish State and EUR 186,64 million by Babcock Borsig/NewCo. In short, Babcock Borsig will bear 19,96 % of the costs of restructuring BWE/NewCo.

(138) On top of this, Babcock Borsig has undertaken under the privatisation arrangements to make any contribution in cash that may be necessary for NewCo to maintain at all times the level of equity required for the development of the Industrial Plan, it being understood that the minimum level of NewCo's equity will be EUR 20 million, which equals its share capital.

(139) The Commission therefore takes the view that NewCo and its purchaser, BB, have assumed the risk of the restructuring and will make a significant contribution to it from their own resources.

([23]) The table does not include any cost linked to contingencies in the environmental, labour, tax and social fields, which have been limited to EUR 18 million because no disbursements are expected to be made under this heading.

([24]) The estimate corresponds to the usual market price of 5 % of the expected turnover during the first five years of operations.

VII. **CONCLUSION**

(140) Accordingly, in view of the foregoing considerations, the Commission finds that Spain should refrain from paying NewCo a grant of EUR 21,4 million corresponding to the aid for investment in venture capital as this aid would distort competition and trade to an extent contrary to the common interest,

HAS ADOPTED THIS DECISION:

Article 1

The ESP 10 000 million (EUR 60,1 million) increase in the capital of Babcock Wilcox España SA carried out by TENEO in 1994 constitutes existing aid within the meaning of Article 88(1) of the Treaty.

Article 2

The increases in the capital of Babcock Wilcox España SA of ESP 10 000 million (EUR 60,1 million) and ESP 41 000 million (EUR 246,4 million) decided by SEPI in 1997 and 1999 respectively constitute aid within the meaning of Article 87(1) of the Treaty. Both increases were unlawfully granted in breach of Article 88(3)(c) of the Treaty, except for a sum of ESP 16 725 million (EUR 100,52 million) of the latter increase which has not yet been disbursed.

The said aid nevertheless meets the conditions for exemption under Article 87(3)(c) of the Treaty, as set out in the Community guidelines on State aid for rescuing and restructuring firms in difficulty, and is therefore compatible with the common market.

Article 3

The measures which Spain proposes to implement under the arrangements for privatising Babcock Wilcox España SA, consisting of:

(a) cash injections into NewCo amounting to EUR 55 million;

(b) the payment to NewCo of EUR 100 million for the costs of adapting the activities transferred to it;

(c) the payment to NewCo of EUR 95 million for investments and training to be carried out according to the Investment Plan presented by Babcock Borsig;

(d) the coverage of any ultimate loss under contracts transferred to NewCo, at an estimated cost of ESP 8 000 million (EUR 48,1 million);

(e) the coverage up to a maximum of EUR 18 million of any cost incurred through claims against NewCo for any harm or economic damage resulting from events occurring prior to the sale in relation to environmental, labour, tax and social security issues and obligations arising from pension plans, and

(f) the coverage of the deficit in the liquidation of Babcock Wilcox España SA, at an estimated cost of ESP 35 000 million (EUR 210,4 million),

constitute aid within the meaning of Article 87(1) of the Treaty.

The aid measures under points (a), (d), (e) and (f), the aid measure under point (b) up to the limit of the effective negative cash flows actually recorded by NewCo during the first three years of operations, and the aid measure under point (c) up to a maximum amount of EUR 73,56 million meet the conditions for exemption under Article 87(3)(c) of the Treaty, as set out in the Community guidelines on State aid for rescuing and restructuring firms in difficulty, and are therefore compatible with the common market.

Article 4

The aid amounting to EUR 100 million, referred to in Article 3(b), for the costs of adapting the activities transferred to NewCo shall be paid only on submission by the beneficiary of proof that negative operating cash flows have actually been recorded at the end of each of the first three years of operations.

Article 5

The aid proposed under the privatisation arrangements for investments by NewCo in venture capital, amounting to EUR 21,44 million, does not meet any of the conditions for exemption under Article 87(2) or (3) of the Treaty. It is therefore incompatible with the common market.

Accordingly, this aid may not be implemented and Spain shall refrain from paying the said amount.

Article 6

The Industrial Plan presented to the Commission must fully be implemented.

Spain shall submit to the Commission annual reports giving all the information the Commission needs in order to be able to monitor the implementation of the Industrial Plan in accordance with point 45 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty. The first of these reports shall be submitted not later than six months after the date of this Decision.

Article 7

Spain shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 8

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 3 July 2001.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION RECOMMENDATION

of 4 March 2002

on the reduction of the presence of dioxins, furans and PCBs in feedingstuffs and foodstuffs

(notified under document number C(2002) 836)

(Text with EEA relevance)

(2002/201/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the second indent of Article 211 thereof,

Whereas:

(1) For the time being, the acceptable levels of dioxins in feedingstuffs and foodstuffs must be assessed in the light of current background levels. The maximum levels, established for feedingstuffs by Council Directive 1999/29/EC of 22 April 1999 on the undesirable substances and products in animal nutrition ([1]), as last amended by Directive 2001/102/EC ([2]), and for foodstuffs by Commission Regulation (EC) No 466/2001 of 8 March 2001 setting maximum levels for certain contaminants in foodstuffs ([3]), as amended by Council Regulation (EC) No 2375/2001 ([4]), are fixed at a strict but feasible level, while taking account of background contamination. These maximum levels should prevent unacceptably high exposure levels among animals and the human population and the distribution of feedingstuffs and foodstuffs with an unacceptably high contamination.

(2) On 30 May 2001 the Scientific Committee on Food (SCF) adopted an opinion on the Risk Assessment of Dioxins and Dioxin-like PCBs in Food; based on new scientific information which had become available since the adoption of the SCF opinion on this matter on 22 November 2000. The SCF fixed a tolerable weekly intake (TWI) for dioxins and dioxin-like PCBs of 14 pg World Health Organisation (WHO)-toxic equivalent (TEQ)/kg bodyweight. Exposure estimates indicate that a considerable proportion of the Community population has a dietary intake in excess of the tolerable intake.

(3) The reduction of human exposure to dioxins through food consumption is therefore important and necessary to ensure consumer protection. More than 90 % of human dioxin exposure derives from food. Food of animal origin normally contributes about 80 % of overall exposure. The dioxin burden in animals derives mainly from feedingstuffs. As food contamination is directly related to feed contamination, an integrated approach should be followed to reduce dioxin incidence throughout the food chain, that is, from feed materials through food-producing animals to humans.

(4) Measures should be implemented with the aim of further reducing the presence and release of dioxin contamination in order to limit the impact of environmental pollution on the contamination of feedingstuffs and foodstuffs. On 24 October 2001 the Commission adopted a Communication to the Council, the European Parliament and the Economic and Social Committee on a Community strategy for dioxins, furans and polychlorinated biphenyls (COM(2001) 593 final) ([5]). The strategy focuses on current and future measures to reduce the release of dioxins and PCBs into the environment.

(5) Measures based solely on establishing maximum levels for dioxins and dioxin-like PCBs in feedingstuffs and foodstuffs would not be sufficiently effective in reducing the level of contamination in feedingstuffs and foodstuffs unless the levels were to be set so low that a large part of the feed and food supply was declared unfit for animal or human consumption. It is generally recognised that, in order to actively reduce the presence of dioxins in feedingstuffs and foodstuffs, maximum levels

([1]) OJ L 115, 4.5.1999, p. 32.
([2]) OJ L 6, 10.1.2002, p. 45.
([3]) OJ L 77, 16.3.2001, p. 1.
([4]) OJ L 321, 6.12.2001, p. 1.
([5]) OJ C 322, 17.11.2001, p. 2.

should be accompanied by measures stimulating a pro-active approach, including the setting of action levels and target levels for feedingstuffs and foodstuffs in combination with measures to limit emissions. Action levels should be a tool for competent authorities and operators to highlight those cases where it is appropriate to identify a source of contamination and to take measures for its reduction or elimination, not only in the event of non-compliance with the provisions of Directive 1999/29/EC or Regulation (EC) No 466/2001 but also where significant levels of dioxins above the normal background level are found in feedingstuffs and foodstuffs. This approach should result in a gradual reduction of dioxin levels in feedingstuffs and foodstuffs and, ultimately, in the achievement of the target levels.

(6) Although, from a toxicological point of view, any level should apply to dioxins, furans and dioxin-like PCBs, the maximum levels established in Directive 1999/29/EC and Regulation (EC) No 466/2001 are set only for dioxins and furans and not for dioxin-like PCBs, given the very limited data available on the prevalence of the latter. It is therefore necessary, in accordance with the recommendations of SCF and SCAN, to generate reliable data on the presence of dioxin-like PCBs in the widest possible range of feed materials, feedingstuffs and foodstuffs in order to obtain a reliable database in a relatively short period of time. This should allow a review of the maximum levels established by Directive 1999/29/EC and Regulation (EC) No 466/2001 and of the action levels set out in this Recommendation, with a view to including dioxin-like PCBs in the levels to be set.

(7) The action levels should be reviewed by 31 December 2004 at the latest, once sufficient data on the presence of dioxin-like PCBs in feed materials, feedingstuffs and foodstuffs are available.

(8) Alongside the review for the purpose of including dioxin-like PCBs, the action levels should be periodically adjusted in line with the downward trend in dioxin presence and the active approach pursued to gradually reduce their presence in feedingstuffs and foodstuffs.

(9) The target levels indicate the contamination levels to be achieved in feed and food in order to ultimately bring human exposure for the majority of the population of the Community down to the TWI for dioxins and dioxin-like PCBs set by the SCF. They should be set in the light of more accurate information on the impact of environmental measures and the source directed measures at the level of feed and food on the reduction of the presence of dioxins and dioxin-like PCBs in the different feed materials, feedingstuffs and foodstuffs. The target levels should be set by 31 December 2004, when more information will be, available and when the action levels are first revised with a view to the inclusion of dioxin-like PCBs.

(10) It is of major importance that monitoring of all feed materials, feedingstuffs and foodstuffs is performed uniformly across the Community. Therefore detailed guidelines for the monitoring of dioxins and dioxin-like PCBs should established within the framework of the Standing Committee for Feedingstuffs, for feedingstuffs, and the Standing Committee for Foodstuffs, for foodstuffs. These guidelines contain, *inter alia*, provisions concerning the minimum frequency of controls to be performed by each Member State, the feed materials, feedingstuffs and foodstuffs to be monitored and the way of reporting the results,

HEREBY RECOMMENDS:

1. That Member States perform, proportionate to their production, use and consumption of feed materials, feedingstuffs and foodstuffs, random monitoring of the presence of dioxins and dioxin-like PCBs in feed materials, feedingstuffs and foodstuffs. This monitoring should be carried out in accordance with the guidelines and frequency established by the Standing Committee on Feedingstuffs for feedingstuffs and by the Standing Committee for Foodstuffs for foodstuffs.

2. That in cases of non-compliance with the provisions of Directive 1999/29/EC and Regulation (EC) No 466/2001, and (subject to point 3) in cases where levels of dioxins in excess of the action levels specified in Annexes I and II are found, Member States, in cooperation with operators,

   (a) initiate investigations to identify the source of contamination;

   (b) check for the presence of dioxin-like PCBs;

   (c) take measures to reduce or eliminate the source of contamination.

3. That Member States in which background levels of dioxin are particularly high set national action levels for their domestic production of feed materials, feedingstuffs and foodstuffs, such that for about 5 % of the results obtained in the monitoring referred to in point 1, an investigation is undertaken to identify the source of contamination.

4. That Member States inform the Commission and the other Member States of their findings, the results of their investigations and the measures taken to reduce or eliminate the source of contamination.

5. That Member States transmit the information referred to in point 4 by 31 December each year at the latest for foodstuffs and as part of the annual report to be submitted to the Commission pursuant to Article 22(2) of Council Directive 95/53/EC [1], as last amended by Directive 2001/46/EC of the European Parliament and of the Council [2], for feedingstuffs, except where the information is of immediate relevance for the other Member States in which case it should be transmitted immediately.

Done at Brussels, 4 March 2002.

For the Commission

David BYRNE

Member of the Commission

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(1) OJ L 265, 8.11.1995, p. 17.
(2) OJ L 234, 2.9.2001, p. 55.

ANNEX I

Dioxin (sum of polychlorinated dibenzo-para-dioxins (PCDDs) and polychlorinated dibenzofurans (PCDFs) expressed in World Health Organisation (WHO) toxic equivalents, using the WHO-TEFs (toxic equivalency factors, 1997))

FEED MATERIAL/FEEDINGSTUFF	ACTION LEVEL FOR DIOXINS (PCDD + PCDF) (1)	TARGET LEVEL (1)
	Maximum content relative to a feedingstuff with a moisture content of 12 %	**Maximum content relative to a feedingstuff with a moisture content of 12 %**
All feed materials of plant origin, including vegetable oils and byproducts	0,50 ng WHO-PCDD/F-TEQ/kg	(2)
Minerals Binders (kaolinitic clay, calcium sulphate dihydrate, vermiculite, natrolite-phonolite, synthetic calcium aluminates and clinoptilolite of sedimentary origin) Trace elements	0,50 ng WHO-PCDD/F-TEQ/kg	(2)
Animal fat, including milk fat and egg fat	1,2 ng WHO-PCDD/F-TEQ/kg	(2)
Other land animal products, including milk and milk products and egg and egg products	0,50 ng WHO-PCDD/F-TEQ/kg	(2)
Fish oil	4,5 ng WHO-PCDD/F-TEQ/kg	(2)
Fish, other marine animals, their products and by-products with the exception of fish oil (3)	1,0 ng WHO-PCDD/F-TEQ/kg	(2)
Compound feedingstuffs, with the exception of feedingstuffs for fur animals, feedingstuffs for fish and feedingstuffs for pet animals	0,40 ng WHO-PCDD/F-TEQ/kg	(2)
Feedingstuffs for fish and feedingstuffs for pet animals	1,5 ng WHO-PCDD/F-TEQ/kg	(2)

(1) Upperbound concentrations; upperbound concentrations are calculated assuming that all values of the different congeners less than the limit of determination are equal to the limit of determination.
(2) The target values will be set by 31 December 2004 simultaneously with the first revision of the action levels with a view of the inclusion of dioxin-like PCBs in the levels.
(3) Fresh fish directly delivered and used without intermediate processing for the production of feedingstuffs for fur animals is exempted from the maximum limit. The products, processed animal proteins produced from these fur animals, cannot enter the food chain and the feeding thereof is prohibited to farmed animals which are kept, fattened or bred for the production of food.

ANNEX II

Dioxin (sum of polychlorinated dibenzo-para-dioxins (PCDDs) and polychlorinated dibenzofurans (PCDFs) expressed in World Health Organisation (WHO) toxic equivalents, using the WHO-TEFs (toxic equivalency factors, 1997)

PRODUCT	ACTION LEVEL FOR DIOXINES (PCDD + PCDF) (1) (pg WHO-PCDD/F-TEQ/g fat or product) (1)	TARGET LEVEL (1)
Meat and meat products (4) originating from		
— ruminants (bovine animals, sheep)	2 pg WHO-PCDD/F-TEQ-TEQ/g fat (3)	(2)
— poultry and farmed game	1,5 pg WHO-PCDD/F-TEQ/g fat (3)	(2)
— pigs	0,6 pg WHO-PCDD/F-TEQ/g fat (3)	(2)
Liver and derived products	4 pg WHO-PCDD/F-TEQ-TEQ/g fat (3)	(2)
Muscle meat of fish and fishery products (5) and products thereof	3 pg PCDD/F-TEQ-TEQ/g fresh weight	(2)
Milk (6) and milk products, including butter fat	2 pg WHO-PCDD/F-TEQ/g fat (3)	(2)
Hen eggs and egg products (7)	2,0 pg WHO-PCDD/F-TEQ/g fat (3)	(2)
Oils and fats		
— Animal fat		
— from ruminants	2 pg WHO-PCDD/F-TEQ/g fat	(2)
— from poultry and farmed game	1,5 pg WHO-PCDD/F-TEQ/g fat	(2)
— from pigs	0,6 pg WHO-PCDD/F-TEQ/g fat	(2)
— mixed animal fat	1,5 pg WHO-PCDD/F-TEQ/g fat	(2)
— Vegetable oil	0,5 pg WHO-PCDD/F-TEQ/g fat	(2)
— Fish oil intended for human consumption	1,5 pg WHO-PCDD/F-TEQ/g fat	(2)
Fruits	0,4 ng WHO-PCDD/F-TEQ/kg product	(2)
Vegetables	0,4 ng WHO-PCDD/F-TEQ/kg product	(2)
Cereals	0,4 ng WHO-PCDD/F-TEQ/kg product	(2)

(1) Upperbound concentrations; upperbound concentrations are calculated assuming that all values of the different congeners less than the limit of determination are equal to the limit of determination.
(2) The target level will be set before 31 December 2004 simultaneously with the first review of the action levels with a view of the inclusion of dioxin-like PCBs in the levels to be set.
(3) The action levels are not applicable for food products containing < 1 % fat.
(4) Meat of bovine animals, sheep, pig, poultry and farmed game as defined in Article 2(a) of Council Directive 64/433/EEC (OJ 121, 29.7.1964, p. 2012/64), as last amended by Directive 95/23/EC (OJ L 243, 11.10.1995, p. 7) and Article 2(1) of Council Directive 71/118/EEC (OJ L 55, 8.3.1971, p. 23), as last amended by Directive 97/79/EC (OJ L 24, 30.1.1998, p. 31) and Article 2(2) of Council Directive 91/495/EC (OJ L 268, 24.9.1991, p. 41), as last amended by Directive 94/65/EC (OJ L 368, 31.12.1994, p. 10), excluding edible offal as defined in Article 2(e) of Directive 64/433/EEC and Article 2(5) of Directive 71/118/EEC.
(5) Muscle meat of fish and fishery products as defined in category (a), (b), (c), (e) and (f) of the list in Article 1 of Council Regulation (EC) No 104/2000 (OJ L 17, 21.1.2000, p. 22). The maximum level applies to crustaceans excluding the brown meat of crab and to cephalopods without viscera.
(6) Milk (raw milk, milk for the manufacture of milk-based products and heat treated milk as defined by Council Directive 92/46/EEC (OJ L 268, 14.9.1992, p. 1), as last amended by Council Directive 94/71/EC (OJ L 368, 31.12.1994, p. 33).
(7) Hen eggs and egg products as defined by Article 2 of Council Directive 89/437/EEC (OJ L 212, 22.7.1989, p. 87). Free range or semi-intensive eggs as defined by Article 18 of Commission Regulation (EEC) No 1274/91 (OJ L 121, 16.5.1991, p. 1).

EUROPEAN CENTRAL BANK

GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 27 February 2002

amending Guideline ECB/2001/3 on a Trans-European Automated Real-time Gross Settlement Express Transfer system (Target)

(ECB/2002/1)

(2002/202/EC)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the 'Statute'), and in particular to Article 3.1, Article 12.1, Article 14.3 and Articles 17, 18 and 22 thereof,

Whereas:

(1) The fourth indent of Article 105(2) of the Treaty establishing the European Community (hereinafter referred to as the 'Treaty') and the fourth indent of Article 3.1 of the Statute empower the European Central Bank (ECB) and the national central banks (NCBs) to promote the smooth operation of payment systems.

(2) Under Article 22 of the Statute, the ECB and the NCBs may provide facilities to ensure efficient and sound clearing and payment systems within the Community and with other countries.

(3) On 14 December 2000, the Governing Council adopted a long-term calendar of Target operating days to be applied from the beginning of 2002 until further notice, according to which Target should be closed not only on Saturdays and Sundays but also on New Year's Day, Good Friday and Easter Monday (according to the calendar applicable at the seat of the ECB), Labour Day (1 May), Christmas Day and 26 December. In order to ensure a level playing field for all participants, the Governing Council also decided that Target as a whole, including domestic real-time gross settlement (RTGS) systems, would be closed, implying that neither cross-border nor domestic transactions would be processed through Target on these days. The principle of equal treatment should not prevent any differentiation objectively justified by specific national situations. The complete closure of Hermes (the Greek RTGS system), including for domestic transactions, creates disturbances for the Greek general public and banking industry since the Orthodox Easter seldom coincides with the Protestant/Catholic Easter covered by the calendar applicable at the seat of the ECB, which de facto implies several extra days when the Greek domestic markets are closed. Furthermore, the number of consecutive closed days is greater when the Protestant/Catholic and Orthodox Easter public holidays are only one week apart, as is the case in the year 2003, when the Greek credit institutions will operate on only three days over an 11 day period. For this reason, an extraordinary and limited derogation from the Target operating days during the Easter public holidays should be made for a three year period, after which the Greek situation will be re-evaluated on the basis of experience.

(4) In addition, Annex V to Guideline ECB/2001/3 of 26 April 2001 on a Trans-European Automated Real-time Gross Settlement Express Transfer system (Target) [1], concerning the list of 'out' collateral which can be applied to collateralise intra-day credit in Target, should be amended in order to allow three national central banks of Member States which have adopted the single currency in accordance with the Treaty to accept bonds issued by Damaras Skibskreditfond and KommuneKredit as collateral for intra-day credit.

(5) In accordance with Article 12.1 and Article 14.3 of the Statute, ECB guidelines form an integral part of Community law,

HAS ADOPTED THIS GUIDELINE:

Article 1

Guideline ECB/2001/3 is amended as follows:

1. Article 2(1) is replaced by the following:

'1. The Trans-European Automated Real-time Gross Settlement Express Transfer system is a real-time gross settlement system for the euro. Target is composed of the national RTGS systems, the ECB payment mechanism and interlinking.'

[1] OJ L 140, 24.5.2001, p. 72.

2. Article 3(d)(1) is replaced by the following:

‘1. Operating days

From 2002, Target as a whole shall be closed on Saturdays, Sundays, New Year's Day, Good Friday and Easter Monday (according to the calendar applicable at the seat of the ECB), 1 May (Labour Day), Christmas Day and 26 December.

Without prejudice to the above, only the following limited settlement services may, extraordinarily, during the years 2002 to 2004, be undertaken in Hermes, the Greek RTGS system, on Good Friday and Easter Monday (according to the calendar applicable at the seat of the ECB), when these days do not coincide with the Orthodox Easter:

(a) settlement of domestic customer payments, and

(b) settlement of payments related to the delivery of cash from and return of cash to the Bank of Greece, and

(c) settlement operations of the Athens Clearing Office and the DIAS retail payment systems.’

3. Annex V is replaced by the text in the Annex to this Guideline.

Article 2

Final provisions

This Guideline is addressed to the national central banks of participating Member States.

This Guideline shall enter into force on 22 March 2002.

Each NCB shall inform the ECB of the laws, regulations and administrative provisions necessary to comply with this Guideline no later than 15 March 2002.

This Guideline shall be published in the *Official Journal of the European Communities*.

Done at Frankfurt am Main, 27 February 2002.

On behalf of the Governing Council of the ECB

Christian NOYER

ANNEX

'ANNEX V

LIST OF "OUT" COLLATERAL

which can be used to collateralise intra-day credit for each NCB of a participating Member State that has declared its intention to use certain collateral located in the country of a national central bank of a Member State which has not adopted the euro and whose intention has been approved by the ECB pursuant to Article 3(f)(3) and Article 3(g) of the TARGET Guideline:

Participating NCB	Approved use of 'out' collateral
DEUTSCHE BUNDESBANK	— Danish government and mortgage credit bonds and bonds issued by Danmarks Skibskreditfond and KommuneKredit ([1]) — Swedish government debt instruments and mortgage institutions' bonds — United Kingdom government gilt-edged securities — United Kingdom Treasury bills
BANCO DE ESPAÑA	— United Kingdom gilt-edged securities — United Kingdom Treasury bills
BANQUE DE FRANCE	— Dansih government and mortgage credit bonds and bonds issued by Danmarks Skibskreditfond and KommuneKredit ([2]) — Swedish government debt instruments and mortgage institutions' bonds — United Kingdom government gilt-edged securities — United Kingdom Treasury bills
CENTRAL BANK OF IRELAND	— United Kingdom gilt-edged securities — United Kingdom Treasury bills
BANQUE CENTRALE DU LUXEMBOURG	— Danish government and mortgage credit bonds
DE NEDERLANDSCHE BANK	— Danish government and mortgage credit bonds and bonds issued by Danmarks Skibskreditfond and KommuneKredit ([3]) — Swedish government debt instruments and mortgage institutions' bonds
SUOMEN PANKKI	— Danish government and mortgage credit bonds — Swedish governement debt instruments and mortgage institutions' bonds — United Kingdom government gilt-edged securities — United Kingdom Treasury bills

([1]) Excluding bonds linked to references other than interest rates and/or having option characteristics, but including bonds linked to inflation.
([2]) Excluding bonds linked to references other than interest rates and/or having option characteristics, but including bonds linked to inflation.
([3]) Excluding bonds linked to references other than interest rates and/or having option characteristics, but including bonds linked to inflation.'

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 430/2001 of 7 March 2002 concerning tenders notified in response to the invitation to tender for the export of barley issued in Regulation (EC) No 1558/2001

(Official Journal of the European Communities L 66 of 8 March 2002)

In the contents and on page 14 in the title:

for: 'Commission Regulation (EC) No 430/2001 …',

read: 'Commission Regulation (EC) No 430/2002 …'.