

English edition

Legislation

Contents

I	<i>Acts whose publication is obligatory</i>	
★	Regulation (EC) No 1991/2002 of the European Parliament and of the Council of 8 October 2002 amending Council Regulation (EC) No 577/98 on the organisation of a labour force sample survey in the Community	1
	Commission Regulation (EC) No 1992/2002 of 8 November 2002 establishing the standard import values for determining the entry price of certain fruit and vegetables	3
	Commission Regulation (EC) No 1993/2002 of 8 November 2002 fixing the maximum export refund on wholly milled round grain rice to certain third countries in connection with the invitation to tender issued in Regulation (EC) No 1896/2002	5
	Commission Regulation (EC) No 1994/2002 of 8 November 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 1897/2002	6
	Commission Regulation (EC) No 1995/2002 of 8 November 2002 fixing the maximum export refund on wholly milled long grain B rice to certain third countries in connection with the invitation to tender issued in Regulation (EC) No 1898/2002	7
★	Commission Regulation (EC) No 1996/2002 of 8 November 2002 fixing, for 2003, the reduction percentages to be applied to applications for an allocation by non-traditional operators under the tariff quotas for imports of bananas	8
★	Commission Regulation (EC) No 1997/2002 of 8 November 2002 amending Regulation (EC) No 296/96 on data to be transmitted by the Member States and the monthly booking of expenditure financed under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF)	9
★	Commission Regulation (EC) No 1998/2002 of 8 November 2002 amending Regulation (EC) No 902/2002 as regards the particulars of the inspection body	10

2

(Continued overleaf)

EN

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

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

★ Commission Regulation (EC) No 1999/2002 of 8 November 2002 laying down detailed rules for the application of Council Regulation (EC) No 2019/93 as regards the specific aid arrangements for the smaller Aegean Islands in respect of vineyards	11
★ Commission Regulation (EC) No 2000/2002 of 8 November 2002 adapting certain fish quotas for 2002 pursuant to Council Regulation (EC) No 847/96 introducing additional conditions for year-to-year management of TACs and quotas	13
Commission Regulation (EC) No 2001/2002 of 8 November 2002 concerning tenders submitted in response to the invitation to tender for the export of husked long grain B rice to the island of Réunion referred to in Regulation (EC) No 1895/2002	19
Commission Regulation (EC) No 2002/2002 of 8 November 2002 on the issue of import licences for high-quality fresh, chilled or frozen beef and veal	20
Commission Regulation (EC) No 2003/2002 of 8 November 2002 determining the world market price for unginning cotton	21
★ Commission Regulation (EC) No 2004/2002 of 8 November 2002 relating to the procedure for determining the meat and fat content of certain pigmeat products	22

II Acts whose publication is not obligatory

Council

2002/882/EC:

★ Council Decision of 5 November 2002 providing further macro-financial assistance to the Federal Republic of Yugoslavia	25
---------------------------------------------------------------------------------------------------------------------------------------	----

2002/883/EC:

★ Council Decision of 5 November 2002 providing further macro-financial assistance to Bosnia and Herzegovina	28
---------------------------------------------------------------------------------------------------------------------------	----

Commission

2002/884/EC:

★ Commission Decision of 31 October 2002 concerning national provisions on restrictions on the marketing and use of creosote-treated wood notified by the Netherlands under Article 95(4) and (5) of the EC Treaty ⁽¹⁾ (notified under document number C(2002) 4116)	30
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----

2002/885/EC:

★ Commission Decision of 7 November 2002 amending Council Directive 96/49/EC as regards the time-limits within which pressure drums, cylinder racks and tanks for the transport of dangerous goods by rail must comply with it ⁽¹⁾ (notified under document number C(2002) 4343)	44
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----

2002/886/EC:

★ Commission Decision of 7 November 2002 amending Council Directive 94/55/EC as regards the time-limits within which pressure drums, cylinder racks and tanks for the transport of dangerous goods by road must comply with it ⁽¹⁾ (notified under document number C(2002) 4344)	45
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----

⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

**REGULATION (EC) No 1991/2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 8 October 2002
amending Council Regulation (EC) No 577/98 on the organisation of a labour force sample survey
in the Community**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 285(1) thereof,

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

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

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

- (1) Council Regulation (EC) No 577/98 ⁽⁴⁾ lays down the basic provisions for a labour force sample survey, designed to provide comparable statistical information on the level and pattern of, and trends in, employment and unemployment in the Member States.
- (2) An expeditious implementation by all Member States of the continuous labour force sample survey required by Regulation (EC) No 577/98 was considered a priority action in the Action Plan on EMU Statistical Requirements endorsed by the Council on 19 January 2001.
- (3) Sufficient time has now passed since Regulation (EC) No 577/98 took effect to allow all Member States to make the arrangements and commitments needed fully to implement that Regulation. However not all Member States have made such arrangements and commitments. Therefore, the derogation that allows Member States to limit themselves to an annual survey should be subject to a time limit.

(4) The measures necessary for the implementation of Regulation (EC) No 577/98 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 ⁽⁵⁾.

(5) Regulation (EC) No 577/98 should therefore be amended accordingly.

(6) The Statistical Programme Committee, established by Council Decision 89/382/EEC, Euratom ⁽⁶⁾ has been consulted in accordance with Article 3 of that Decision,

HAVE ADOPTED THIS REGULATION:

Article 1

Council Regulation (EC) No 577/98 is hereby amended as follows:

1. in Article 1, the second paragraph shall be replaced by the following:

'The survey shall be a continuous survey providing quarterly and annual results; however, during a transitional period not extending beyond 2002, Member States which are unable to implement a continuous survey shall instead carry out an annual survey, to take place in the spring.

By way of derogation, the transitional period shall be extended

- (a) until 2003 for Italy,
- (b) until 2004 for Germany under the condition that Germany provide quarterly substitute estimates for the main labour force sample survey aggregates as well as annual average estimates for some specified labour force sample survey aggregates.'

⁽¹⁾ OJ C 270 E, 25.9.2001, p. 23.

⁽²⁾ OJ C 48, 21.2.2002, p. 67.

⁽³⁾ Opinion of the European Parliament of 11 December 2001 (OJ C 177 E, 25.7.2002, p. 30), Council Common Position of 15 April 2002 (OJ C 145 E, 18.6.2002, p. 122) and Decision of the European Parliament of 11 June 2002 (not yet published in the Official Journal).

⁽⁴⁾ OJ L 77, 14.3.1998, p. 3.

⁽⁵⁾ OJ L 184, 17.7.1999, p. 23.

⁽⁶⁾ OJ L 181, 28.6.1989, p. 47.

2. Article 8 shall be replaced by the following:

'Article 8

Procedure

1. The Commission shall be assisted by the Statistical Programme Committee instituted by Article 1 of Council Decision No 89/382/EEC, Euratom (*).

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.

(*) OJ L 181, 28.6.1989, p. 47.

(**) OJ L 184, 17.7.1999, p. 23.'

Article 2

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

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

Done at Luxembourg, 8 October 2002.

For the European Parliament

The President

P. COX

For the Council

The President

T. PEDERSEN

COMMISSION REGULATION (EC) No 1992/2002
of 8 November 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 November 2002.

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

Done at Brussels, 8 November 2002.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

⁽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 November 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	57,4
	096	32,2
	204	59,1
	999	49,6
0707 00 05	052	103,8
	628	151,4
	999	127,6
0709 90 70	052	88,0
	999	88,0
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	66,0
	624	79,7
	999	72,8
0805 50 10	052	66,3
	528	51,6
	600	81,6
	999	66,5
0806 10 10	052	137,2
	400	313,8
	508	330,7
	999	260,6
0808 10 20, 0808 10 50, 0808 10 90	400	96,9
	404	95,4
	512	69,8
	800	168,2
	999	107,6
0808 20 50	052	107,2
	720	39,1
	999	73,2

⁽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 1993/2002
of 8 November 2002**

**fixing the maximum export refund on wholly milled round grain rice to certain third countries in
connection with the invitation to tender issued in Regulation (EC) No 1896/2002**

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 Commission Regulation (EC) No 411/2002 ⁽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 1896/2002 ⁽³⁾.

(2) Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 1948/2002 ⁽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 1896/2002 is hereby fixed on the basis of the tenders submitted from 4 to 7 November 2002 at 163,00 EUR/t.

Article 2

This Regulation shall enter into force on 9 November 2002.

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

Done at Brussels, 8 November 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 62, 5.3.2002, p. 27.

⁽³⁾ OJ L 287, 25.10.2002, p. 5.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 299, 1.11.2002, p. 18.

**COMMISSION REGULATION (EC) No 1994/2002
of 8 November 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 1897/2002

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 Commission Regulation (EC) No 411/2002 ⁽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 1897/2002 ⁽³⁾.
- (2) Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 1948/2002 ⁽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 1897/2002 is hereby fixed on the basis of the tenders submitted from 4 to 7 November 2002 at 175,00 EUR/t.

Article 2

This Regulation shall enter into force on 9 November 2002.

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

Done at Brussels, 8 November 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 62, 5.3.2002, p. 27.

⁽³⁾ OJ L 287, 25.10.2002, p. 8.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 299, 1.11.2002, p. 18.

**COMMISSION REGULATION (EC) No 1995/2002
of 8 November 2002**

**fixing the maximum export refund on wholly milled long grain B rice to certain third countries in
connection with the invitation to tender issued in Regulation (EC) No 1898/2002**

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 Commission Regulation (EC) No 411/2002 ⁽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 1898/2002 ⁽³⁾.

(2) Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 1948/2002 ⁽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 B rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 1898/2002 is hereby fixed on the basis of the tenders submitted from 4 to 7 November 2002 at 270,00 EUR/t.

Article 2

This Regulation shall enter into force on 9 November 2002.

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

Done at Brussels, 8 November 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 62, 5.3.2002, p. 27.

⁽³⁾ OJ L 287, 25.10.2002, p. 11.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 299, 1.11.2002, p. 18.

**COMMISSION REGULATION (EC) No 1996/2002
of 8 November 2002**

fixing, for 2003, the reduction percentages to be applied to applications for an allocation by non-traditional operators under the tariff quotas for imports of bananas

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 404/93 of 13 February 1993 on the common organisation of the market in bananas⁽¹⁾, as last amended by Regulation (EC) No 2587/2001⁽²⁾,

Having regard to Commission Regulation (EC) No 896/2001 of 7 May 2001 laying down detailed rules for applying Council Regulation (EEC) No 404/93 as regards the arrangements for importing bananas into the Community⁽³⁾, as last amended by Regulation (EC) No 349/2002⁽⁴⁾, and in particular Article 9(2) thereof,

Whereas:

- (1) Member States' notifications under Article 9(1) of Regulation (EC) No 896/2001 indicate that the sum of allocations applied for is 12 276 727,76 tonnes for all non-traditional operators A/B and 650 916,000 tonnes for all non-traditional operators C.
- (2) The percentages to be applied for determining the allocations for non-traditional operators under the tariff quotas A/B and C should therefore be fixed.

- (3) So that the operators have sufficient time to lodge licence applications for the first quarter of 2003, this Regulation must enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

For the tariff quotas A/B and C provided for in Article 18 of Regulation (EEC) No 404/93, the allocation to be granted to each non-traditional operator under Article 9(2) of Regulation (EC) No 896/2001 shall be the following percentage of the allocation applied for:

- (a) for each non-traditional operator A/B: 3,67370 %,
- (b) for each non-traditional operator C: 12,67444 %.

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 November 2002.

For the Commission
Franz FISCHLER
Member of the Commission

⁽¹⁾ OJ L 47, 25.2.1993, p. 1.

⁽²⁾ OJ L 345, 29.12.2001, p. 13.

⁽³⁾ OJ L 126, 8.5.2001, p. 6.

⁽⁴⁾ OJ L 55, 26.2.2002, p. 17.

**COMMISSION REGULATION (EC) No 1997/2002
of 8 November 2002**

**amending Regulation (EC) No 296/96 on data to be transmitted by the Member States and the
monthly booking of expenditure financed under the Guarantee Section of the European Agricultural
Guidance and Guarantee Fund (EAGGF)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy ⁽¹⁾, and in particular Articles 5(3) and 7(5) thereof,

Whereas:

- (1) Article 16(1) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽²⁾ provides that the budget shall be drawn up and implemented in euro and the accounts shall be presented in euro.

- (2) Commission Regulation (EC) No 296/96 ⁽³⁾, as last amended by Regulation (EC) No 1934/2001 ⁽⁴⁾, should be amended so as to bring it in line with this new provision.

- (3) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the European Agricultural Guidance and Guarantee Fund,

HAS ADOPTED THIS REGULATION:

Article 1

Article 4(1a) of Regulation (EC) No 296/96 is hereby deleted.

Article 2

This Regulation shall enter into force on 1 January 2003.

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

Done at Brussels, 8 November 2002.

For the Commission
Franz FISCHLER
Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 103.

⁽²⁾ OJ L 248, 16.9.2002, p. 1.

⁽³⁾ OJ L 39, 17.2.1996, p. 5.

⁽⁴⁾ OJ L 262, 2.10.2001, p. 8.

COMMISSION REGULATION (EC) No 1998/2002
of 8 November 2002
amending Regulation (EC) No 902/2002 as regards the particulars of the inspection body

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 545/2002 ⁽²⁾, and in particular Article 10 thereof,

Whereas:

- (1) Commission Regulation (EC) No 902/2002 of 30 May 2002 approving operations to check conformity with the marketing standards applicable to fresh fruit and vegetables carried out in the Czech Republic prior to import into the European Community ⁽³⁾ includes the particulars of the inspection body responsible for carrying out these checks, in this case the Czech Agricultural and Food Inspectorate.
- (2) The Czech authorities have informed the Commission that, under Czech Law No 146/2002 of 20 March 2002, the name and address of the inspection body will be amended with effect from 1 January 2003. The Annex to Regulation (EC) No 902/2002 must be amended as a result.
- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fresh Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

Article 1

In Annex I to Regulation (EC) No 902/2002, the particulars of the inspection body referred to in Article 7(2) of Commission Regulation (EC) No 1148/2001 ⁽⁴⁾ are replaced by the following:

‘CAFIA
The Czech Agriculture and Food Inspection Authority
(Státní zemědělská a potravinářská inspekce)
Kvìtná 15
CZ-603 00 Brno
Tel.: (420-5) 43 54 02 03/02 49
Fax: (420-5) 43 54 02 10
E-mail: fruveg@cafia.cz fruveg@cafia.cz’

Article 2

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

It shall apply from 1 January 2003.

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

Done at Brussels, 8 November 2002.

For the Commission
Franz FISCHLER
Member of the Commission

⁽¹⁾ OJ L 297, 21.11.1996, p. 1.

⁽²⁾ OJ L 84, 28.3.2002, p. 1.

⁽³⁾ OJ L 142, 31.5.2002, p. 20.

⁽⁴⁾ OJ L 156, 13.6.2001, p. 9.

COMMISSION REGULATION (EC) No 1999/2002
of 8 November 2002

**laying down detailed rules for the application of Council Regulation (EC) No 2019/93 as regards
the specific aid arrangements for the smaller Aegean Islands in respect of vineyards**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Article 2

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2019/93 of 19 July 1993 introducing specific measures for the smaller Aegean islands concerning certain agricultural products ⁽¹⁾, as last amended by Regulation (EC) No 442/2002 ⁽²⁾, and in particular Article 9 thereof,

Whereas:

- (1) Article 9 of Regulation (EEC) No 2019/93 provides for a flat-rate aid per hectare for the continued cultivation of vines for the production of quality wines psr in traditional production areas in the smaller Aegean islands.
- (2) To be granted the flat-rate aid per hectare, the interested party (either a wine producer group or organisation) must first submit a wine improvement measure, based on a programme approved by the competent authorities.
- (3) Article 1(8) of Regulation (EC) No 2019/93 abolishes aid for ageing quality liqueur wines, since it was deemed unsuitable to the situation in the Aegean Islands, due to the short storage period.
- (4) The detailed rules to administer this scheme and to monitor the conditions adopted by the Council should be laid down.
- (5) To avoid any legal ambiguity, Regulation (EEC) No 3112/93 ⁽³⁾ should be repealed.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Wine,

1. The flat-rate aid per hectare for continuing to cultivate vines for the production of quality wines psr provided for in Article 9 of Regulation (EC) No 2019/93 shall be granted at the request of wine producer groups or organisations for areas planted with vine varieties suitable for the production of quality wines psr.

2. The producer organisations shall be those referred to in Article 39 of Regulation (EC) No 1493/1999. The Greek authorities shall lay down the criteria that the producer groups must satisfy to qualify for the aid in question, and notify them to the Commission.

Article 3

1. Applications for the per-hectare aid shall be lodged by interested parties with the competent Greek authorities during the period fixed by them and by 1 May of each year, at the latest, for the following wine year. However, for the 2002/03 wine year, applications shall be lodged no later than 31 December 2002.

2. The aid application must include the following:

- (a) the address of the producer group or organisation;
- (b) the area cultivated for the production of quality wines psr, in hectares and ares, together with the land register reference or indication recognised as equivalent by the agency responsible for verifying the areas;
- (c) the grape varieties used;
- (d) an estimate of the potential crop.

Article 4

HAS ADOPTED THIS REGULATION:

Having checked that the wine producer group or organisation has carried out the wine improvement measure in accordance with the approved programme, the competent Greek authority shall pay the aid before 1 April of the wine year for which it is granted.

Article 1

This Regulation lays down the detailed rules for applying Article 9 of Regulation (EEC) No 2019/93, as amended by Council Regulation (EC) No 442/2002.

Article 5

The competent Greek authority shall notify the Commission by 30 April of the areas for which aid applications have been made and in respect of which aid has actually been paid.

⁽¹⁾ OJ L 184, 27.7.1993, p. 1.

⁽²⁾ OJ L 68, 12.3.2002, p. 4.

⁽³⁾ OJ L 278, 11.11.1993, p. 52.

Article 6

1. The competent Greek authority shall take all the measures necessary to ensure compliance with the conditions to which the grant of aid provided for in this Regulation is subject.
2. Aid applications shall be checked in a manner that ensures effective verification of compliance with the conditions imposed. Depending on the kind of support measure, the competent Greek authority shall define the method and means for conducting the check and the beneficiaries to be checked. In all appropriate cases the competent Greek authority shall use the vineyard register and the integrated administration and control system established by Regulation (EEC) No 3508/92.
3. The checks shall involve administrative and on-the-spot checks.
4. The administrative checks shall be exhaustive and shall include crosschecks, where appropriate, with the data in the integrated administration and control system in order to prevent multiple payments of undue aid.

5. On the basis of a risk analysis, the national authorities shall carry out random on-the-spot checks of a number of aid applications representing at least 5 % of the assisted areas.

6. The competent Greek authority shall establish the system of penalties to be imposed in the event of breaches of the obligations entered into and the applicable provisions, and shall take all the steps necessary to implement the system. The penalties must be effective, commensurate with their purpose and have a deterrent effect.

7. Article 8 of Council Regulation (EC) No 1258/1999 ⁽¹⁾ on the financing of the common agricultural policy shall apply.

Article 7

Regulation (EEC) No 3112/93 is hereby repealed.

Article 8

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

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

Done at Brussels, 8 November 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 103.

COMMISSION REGULATION (EC) No 2000/2002
of 8 November 2002

adapting certain fish quotas for 2002 pursuant to Council Regulation (EC) No 847/96 introducing additional conditions for year-to-year management of TACs and quotas

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy ⁽¹⁾, as last amended by Regulation (EC) No 2846/98 ⁽²⁾, and in particular Article 23(1) thereof,

Having regard to Council Regulation (EC) No 847/96 of 6 May 1996 introducing additional conditions for year-to-year management of TACs and quotas ⁽³⁾ and in particular Article 4(2) thereof,

Whereas:

- (1) Council Regulation (EC) No 2848/2000 of 15 December 2000 fixing for 2001 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where limitations in catch are required ⁽⁴⁾, as last amended by Regulation (EC) No 2425/2001 ⁽⁵⁾, stipulate which stocks may be subject to the measures foreseen by Regulation (EC) No 847/96.
- (2) Council Regulation (EC) No 2555/2001 ⁽⁶⁾, as amended by Regulation (EC) No 1811/2002 ⁽⁷⁾, fixes fish quotas for certain stocks in 2002.
- (3) Within the terms of Article 4(2) of Council Regulation (EC) No 847/96, certain Member States have asked to withhold a fraction of their quotas to be transferred to the following year. Within the limits indicated in that Article, the quantities withheld shall be added to the quota for 2002.

(4) According to the information communicated to the Commission, certain Member States have fished in excess of permitted landings for some stocks in 2001. In accordance with Article 5(1) of Regulation (EC) No 847/96, deductions from national quotas for 2002 should be made at a level equivalent to the quantity fished in excess, without prejudice to the application of Article 5(2).

(5) In conformity with Article 5(2) of Regulation (EC) No 847/96, weighted deductions from national quotas for 2002 should be made in the case of overfishing of permitted landings in 2001 for those stocks identified as such in Article 5 of and Annex III to Regulation (EC) No 2848/2000.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS REGULATION:

Article 1

The quotas fixed in Regulation (EC) No 2555/2001 are increased or reduced as shown in the Annex.

Article 2

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

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

Done at Brussels, 8 November 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 261, 20.10.1993, p. 1.

⁽²⁾ OJ L 358, 31.12.1998, p. 5.

⁽³⁾ OJ L 115, 9.5.1996, p. 3.

⁽⁴⁾ OJ L 334, 30.12.2000, p. 1.

⁽⁵⁾ OJ L 328, 13.12.2001, p. 7.

⁽⁶⁾ OJ L 347, 31.12.2001, p. 1.

⁽⁷⁾ OJ L 276, 12.10.2002, p. 1.

ANNEX

Species	Zone	Member State	Withheld Quantities (1)	Catch in Excess of Permitted Landings in 2001	Deductions (2)	Weighted Deductions (3)	Additional Deductions (4)	2002 Quota	Revised Value of 2002 Quota
Anchovy	VIII	ES	0,00	785,00	785,00	0,00	n.a.	29 700,00	28 915,00
Anglerfish	VII	BE	201,00	0,00	0,00	0,00	n.a.	1 719,00	1 920,00
Anglerfish	VII	NL	26,00	0,00	0,00	0,00	n.a.	223,00	249,00
Anglerfish	VII	UK	390,00	0,00	0,00	0,00	n.a.	3 345,00	3 735,00
Anglerfish	VII	FR	644,00	0,00	0,00	0,00	n.a.	11 030,00	11 674,00
Anglerfish	VII	ES	80,00	0,00	0,00	0,00	n.a.	683,00	763,00
Anglerfish	VIIIabde	ES	90,00	0,00	0,00	0,00	n.a.	786,00	876,00
Anglerfish	VIIIabde	FR	500,00	0,00	0,00	0,00	n.a.	4 374,00	4 874,00
Anglerfish	VIIIc, IX, X	ES	500,00	0,00	0,00	0,00	n.a.	3 958,00	4 458,00
Atlantic cod	I, II (Norwegian waters)	DE	0,00	0,00	0,00	0,00	n.a.	1 976,00	1 976,00
Atlantic cod	I, II	ES	0,00	11,00	11,00	0,00	n.a.	2 205,00	2 194,00
Atlantic cod	Ila (EC), North Sea	FR	0,00	37,00	0,00	37,00	n.a.	1 822,00	1 785,00
Atlantic cod	IIla Skagerrak	DK	0,00	204,00	0,00	204,00	n.a.	5 680,00	5 476,00
Atlantic cod	VIIb to k, VIII, IX, X, CECAF 34.1.1 (EC waters)	IRL	0,00	4,00	0,00	4,00	n.a.	977,00	973,00
Blue Whiting	Ila (EC waters), North Sea (EC waters)	DK	4 855,00	0,00	0,00	0,00	n.a.	26 846,00	31 701,00
Blue Whiting	Ila (EC waters), North Sea (EC waters)	NL	15,00	0,00	0,00	0,00	n.a.	81,00	96,00
Blue Whiting	Ila (EC waters), North Sea (EC waters)	UK	107,00	0,00	0,00	0,00	n.a.	592,00	699,00
Blue Whiting	Vb (EC waters), VI, VII, XII, XIV	DE	1 494,00	0,00	0,00	0,00	n.a.	8 582,00	10 076,00

Species	Zone	Member State	Withheld Quantities (1)	Catch in Excess of Permitted Landings in 2001	Deductions (2)	Weighted Deductions (3)	Additional Deductions (4)	2002 Quota	Revised Value of 2002 Quota
Blue Whiting	Vb (EC waters), VI, VII, XII, XIV	ES	2 591,00	0,00	0,00	0,00	n.a.	14 304,00	16 895,00
Blue Whiting	Vb (EC waters), VI, VII, XII, XIV	FR	2 164,00	0,00	0,00	0,00	n.a.	11 944,00	14 108,00
Blue Whiting	Vb (EC waters), VI, VII, XII, XIV	NL	3 108,00	0,00	0,00	0,00	n.a.	26 963,00	30 071,00
Blue Whiting	Vb (EC waters), VI, VII, XII, XIV	UK	2 976,00	0,00	0,00	0,00	n.a.	25 032,00	28 008,00
Blue Whiting	VIIIabde	ES	1 000,00	0,00	0,00	0,00	n.a.	5 530,00	6 530,00
Blue Whiting	VIIIabde	FR	776,00	0,00	0,00	0,00	n.a.	4 291,00	5 067,00
Blue Whiting	VIIIc, IX, X	ES	4 400,00	0,00	0,00	0,00	n.a.	24 332,00	28 732,00
Cod & haddock	Vb (Faroese waters)	DE	0,00	1,00	1,00	0,00	n.a.	10,00	9,00
Common sole	II, IV (North Sea)	NL	1 274,00	0,00	0,00	0,00	n.a.	12 038,00	13 413,00
Common sole	II, IV (North Sea)	BE	159,00	0,00	0,00	0,00	n.a.	1 333,00	1 492,00
Common sole	II, IV (North Sea)	GE	141,00	0,00	0,00	0,00	n.a.	1 067,00	1 208,00
Common sole	II, IV (North Sea)	UK	82,00	0,00	0,00	0,00	n.a.	686,00	768,00
Common Sole	Skagerrak and Kattegat, IIIbcd (EC waters)	DK	59,00	0,00	0,00	0,00	n.a.	420,00	479,00
Common sole	VIIa	BE	55,00	0,00	0,00	0,00	n.a.	543,00	598,00
Common sole	VIIa	UK	25,00	0,00	0,00	0,00	n.a.	244,00	269,00
Common sole	VIIId	BE	124,00	0,00	0,00	0,00	n.a.	1 400,00	1 524,00
Common sole	VIIId	UK	89,00	0,00	0,00	0,00	n.a.	1 000,00	1 089,00
Common sole	VIIe	UK	0,00	21,00	0,00	21,00	n.a.	309,00	288,00
Common sole	VIIIfg	BE	0,00	30,00	0,00	30,00	n.a.	669,00	639,00

Species	Zone	Member State	Withheld Quantities (1)	Catch in Excess of Permitted Landings in 2001	Deductions (2)	Weighted Deductions (3)	Additional Deductions (4)	2002 Quota	Revised Value of 2002 Quota
Common sole	VIIIfg	UK	29,00	0,00	0,00	0,00	n.a.	301,00	330,00
Common sole	VIIIab	BE	7,00	0,00	0,00	0,00	n.a.	50,00	57,00
Common sole	VIIIab	NL	11,00	0,00	0,00	0,00	n.a.	275,00	286,00
European plaice	Ila (EC waters, North Sea)	BE	0,00	504,00	0,00	504,00	n.a.	4 591,00	4 087,00
European plaice	Ila (EC waters, North Sea)	DK	0,00	132,00	0,00	132,00	n.a.	14 922,00	14 790,00
European plaice	IIIa Kattegat	SW	0,00	1,00	1,00	0,00	n.a.	211,00	210,00
European plaice	VIII, IX, X, CECAF 34.1.1 (EC waters)	FR	37,00	0,00	0,00	0,00	n.a.	373,00	410,00
Greenland halibut	NAFO 3LMNO	ES	0,00	206,00	206,00	0,00	n.a.	12 060,00	11 854,00
Haddock	IIIa, IIIbcd (EC waters)	DE	0,00	16,00	16,00	0,00	n.a.	250,00	234,00
Haddock	IIIa, IIIbcd (EC waters)	DK	0,00	14,00	14,00	0,00	n.a.	3 937,00	3 923,00
Haddock	IIIa, IIIbcd (EC waters)	SW	0,00	63,00	63,00	0,00	n.a.	465,00	402,00
Hake	Ila (EC waters), North Sea (EC waters)	NL	0,00	3,00	0,00	3,00	n.a.	31,00	28,00
Herring	I, II	SW	0,00	221,00	221,00	0,00	n.a.	9 540,00	9 319,00
Herring	I, II (Norwegian EEZ)	DK	0,00	34,00	34,00	0,00	n.a.	5 930,00	5 896,00
Herring	I, II (Norwegian EEZ)	SW	0,00	107,00	107,00	0,00	n.a.	2 200,00	2 093
Herring	IIIbcd (EC waters), except Management Unit 3	DK	0,00	4,00	4,00	0,00	n.a.	11 478,00	11 474,00
Herring	North Sea North of 53° 30' N	FR	0,00	72,00	0,00	72,00	n.a.	11 982,00	11 910,00
Herring	North Sea North of 53° 30' N (IVa, IVb)	UK	0,00	68,00	0,00	68,00	n.a.	38 169,00	38 101,00
Herring	North Sea North of 53° 30' N	SW	0,00	132,00	0,00	132,00	n.a.	3 546,00	3 414,00

Species	Zone	Member State	Withheld Quantities (1)	Catch in Excess of Permitted Landings in 2001	Deductions (2)	Weighted Deductions (3)	Additional Deductions (4)	2002 Quota	Revised Value of 2002 Quota
Herring	Skagerrak and Kattegat	SW	0,00	931,00	0,00	931,00	n.a.	34 917,00	33 986,00
Herring	VlaS, VIIbc	NL	30,00	0,00	0,00	0,00	n.a.	1 273,00	1 303,00
Herring	VIIef	FR	0,00	3,00	3,00	0,00	n.a.	500,00	498,00
Herring	VIIghjk	FR	0,00	1,00	1,00	0,00	n.a.	679,00	678,00
Herring	VIIghjk	NL	123,00	0,00	0,00	0,00	n.a.	679,00	802,00
Horse Mackerel	Vb (EC), VI, VII, VIIIabde, XII, XIV	ES	1 500,00	0,00	0,00	0,00	n.a.	14 163,00	15 663,00
Horse Mackerel	Vb (EC), VI, VII, VIIIabde, XII, XIV	DE	1 690,00	0,00	0,00	0,00	n.a.	10 371,00	12 061,00
Horse Mackerel	Vb (EC), VI, VII, VIIIabde, XII, XIV	DK	2 098,00	0,00	0,00	0,00	n.a.	12 975,00	15 073,00
Horse Mackerel	Vb (EC), VI, VII, VIIIabde, XII, XIV	FR	1 117,00	0,00	0,00	0,00	n.a.	6 853,00	7 970,00
Horse Mackerel	Vb (EC), VI, VII, VIIIabde, XII, XIV	NL	8 062,00	0,00	0,00	0,00	n.a.	49 479,00	57 541,00
Horse Mackerel	Vb (EC), VI, VII, VIIIabde, XII, XIV	UK	2 285,00	0,00	0,00	0,00	n.a.	14 026,00	16 311,00
Horse Mackerel	VIIIc, IX	ES	3 658,00	0,00	0,00	0,00	n.a.	30 932,00	34 590,00
Megrims	VII	BE	41,00	0,00	0,00	0,00	n.a.	361,00	402,00
Megrims	VII	ES	450,00	0,00	0,00	0,00	n.a.	4 005,00	4 455,00
Megrims	VII	FR	546,00	0,00	0,00	0,00	n.a.	4 861,00	5 407,00
Megrims	VII	UK	215,00	0,00	0,00	0,00	n.a.	1 914,00	2 129,00
Megrims	VIIIabde	ES	100,00	0,00	0,00	0,00	n.a.	858,00	958,00
Megrims	VIIIabde	FR	80,00	0,00	0,00	0,00	n.a.	692,00	772,00
Megrims	VIIIc, IX, X	FR	23,00	0,00	0,00	0,00	n.a.	185,00	208,00

Species	Zone	Member State	Withheld Quantities ⁽¹⁾	Catch in Excess of Permitted Landings in 2001	Deductions ⁽²⁾	Weighted Deductions ⁽³⁾	Additional Deductions ⁽⁴⁾	2002 Quota	Revised Value of 2002 Quota
Megrims	VIIIc, IX, X	ES	462,00	0,00	0,00	0,00	n.a.	3 692,00	4 154,00
Norway Lobster	VII	FR	460,00	0,00	0,00	0,00	n.a.	4 326,00	4 785,50
Pollack	VIIIabde	FR	216,00	0,00	0,00	0,00	n.a.	1 743,00	1 959,00
Pollack	VIIIc	FR	8,00	0,00	0,00	0,00	n.a.	576,00	584,00
Skates and rays	Ila (EC waters), IV (EC waters)	NL	0,00	42,00	42,00	0,00	n.a.	696,00	654,00
Redfish	V (non-EC waters), XII, XIV	IRL	0,00	1,00	1,00	0,00	n.a.	3,00	2,00
Redfish	V, XIV (Greenland waters)	UK	0,00	4,00	4,00	0,00	n.a.	175,00	171,00
Saithe(= Pollock)	I, IIab (Norwegian waters)	UK	0,00	0,00	0,00	0,00	n.a.	231,00	231,00
Saithe(= Pollock)	Ila (EC waters), IIIa, IIIbcd (EC waters), IV	DK	0,00	87,00	0,00	87,00	n.a.	5 598,00	5 511,00
Saithe(= Pollock)	Ila (EC waters), IIIa, IIIbcd (EC waters), IV	UK	0,00	77,00	0,00	77,00	n.a.	10 838,00	10 761,00
Saithe(= Pollock)	Ila (EC waters), IIIa, IIIbcd (EC waters), IV	SW	0,00	223,00	0,00	231,00	n.a.	2 119,00	1 888,00
Saithe(= Pollock)	Vb (EC waters), VI, VII, XIV	IRL	0,00	8,00	0,00	8,00	n.a.	425,00	417,00
Swordfish	Atlantic Ocean, south of latitude 5° N	PT	0,00	8,00	8,00	0,00	n.a.	385,00	377,00
Whiting	Ila (EC waters), IV	NL	0,00	145,00	0,00	145,00	n.a.	2 154,00	2 009,00
Whiting	VIII	FR	336,00	0,00	0,00	0,00	n.a.	3 360,00	3 696,00

n.a. Not applicable.

⁽¹⁾ In accordance with Article 4(2) of Regulation (EC) No 847/96.

⁽²⁾ In accordance with Article 5(1) of Regulation (EC) No 847/96.

⁽³⁾ In accordance with Article 5(2) of Regulation (EC) No 847/96.

⁽⁴⁾ Due to relapse, in accordance with Article 5(2) of Regulation (EC) No 847/96.

COMMISSION REGULATION (EC) No 2001/2002
of 8 November 2002
concerning tenders submitted in response to the invitation to tender for the export of husked long grain B rice to the island of Réunion referred to in Regulation (EC) No 1895/2002

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 Commission Regulation (EC) No 411/2002 ⁽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 1895/2002 ⁽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 decide, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, to make no award.

(3) On the basis of the criteria laid down in Articles 2 and 3 of Regulation (EEC) No 2692/89, a maximum subsidy should not be fixed.

(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

No action shall be taken on the tenders submitted from 4 to 7 November 2002 in response to the invitation to tender referred to in Regulation (EC) No 1895/2002 for the subsidy on exports to Réunion of husked long grain B rice falling within CN code 1006 20 98.

Article 2

This Regulation shall enter into force on 9 November 2002.

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

Done at Brussels, 8 November 2002.

For the Commission
Franz FISCHLER
Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 62, 5.3.2002, p. 27.

⁽³⁾ OJ L 261, 7.9.1989, p. 8.

⁽⁴⁾ OJ L 167, 2.7.1999, p. 19.

⁽⁵⁾ OJ L 287, 25.10.2002, p. 3.

COMMISSION REGULATION (EC) No 2002/2002
of 8 November 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 1524/2002 ⁽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 2002 to 30 June 2003 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 November 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 December 2002 for 5 327,812 t.

Article 2

This Regulation shall enter into force on 11 November 2002.

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

Done at Brussels, 8 November 2002.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 137, 28.5.1997, p. 10.

⁽²⁾ OJ L 229, 27.8.2002, p. 7.

COMMISSION REGULATION (EC) No 2003/2002
of 8 November 2002
determining the world market price for unginning 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 unginning 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 unginning cotton. That historical relationship has been established in Article 2(2) of Commission Regulation (EC) No 1591/2001 of 2 August 2001 ⁽³⁾, as amended by Regulation (EC) No 1486/2002 ⁽⁴⁾. 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 unginning 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 unginning cotton determined hereinafter,

HAS ADOPTED THIS REGULATION:

Article 1

The world price for unginning cotton as referred to in Article 4 of Regulation (EC) No 1051/2001 is hereby determined as equalling EUR 24,719/100 kg.

Article 2

This Regulation shall enter into force on 9 November 2002.

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

Done at Brussels, 8 November 2002.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽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.

⁽⁴⁾ OJ L 223, 20.8.2002, p. 3.

COMMISSION REGULATION (EC) No 2004/2002
of 8 November 2002
relating to the procedure for determining the meat and fat content of certain pigmeat products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organisation of the market in pigmeat ⁽¹⁾, as last amended by Regulation (EC) No 1365/2000 ⁽²⁾, and in particular Article 13(12) thereof,

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff ⁽³⁾, as last amended by Commission Regulation (EC) No 969/2002 ⁽⁴⁾, and in particular Article 9 thereof,

Whereas:

- (1) Commission Regulation (EEC) No 3846/87 of 17 December 1987 establishing an agricultural product nomenclature for export refunds ⁽⁵⁾, as last amended by Regulation (EC) No 1007/2002 ⁽⁶⁾, established, on the basis of the combined nomenclature, an agricultural product nomenclature for export refunds.
- (2) Provisions are needed to ensure uniform application of the nomenclature in the Annex to Regulation (EEC) No 3846/87 in the pigmeat sector with a view to the classification of products falling within product codes 1602 41 10 9110, 1602 41 10 9130, 1602 42 10 9110, 1602 42 10 9130 and 1602 49 19 9130.
- (3) It is necessary to define a procedure for determining the percentage by weight of meat and fats.
- (4) Commission Regulation (EEC) No 1583/89 of 7 June 1989 relating to the procedure for determining the meat and fat content of certain pigmeat products ⁽⁷⁾ lays down a procedure for determining the percentage by weight of meat and fats. However, the description of the products

referred to in that Regulation no longer corresponds to reality and should therefore be amended. In making this amendment, the opportunity should also be taken to recast the relevant rules and to base the new text on Article 37 of the Treaty, as it concerns exclusively the uniform application of the agricultural product nomenclature for export refunds.

- (5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Pigmeat and the Customs Code Committee regarding the issues coming within their respective areas of responsibility,

HAS ADOPTED THIS REGULATION:

Article 1

The percentage by weight of meat and fat in products falling within product codes 1602 41 10 9110, 1602 41 10 9130, 1602 42 10 9110, 1602 42 10 9130 and 1602 49 19 9130 of the nomenclature contained in the Annex to Regulation (EEC) No 3846/87 shall be determined in accordance with the procedure described in the Annex hereto.

Article 2

Regulation (EEC) No 1583/89 is hereby repealed.

Article 3

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

It shall apply to export licences applied for from 18 November 2002.

⁽¹⁾ OJ L 282, 1.11.1975, p. 1.

⁽²⁾ OJ L 156, 29.6.2000, p. 5.

⁽³⁾ OJ L 256, 7.9.1987, p. 1.

⁽⁴⁾ OJ L 149, 7.6.2002, p. 20.

⁽⁵⁾ OJ L 366, 24.12.1987, p. 1.

⁽⁶⁾ OJ L 153, 13.6.2002, p. 8.

⁽⁷⁾ OJ L 156, 8.6.1989, p. 13.

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

Done at Brussels, 8 November 2002.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

ANALYTICAL PROCEDURE

The meat and fat content is determined as follows:

1. Analytical methods:
 - 1.1. Homogeneous and representative samples of the meat product must be prepared for the purposes of analysis.
 - 1.2. Analytical methods to be used are as follows:
 - 1.2.1. nitrogen: determination of the nitrogen content — Kjeldahl method,
 - 1.2.2. moisture: determination of the moisture content in meat and meat products — ISO 1442 — 1997,
 - 1.2.3. fats: determination of the total fat content — extraction with light petroleum after hydrolysis with hydrochloric acid,
 - 1.2.4. ash: determination of the ash content in meat and meat products — ISO 936 — 1998.
 - 1.3. The abovementioned ISO standard requirements concerning sampling are not binding for the purposes of this Regulation.
2. Calculation of the meat and fat content:

% of defatted meat

$$DM = \frac{NT - N_x}{f} \times 100$$

% meat and fat total

$$= DM + F$$

where:

NT = total nitrogen determined by analysis (% by weight)

N_x = nitrogen of non-meat origin (% by weight)

f = average nitrogen content (% by weight) in the lean meat contained in the product; the value of this factor is:

3,5 for hams and pieces thereof under product codes 1602 41 10 9110 and 1602 41 10 9130

3,35 for shoulders and cuts thereof under product codes 1602 42 10 9110 and 1602 42 10 9130

3,35 for other products of product code 1602 49 19 9130

F = quantity of extractable fat (% by weight) determined by analysis.

The total nitrogen and extractable fat content is determined by the methods mentioned in paragraphs 1.2.1 and 1.2.3. It is also possible to assess the ash (1.2.4) and moisture (1.2.2) content and to obtain, by deduction, the other ingredients.

In order to correct the value of nitrogen of non-meat origin (N_x factor), it would be necessary to know the quantity of each ingredient containing nitrogen as well as the nitrogen content of these ingredients.

The following table shows the nitrogen content of several typical ingredients of non-meat origin containing nitrogen, which may be found in meat products:

Non-meat products	% of nitrogen by weight
Casein	15,8
Sodium caseinate	14,8
Soya isolate	14,5
Textured soya	8,0
Soya flour	8,0
Monosodium glutamate (MSG)	8,3

As far as repeatability of analytical procedure is concerned, reference should be made to the relevant ISO standard.

The average result of at least two determinations must be taken into account.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 5 November 2002

providing further macro-financial assistance to the Federal Republic of Yugoslavia

(2002/882/EC)

THE COUNCIL OF THE EUROPEAN UNION,

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

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

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Financial Committee ⁽³⁾,

Whereas:

- (1) The Federal Republic of Yugoslavia (FRY) authorities re-established links with international organisations and in particular made progress towards normalising the country's financial relations with multilateral creditors, including the European Investment Bank, and with official bilateral creditors.
- (2) Since October 2000, the FRY has achieved substantial progress in economic stabilisation and reform and has made important steps towards a well-functioning market economy.
- (3) Within the Stabilisation and Association process, which is the framework for the European Union's (EU) relations with the region, it is desirable to support efforts to sustain political and economic stabilisation in the FRY, with a view to evolving towards the development of a full cooperation relationship with the Community.
- (4) Financial assistance from the Community should be instrumental in bringing the FRY closer to the Community.

- (5) The Community already provided in 2001 macro-financial assistance of EUR 345 million to the FRY ⁽⁴⁾. The International Monetary Fund (IMF) approved in May 2002 a three-year 'Extended Arrangement' for the FRY of about USD 829 million to support the authorities' economic programme in 2002 to 2005.

- (6) The World Bank decided in May 2001 to make available to the FRY on a temporary basis a package of concessional loans of USD 540 million over a three year period. So far, two structural adjustment credits of USD 70 million and of USD 85 million have been approved in January and May 2002, respectively, to support reforms in public finance as well as in the energy and social sector and to foster private sector development.

- (7) The Members of the Paris Club agreed in November 2001 on a substantial debt relief in favour of the FRY, already alleviating the balance of payments situation.

- (8) The authorities of the FRY have requested financial assistance from the international financial institutions, the Community, and other bilateral donors.

- (9) Over and above the estimated financing which could be provided by the IMF and the World Bank, an important residual financing gap remains to be covered to support the policy objectives attached to the authorities' reform efforts.

⁽¹⁾ Proposal of 27 August 2002 (not yet published in the Official Journal).

⁽²⁾ Opinion delivered on 10 October 2002 (not yet published in the Official Journal).

⁽³⁾ Opinion delivered on 17 October 2002 (not yet published in the Official Journal).

⁽⁴⁾ Decision 2001/549/EC (OJ L 197, 21.7.2001, p. 38), Decision as amended by Decision 2001/901/EC (OJ L 334, 18.12.2001, p. 30).

- (10) Community macro-financial assistance to the FRY is an appropriate measure to help ease the country's external financial constraints, supporting the balance of payments and strengthening the reserve position.
- (11) Financial assistance from the Community in the form of a combination of a long-term loan and a straight grant is an appropriate measure to support the sustainability of the FRY's external financial position, given its limited borrowing capacity. This Community financial assistance should be effective and properly implemented.
- (12) The inclusion of a grant component in this assistance is without prejudice to the powers of the Community budgetary authority.
- (13) A new Constitutional Charter is presently in the process of parliamentary discussion. Upon its entry into force, the FRY would continue to exist under a new name. The pending name change does not affect this Decision.
- (14) Upon entry into force of the aforementioned Constitutional Charter, the National Bank of Yugoslavia may cease to exist. Therefore, after entry into force of the Constitutional Charter, the macro-financial assistance provided under this Decision will be paid to the institution or institutions designated to take on the responsibilities from the National Bank of Yugoslavia for receiving funds in the context of this Decision.
- (15) This assistance should be managed by the Commission, in consultation with the Economic and Financial Committee.
- (16) The Treaty does not provide, for the adoption of this Decision, powers other than those of Article 308,

HAS DECIDED AS FOLLOWS:

Article 1

1. The Community shall make available to the FRY further macro-financial assistance in the form of a long-term loan and a straight grant with a view to ensuring a sustainable balance-of-payments situation and strengthening the country's reserve position.
2. The loan component of this assistance shall amount to a maximum principal of EUR 55 million with a maximum maturity of 15 years. To this end, the Commission is empowered to borrow, on behalf of the Community, the necessary resources that will be placed at the disposal of the FRY in the form of a loan.
3. The grant component of this assistance shall amount to a maximum of EUR 75 million.
4. This Community financial assistance shall be managed by the Commission in close consultation with the Economic and Financial Committee and in a manner consistent with the agreements reached between the IMF and the FRY.

Article 2

1. The Commission is empowered to agree with the authorities of the FRY, after consultation with the Economic and Financial Committee, the economic policy conditions attached to further Community macro-financial assistance. These conditions shall be consistent with the agreements referred to in Article 1(4).
2. The Commission shall verify at regular intervals, in collaboration with the Economic and Financial Committee and in coordination with the IMF, that economic policies in the FRY are in accordance with the objectives of this macro-financial assistance and that its conditions are being fulfilled.

Article 3

1. The loan and grant components of this assistance shall be made available to the FRY in at least two instalments. Subject to Article 2, the first instalment is to be released on the basis of satisfactory implementation of the adjustment and reform programme of the FRY under the present Extended Arrangement with the IMF.
2. Subject to Article 2, the second and any further instalments shall be released on the basis of a satisfactory track record on the FRY's adjustment and reform programme, and not before one quarter after the release of the previous instalment.
3. The funds shall be paid to the National Bank of the FRY, and after the entry into force of a new Constitutional Charter, to the institution or institutions designated to take on the responsibilities of the National Bank of Yugoslavia for receiving funds in the context of this Decision.

Article 4

1. The borrowing and lending operations referred to in Article 1 shall be carried out using the same value date and must not involve the Community in the transformation of maturities, in any exchange or interest rate risks, or in any other commercial risk.
2. The Commission shall take the necessary steps, if the FRY so requests, to ensure that an early repayment clause is included in the loan terms and conditions and that it may be exercised.
3. At the request of the FRY, and where circumstances permit an improvement in the loan's interest rate, the Commission may refinance all or part of its initial borrowings or restructure the corresponding financial conditions. Refinancing or restructuring operations shall be carried out in accordance with the conditions set out in paragraph 1 and shall not have the effect of extending the average maturity of the borrowing concerned or increasing the amount, expressed at the current exchange rate, of capital outstanding at the date of the refinancing or restructuring.

4. All related costs incurred by the Community in concluding and carrying out the operation under this Decision shall be borne by the FRY, if appropriate.

5. The Economic and Financial Committee shall be kept informed of developments in the operations referred to in paragraph 2 and 3 at least once a year.

Article 5

At least once a year, and before September, the Commission shall address to the European Parliament and to the Council a report, which will include an evaluation on the implementation of this Decision in the previous year.

Article 6

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

It shall apply until two years after that date.

Done at Brussels, 5 November 2002.

For the Council

The President

T. PEDERSEN

COUNCIL DECISION
of 5 November 2002
providing further macro-financial assistance to Bosnia and Herzegovina

(2002/883/EC)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal of the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Financial Committee ⁽³⁾,

Whereas:

- (1) The Bosnia and Herzegovina authorities re-established links with international organisations and, in particular, made progress towards normalising that country's financial relations with multilateral creditors, including the European Investment Bank, and with official bilateral creditors.
- (2) Since October 2000, Bosnia and Herzegovina has achieved substantial progress in economic stabilisation and reform and has made important steps towards a well-functioning market economy.
- (3) Within the Stabilisation and Association process, which is the framework for the European Union's (EU) relations with the region, it is desirable to support efforts to sustain political and economic stabilisation in Bosnia and Herzegovina, with a view to evolving towards the development of a full cooperation relationship with the Community.
- (4) Financial assistance from the Community should be instrumental in bringing Bosnia and Herzegovina closer to the Community.
- (5) The Community already provided in 1999 macro-financial assistance of EUR 60 million to Bosnia and Herzegovina. The International Monetary Fund (IMF) approved on [...] a 15-month 'Stand-by Arrangement' for Bosnia and Herzegovina of about USD 89 million to support the authorities' economic programme in 2002 to 2003.
- (6) The World Bank Group has committed broadly USD 900 m in support of 42 IDA credits/Trust Funds, and has disbursed broadly USD 670 m since 1996. In addition broadly USD 45 m of IFC loans have been committed with USD 37 m disbursed, as of February 2002. A second Public Finance Structural Adjustment Credit (PFSAC II) is being implemented. An Enterprise and Bank Privatisation Adjustment Credit (EBPAC) has just been completed and a labour market reform and social protection operation was completed last year. An operation aimed at improving and enabling the business environment was also recently agreed.
- (7) The Members of the Paris Club agreed, in October 1998, on debt relief in favour of Bosnia and Herzegovina, already alleviating the balance of payments situation.
- (8) The authorities of Bosnia and Herzegovina have requested financial assistance from the international financial institutions, the Community, and other bilateral donors.
- (9) Over and above the estimated financing which could be provided by the IMF and the World Bank, an important residual financing gap remains to be covered to support the policy objectives attached to the authorities' reform efforts.
- (10) Community macro-financial assistance to Bosnia and Herzegovina is an appropriate measure to help ease that country's external financial constraints, supporting the balance of payments and securing the reserve position.
- (11) Financial assistance from the Community in the form of a combination of a long-term loan and a straight grant is an appropriate measure to support the sustainability of Bosnia and Herzegovina's external financial position, given its limited borrowing capacity. This Community financial assistance should be effective and properly implemented.
- (12) The inclusion of a grant component in this assistance is without prejudice to the powers of the Community budgetary authority.
- (13) This assistance should be managed by the Commission, in consultation with the Economic and Financial Committee.
- (14) The Treaty does not provide, for the adoption of this Decision, powers other than those of Article 308,

⁽¹⁾ Proposal of 27 August 2002 (not yet published in the Official Journal).

⁽²⁾ Opinion delivered on 10 October 2002 (not yet published in the Official Journal).

⁽³⁾ Opinion delivered on 17 October 2002 (not yet published in the Official Journal).

HAS DECIDED AS FOLLOWS:

Article 1

1. The Community shall make available to Bosnia and Herzegovina further macro-financial assistance in the form of a long-term loan and a straight grant with a view to ensuring a sustainable balance-of-payments situation and securing the country's reserve position.

2. The loan component of this assistance shall amount to a maximum principal of EUR 20 million with a maximum maturity of 15 years. To this end, the Commission is empowered to borrow, on behalf of the Community, the necessary resources that will be placed at the disposal of Bosnia and Herzegovina in the form of a loan.

3. The grant component of this assistance shall amount to a maximum of EUR 40 million.

4. This Community financial assistance shall be managed by the Commission in close consultation with the Economic and Financial Committee and in a manner consistent with the agreements reached between the IMF and Bosnia and Herzegovina.

Article 2

1. The Commission is empowered to agree with the authorities of Bosnia and Herzegovina, after consultation with the Economic and Financial Committee, the economic policy conditions attached to this assistance. These conditions shall be consistent with the agreements referred to in Article 1(4).

2. The Commission shall verify at regular intervals, in collaboration with the Economic and Financial Committee and in coordination with the IMF, that economic policies in Bosnia and Herzegovina are in accordance with the objectives of this assistance and that its conditions are being fulfilled.

Article 3

1. The loan and grant components of this assistance shall be made available to Bosnia and Herzegovina in at least two instalments. Subject to Article 2, the first instalment is to be released on the basis of a satisfactory implementation of the adjustment and reform programme of Bosnia and Herzegovina under the present stand-by arrangement with the IMF.

2. Subject to Article 2, the second and any further instalments shall be released on the basis of a satisfactory track record on Bosnia and Herzegovina's adjustment and reform programme, and not before one quarter after the release of the previous instalment.

3. The funds shall be paid to the Central Bank of Bosnia and Herzegovina.

Article 4

1. The borrowing and lending operations referred to in Article 1 shall be carried out using the same value date and must not involve the Community in the transformation of maturities, in any exchange or interest rate risks, or in any other commercial risk.

2. The Commission shall take the necessary steps, if Bosnia and Herzegovina so requests, to ensure that an early repayment clause is included in the loan terms and conditions and that it may be exercised.

3. At the request of Bosnia and Herzegovina, and where circumstances permit an improvement in the loan's interest rate, the Commission may refinance all or part of its initial borrowings or restructure the corresponding financial conditions. Refinancing or restructuring operations shall be carried out in accordance with the conditions set out in paragraph 1 and shall not have the effect of extending the average maturity of the borrowing concerned or increasing the amount, expressed at the current exchange rate, of capital outstanding at the date of the refinancing or restructuring.

4. All related costs incurred by the Community in concluding and carrying out the operation under this Decision shall be borne by Bosnia and Herzegovina, if appropriate.

5. The Economic and Financial Committee shall be kept informed of developments in the operations referred to in paragraphs 2 and 3, at least once a year.

Article 5

At least once a year, and before September, the Commission shall address to the European Parliament and to the Council a report, which will include an evaluation on the implementation of this Decision in the previous year.

Article 6

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

It shall apply until two years after that date.

Done at Brussels, 5 November 2002.

For the Council

The President

T. PEDERSEN

COMMISSION

COMMISSION DECISION

of 31 October 2002

concerning national provisions on restrictions on the marketing and use of creosote-treated wood notified by the Netherlands under Article 95(4) and (5) of the EC Treaty

(notified under document number C(2002) 4116)

(Only the Dutch text is authentic)

(Text with EEA relevance)

(2002/884/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 95(6) thereof,

Whereas:

I. FACTS

1. Community legislation

- (1) Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations ⁽¹⁾, as last amended by Commission Directive 2002/61/EC ⁽²⁾, establishes rules restricting the marketing and use of certain dangerous substances and preparations. Under Article 1(1) thereof, the Directive applies to the substances and preparations listed in Annex I.
- (2) Council Directive 89/678/EEC of 21 December 1989 ⁽³⁾ amending Directive 76/769/EEC inserted in Directive 76/76/EEC an Article 2(a), under which the amendments required to adapt the Annexes to technical progress, with regard to the substances and preparations already covered by Directive 76/769/EEC, are to be adopted in accordance with the procedure laid down in Article 29 of Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances ⁽⁴⁾, as amended by Council Directive 92/32/EEC ⁽⁵⁾.
- (3) Directive 76/769/EEC has been amended on several occasions. A number of dangerous substances and preparations have been added to Annex I, and further restrictions have been placed on the marketing and/or use of substances and preparations covered by that Annex. In certain cases, restrictions are also placed on the marketing and/or use of products treated with or containing those substances and preparations.

⁽¹⁾ OJ L 262, 27.9.1979, p. 201.

⁽²⁾ OJ L 243, 11.9.2002, p. 15.

⁽³⁾ OJ L 398, 20.12.1989, p. 24.

⁽⁴⁾ OJ 196, 16.8.1967, p. 1.

⁽⁵⁾ OJ L 154, 5.6.1992, p. 1.

- (4) European Parliament and Council Directive 94/60/EC amending for the 14th time Directive 76/769/EEC ⁽⁶⁾, which was adopted on the basis of Article 100a of the Treaty (now, after amendment, Article 95), added to the list of dangerous substances and preparations whose marketing and use are subject to restrictions set out in Annex I to Directive 76/769/EEC, *inter alia*, Section 32, which concerns creosote and similar coal tar distillates, as well as preparations containing them (hereinafter 'creosote'). It laid down restrictions on the marketing and use of creosote intended for wood treatment and of wood treated with creosote.
- (5) Under Section 32, creosote was not to be used for wood treatment if it contained Benzo[a]pyrene (hereinafter B[a]P), and water extractable phenols (hereinafter WEP) above certain concentrations. The limit for B[a]P was fixed at a maximum of 0,005 % by mass (= 50 ppm) and the limit for WEP was fixed at a maximum of 3 % by mass (= 30 g/kg). In addition, wood so treated was not to be placed on the market.
- (6) However, by way of derogation, the use of creosote for wood treatment was permitted in industrial installations if it contained B[a]P at a concentration of less than 0,05 % by mass (= 500 ppm) and WEP at a concentration of less than 3 % by mass (= 30 g/kg). Creosote complying with those limits could not be sold to the general public and containers had to be labelled with the phrase 'For use in industrial installations only'. Wood treated with creosote in industrial installations which was placed on the market for the first time could be used only in industrial and professional applications, such as on railways, in electric power transmission and telecommunications, for fencing and in harbours and waterways. In certain cases, however, its use was wholly excluded, for example, inside buildings, in contact with products intended for human or animal consumption, in playgrounds and in other outdoor places for public recreation or where there was a risk of skin contact. Old treated wood placed on the second-hand market could be used irrespective of the creosote-type applied except in the cases mentioned above.
- (7) In 1999, on the basis of a study on the health effects of creosote ⁽⁷⁾ and the subsequent review by the Scientific Committee on Toxicity, Ecotoxicity and the Environment (hereinafter referred to as the SCTEE) ⁽⁸⁾, the Commission started discussions with the Member States with a view to reviewing the provisions of Directive 76/769/EEC regarding creosote.
- (8) On 26 October 2001 the Commission, adopted Directive 2001/90/EC ⁽⁹⁾, adapting to technical progress for the seventh time Annex I to Directive 76/769/EEC (creosote). The second recital in the preamble makes reference to the health effects study, concluding that creosote has a greater potential to cause cancer than previously thought. The third recital mentions the findings of the review of that study, carried out by the SCTEE, indicating that there is a cancer risk to consumers from creosote with a B[a]P content of less than 0,005 % by mass and/or from wood containing such creosote, and that the magnitude of the risk gives clear cause for concern.
- (9) Directive 2001/90/EC replaced Section 32 of Annex I to Directive 76/769/EEC, introducing new restrictions on the marketing and use of creosote for wood treatment and creosote-treated wood. According to the provisions of that Section, creosote may not be used in the treatment of wood and wood so treated may not be placed on the market. However by way of derogation, creosote containing B[a]P at a concentration of less than 0,005 by mass (= 50 ppm) and WEP at a concentration of less than 3 % by mass (= 30 g/kg) may be used for wood treatment in industrial installations or by professionals for *in situ* re-treatment. This type of creosote may not be sold to consumers and may be placed on the market only in packaging of a capacity equal to or greater than 20 litres. The packaging has to be labelled with the phrase 'For use in industrial installations or professional treatment only'.

⁽⁶⁾ OJ L 365, 31.12.1994, p. 1.

⁽⁷⁾ Fraunhofer Institute of Toxicity and Aerosol Research, 'Dermal Carcinogenicity Study of two Coal Tar Products (CTP) by Chronic Epicutaneous Application in Male CD-1 mice (78 weeks)', Final Report, Hanover, Germany, October 1997.

⁽⁸⁾ Opinion on 'Cancer risk to consumers from creosote containing less than 50 ppm benzo-[a]-Pyrene and/or from wood treated with such creosote and estimation of respective magnitude', expressed at the eight SCTEE plenary meeting, Brussels, 4 March 1999.

⁽⁹⁾ OJ L 283, 27.10.2001, p. 41.

- (10) The use of wood so treated which is placed on the market for the first time or re-treated *in situ* is permitted for professional and industrial applications only, such as on railways, in electric power transmission and telecommunications, for fencing, for agricultural purposes and in harbours and waterways. In certain cases, however, its use is wholly excluded, for example inside buildings, in playgrounds, in parks, in gardens and outdoor recreational and leisure facilities where there is a risk of frequent skin contact and in garden furniture or in contact with products intended for human or animal consumption. Wood that has been treated with creosote before Directive 76/769/EEC, as amended by Directive 2001/90/EC, applies may be placed on the second-hand market for re-use, except in the cases listed above where its use is wholly excluded.

2. National provisions

- (11) The national provisions notified to the Commission take the form of a draft Decree intended to amend the Decision on Coatings Containing Polycyclic Aromatic Hydrocarbons (*Besluit PAK-houdende coatings*)⁽¹⁰⁾ under the Chemical Substances Act (creosote-treated wood).
- (12) Article 1, point B, of the draft Decree inserts a new Section 4(a) entitled 'creosote-treated wood', containing a new Article 8(a), Paragraph 1(a), of which provides that 'as from the date to be determined by Royal Decree, it shall be forbidden to import into the Netherlands, to use, or to supply to others, or to keep available for sale on the Dutch market, creosote-treated wood for applications involving contact with surface water or groundwater'.
- (13) Under paragraph 2 of the new Article 8(a), the ban would not apply to creosote-treated wood which was put to use in its application before a date to be determined by Royal Decree, so long as the existing place of application is retained. Two other exceptions from the application of the ban are provided in paragraph 3. They concern creosote-treated wood which:
- has been placed under a customs procedure and is intended for customs transit, placement in a customs warehouse or for temporary admission, in accordance with the provisions of Article 4(16) of Council Regulation (EEC) No 2913/92⁽¹¹⁾;
 - originates from a Member State of the European Union, or an EEA State and is not intended for sale on the Netherlands market.
- (14) Article 8b of the new Section 4a would require anyone who imports, supplies, or keeps available for sale on the market, creosote-treated wood that does not come under the ban, to keep a record of that wood and to show if so required that the creosote-treated wood in question is not intended for applications to which the ban relates. Specific minimum requirements are provided for in relation to the record, including:
- the name and address of the manufacturer or supplier from whom the creosote-treated wood was purchased,
 - the date on which the creosote-treated wood was delivered by the manufacturer or supplier,
 - the field of application for the creosote-treated wood,
 - the name and address of the person to whom the creosote-treated wood was made available or delivered,
 - the date of delivery of the creosote-treated wood,
 - the quantity of creosote-treated wood received or delivered.

3. Previous notification under Article 95(5) of the Treaty

- (15) The Netherlands had previously notified the Commission of their intention to introduce those national provisions. The notification was submitted on 25 January 2001 and sought to obtain the Commission's approval in relation to the relevant provisions of Directive 76/769/EEC as amended by Directive 94/60/EC. Pursuant to Article 95(6) of the Treaty, by Decision 2002/59/EC⁽¹²⁾, the Commission approved the draft national provisions.

⁽¹⁰⁾ Bulletin of Acts and Decrees (Staatsblad) 1996, No 304, as last amended by the Decree of 6 April 1998 (Staatsblad No 235).

⁽¹¹⁾ OJ L 302, 19.10.1992, p. 1.

⁽¹²⁾ OJ L 23, 25.1.2002, p. 37.

- (16) A detailed description of the arguments put forward by the Netherlands, as supported by the evidence submitted, as well as the main factual and legal elements taken as a basis for the assessment by the Commission is contained in the recitals of Decision 2002/59/EC, to which full reference is made for the purpose of the present Decision. For reasons of clarity, a brief summary is given in recitals 17 to 20.
- (17) The Netherlands took the view that new scientific findings concerning the protection of the environment in connection with a problem that had arisen in the Netherlands after the adoption of Directive 94/60/EC justified the introduction of the notified provisions.
- (18) The evidence submitted by the Netherlands indicated certain environmental risks posed by creosote compounds, in particular Polycyclic Aromatic Hydrocarbons, leaching out from creosote-treated wood in contact with surface water and groundwater. Also, the information submitted highlighted the particularly heavy exposure situation prevailing in the Netherlands with regard to its surface water and groundwater compartments.
- (19) On 12 June 2001 the SCTEE gave a preliminary opinion⁽¹³⁾ on the evidence submitted, concluding that the justification of the Netherlands notification is a complex matter and does not directly involve a danger to human health. On 13 July 2001, by Decision 2001/599/EC⁽¹⁴⁾, the Commission extended the six-month period referred to in the second subparagraph of Article 95(6) of the Treaty for a further period of six months in order to allow for a thorough evaluation of all evidence submitted. The Decision was notified to the Netherlands on the day of its adoption.
- (20) The SCTEE delivered its final opinion on 21 October 2001, shortly before the adoption of Directive 2001/90/EC, broadly confirming the scientific validity of the evidence submitted by the Netherlands. On the basis of that opinion, on 23 January 2002, by Decision 2002/59/EC, the Commission approved the draft national provisions. The Decision was notified to the Netherlands the same day.

II. PROCEDURE

- (21) Under Directive 2001/90/EC, Member States have to adopt and publish the provisions necessary to comply with that Directive by 31 December 2002 at the latest, and to apply them no later than 30 June 2003.
- (22) As indicated in point 16, pursuant to Article 95(6) of the Treaty, by Decision 2002/59/EC the Commission approved the draft national provisions concerning creosote-treated wood notified to it by the Netherlands.
- (23) By letter dated 25 April 2002, the Permanent Representation of the Netherlands again notified the Commission, in accordance with Article 95(5) of the Treaty, of the national provisions which the Netherlands intends to introduce, but which are inconsistent with Directive 76/769/EEC as amended by Directive 2001/90/EC, as well as the grounds for introducing them. By letter of 10 July 2002, the Netherlands Permanent Representation informed the Commission that the Netherlands Government also refers to Article 95(4) of the Treaty in support of its position.
- (24) By letter of 8 August 2002, the Commission informed the Netherlands authorities that it had received the notification under Article 95(4) and (5) of the Treaty and that the six-month period for its examination under Article 95(6) started on 4 May 2002, the day following the day on which the notification was received.

⁽¹³⁾ Opinion on Creosote — Notification of the Netherlands made under Article 95(5) of the Treaty expressed at the 24th CSTEE plenary meeting, Brussels, 12 June 2001.

⁽¹⁴⁾ OJ L 210, 3.8.2001, p. 46.

- (25) By letter of 8 August 2002, the Commission informed the other Member States of the notification received from the Netherlands. The Commission also published a notice regarding the notification in the *Official Journal of the European Communities* ⁽¹⁵⁾ in order to inform other interested parties of the draft national measures that the Netherlands intend to introduce.

III. ASSESSMENT

1. Admissibility

- (26) The Netherlands seeks the Commission's approval of national provisions which are incompatible with Directive 76/769/EEC as amended by Directive 2001/90/EC, a harmonisation measure adopted on the basis of Article 95 of the Treaty. Directive 2001/90/EC was adopted pursuant to Article 2a of Directive 76/769/EEC. It replaces Section 32 of Annex I to Directive 76/769/EEC, as amended by Directive 94/60/EC, which was adopted on the basis of Article 100(a) of the Treaty (now, after amendment, Article 95) and harmonises the marketing and use of creosote and creosote treated wood.
- (27) The differences between the relevant provisions of Directive 2001/90/EC and the national provisions are summarised in the following table:

	Directive 2001/90/EC	National provisions
Wood treated with creosote containing B[a]P < 0,005 % by mass and WEP < 3 % by mass	Wood treated in industrial installations or retreated <i>in situ</i> by professionals can be placed on the market and used for professional and industrial applications involving contact with surface water and groundwater. Wood treated otherwise than above before 30 June 2003 can be placed on the secondhand market and/or (re)used for the above applications	Ban on marketing and use of treated wood for applications involving contact with surface water or groundwater Old treated wood cannot be marketed for reuse or be reused for the applications above if it is removed from the existing place of application
Wood treated with creosote containing B[a]P > 0,005 % by mass and WEP < 3 % by mass	Old treated wood can be placed on the secondhand market for reuse for applications involving contact with surface water and groundwater	Old treated wood cannot be marketed for reuse or be reused for applications involving contact with surface water or groundwater if it is removed from the existing place of application

- (28) Overall, the national provisions are more restrictive than those laid down in Directive 2001/90/EC in the following respects:
- the placing on the market and/or use of wood treated with creosote containing B[a]P at a concentration of less than 0,005 % by mass and WEP at a concentration of less than 3 % by mass in industrial installations or re-treated *in situ* by professionals for professional and industrial applications involving contact with (ground)water, which are allowed under the Directive, would be prohibited in the Netherlands;
 - the marketing for reuse or the reuse for applications involving contact with surface water or ground water in the Netherlands of old creosote-treated wood is prohibited if the wood is removed from the existing place of application.
- (29) Directive 2001/90/EC replaces all the provisions on creosote-treated wood which had been introduced into Directive 76/769/EEC by Directive 94/60/EC and in relation to which the Netherlands had obtained authorisation to introduce the national provisions in question. The differences between the relevant provisions of Directive 76/769/EEC as amended by 94/60/EC, as amended by Directive 2001/90/EC and the national provisions in question are summarised in the following table:

⁽¹⁵⁾ OJ C 188, 8.8.2002, p. 2.

	Directive 94/60/EC	Directive 2001/90/EC	National provisions
Wood treated with creosote containing < 0,005 % by mass and WEP FEA < 3 % by mass	No restrictions on marketing or use of treated wood for applications involving contact with surface water and groundwater No restrictions on marketing or use of old treated wood for applications involving contact with surface water and groundwater	Wood treated in industrial installations or re-treated <i>in situ</i> by professionals can be placed on the market and used for professional and industrial applications involving contact with surface water and groundwater. Wood treated otherwise than above before 30 June 2003 can be placed on the second-hand market and (re)used for the above applications.	Ban on the marketing and use of creosote-treated wood for applications involving contact with surface water or groundwater Old treated wood cannot be marketed for re-use or be re-used for applications involving contact with surface water or groundwater if it is removed from the existing place of application
Wood treated with creosote containing B[a]P in the range of 0,005 to 0,05 (0,005 < B[a]P < 0,05) and WEP < 3 % by mass	Wood treated with creosote in industrial installations can be placed on the market and used for professional and industrial applications involving contact with surface water and groundwater. Old treated wood can be placed on the second hand market for re-use for the above applications.	First placing on the market of creosote-treated wood totally banned Wood treated before 30 June 2003 can be placed on the second-hand market for re-use in applications involving contact with surface water and groundwater.	Ban on marketing and use of creosote-treated wood for applications involving contact with surface water or groundwater Old treated wood cannot be marketed for re-use or be re-used for applications involving contact with surface water or groundwater if it is removed from the existing place of application
Wood treated with creosote containing B[a]P > 0,05 % by mass and WEP < 3 % by mass	Placing on the market of creosote-treated wood totally banned. Old treated wood can be placed on the second-hand market for re-use for applications involving contact with surface water and groundwater.	Placing on the market of creosote-treated wood totally banned. Old treated wood can be placed on the second-hand market for re-use for applications involving contact with surface water and groundwater.	Placing on the market of creosote-treated wood totally banned. Old treated wood cannot be marketed for re-use or be re-used for applications involving contact with surface water or groundwater if it is removed from the existing place of application

- (30) It is evident from that table that, with the exception of the rules on the marketing and use of wood treated with creosote containing B[a]P at a concentration of greater than 0,05 % by mass previously placed on the market, which remain unchanged, the relevant provisions introduced by Directive 2001/90/EC are more restrictive than those introduced by Directive 94/60/EC. However, the national provisions notified by the Netherlands, and previously notified and approved by the Commission, continue to be stricter than those of Directive 2001/90/EC.
- (31) In their letter of 25 April 2002, notified to the Commission on 3 May 2002, and complemented by their letter of 10 July 2002, the Netherlands makes reference to both Article 95(4) and/or (5) of the Treaty in support of its notification.

- (32) Article 95(4) of the Treaty reads as follows: 'If, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 30, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.'
- (33) Article 95(5) of the Treaty provides that 'If, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them.'
- (34) Those Treaty provisions distinguish between situations where the national provisions notified by Member States are to be maintained and situations where they are to be introduced, each situation being subject to specific conditions for the application of the derogation provided for in the key provisions of Article 95. While the applicability of the conditions laid down in Article 95(4) presupposes that the national provisions in principle exist before the adoption of the harmonisation measure, the conditions established by Article 95(5) apply where the national provisions are in principle notified at the draft stage.
- (35) It appears from the submitted documentation that the national provisions exist only in draft form. They are not in force, nor were they adopted before the adoption of Directive 2001/90/EC. However, certain specific circumstances have to be taken into account in order to establish whether the notification submitted by the Netherlands has to be considered in the light of the conditions provided for in Article 95(4) of the Treaty or has rather to be assessed in the light of those specified in Article 95(5).
- (36) In particular, the national provisions were first notified to the Commission on 23 January 2001, that is to say, before the adoption of Directive 2001/90/EC, and they were approved by Decision 2002/59/EC. According to established case-law, a Member State is not authorised to apply national measures derogating from a harmonisation measure until the Commission has decided thereupon⁽¹⁶⁾. In addition, neither the environmental concerns nor the specific problem pointed out by the Netherlands were taken into consideration at the time of adoption of Directive 2001/90/EC. Acknowledgement of those concerns and their specificity to the Netherlands occurred after the adoption of that Directive. This in turn led the Commission to approve the national provisions while at the same time to declare its intention of reviewing the newly adopted Directive⁽¹⁷⁾.
- (37) It is clear that by notifying national provisions which had already been notified before the adoption of Directive 2001/90/EC, the Netherlands 'deems it necessary to maintain [those] national provisions', which have been approved by the Commission, within the meaning of Article 95(4). Conversely, the renewed notification does not appear to fulfil the conditions of Article 95(5) because it was not 'after the adoption by ... the Commission of a harmonisation measure' that the Netherlands deemed it necessary to introduce the national provisions, but well before the adoption of Directive 2001/90/EC.
- (38) It should be noted that under Community law a Member State is not allowed to apply national measures derogating from a harmonisation measure until the Commission has approved them. It should also be noted that Article 95(4) EC is concerned with national measures that a Member State wishes to maintain after the adoption of a harmonisation measure, in other words measures that are already applicable in that Member State. On 23 January 2002 the Commission approved the draft national measures that the Netherlands wishes to introduce and which from a point of view of environmental protection derogated from Directive 94/60/EC. However, Directive 2001/90/EC was adopted on 26 October 2001. The draft national measures, thus authorised by the Commission under Article 95(5) EC, derogate from Directive 2001/90/EC and accordingly, the Commission needs to approve that they may be applied. Hence, the Netherlands proceeded to a second notification of the same national provisions that it had previously notified and which the Commission has already approved. It is under these specific circumstances that the Commission concludes that the Netherlands wish to 'maintain' the same national provisions, which from a point of view of environmental protection are more restrictive than those laid down in Directive 2001/90. The notification submitted by the Netherlands has therefore to be assessed in the light of Article 95(4) EC.

⁽¹⁶⁾ See e.g. Case C-319/97: *Kortas*, ECR [1999] I-3143, para [28].

⁽¹⁷⁾ See Commission Decision 2002/59/EC, recital 98.

- (39) It has to be noted that Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community⁽¹⁸⁾ applies to the placing by a person of creosote-treated wood into surface water⁽¹⁹⁾. However, that Directive is concerned with the prior authorisation of all discharges into, *inter alia*, inland surface water, territorial waters, internal coastal waters and does not cover the placing on the market of creosote-treated wood, nor does it provide for a general ban on the use of creosote-treated wood in contact with surface water. Therefore, the Netherlands provisions under consideration, in providing for a total ban on the marketing and/or use of creosote-treated wood for applications involving contact with surface water, go beyond the measures provided for in Directive 76/464/EC and are incompatible with Directive 2001/90/EC.
- (40) Furthermore, Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances⁽²⁰⁾ covers the placing by a person of creosote-treated wood into direct contact with ground water if polycyclic aromatic hydrocarbons (hereinafter referred to as PAHs) leaching out from treated wood are found in quantities or concentrations of concern. In those circumstances, the use of creosote-treated wood in contact with groundwater is prohibited under that Directive. However, that Directive does not provide for a total ban on the use of creosote-treated wood in contact with groundwater nor does it cover the placing on the market of creosote-treated wood. Consequently, the Netherlands provisions under consideration, in providing for a total ban on the marketing and use of creosote-treated wood for applications involving contact with groundwater, go beyond the measures provided for in Directive 80/68/EEC and are incompatible with Directive 2001/90/EC.
- (41) The notification submitted by the Netherlands contains an explanation of the grounds relating to the protection of the environment which, in their opinion, justify the national provisions notified.
- (42) In the light of the foregoing, it can therefore be concluded that the Netherlands notified the Commission of the actual wording of the national provisions approved by Decision 2002/59/EC but incompatible with Directive 2001/90/EC, which they intend to maintain, as well as an explanation of the reasons which, in their opinion, justify the maintenance of those provisions.
- (43) The notification submitted by the Netherlands in order to obtain approval of the draft national provisions, which were approved by Decision 2002/59/EC under Article 95(5) EC and remain unchanged, concerns measures more restrictive than those adopted by Directive 2001/90/EC. The notification is therefore to be considered admissible under Article 95(4) of the Treaty to the extent that the relevant provisions of Directive 2001/90/EC are not identical with those laid down in Directive 94/60/EC.

2. Merits

- (44) In accordance with Article 95(4) of the Treaty, the Commission must ascertain that all the conditions enabling a Member State to avail itself of the possibility of derogation provided for in that Article are fulfilled. In particular, the national provisions have to be justified by the major needs referred to in Article 30 of the Treaty or relating to the protection of the environment or the working environment. Also, the possibility of derogation provided for in Article 95(4) requires the existence of a problem specific to the notifying Member State in connection with the grounds invoked by that State.

⁽¹⁸⁾ OJ L 129, 18.5.1976, p. 23.

⁽¹⁹⁾ European Court of Justice's judgment of 29 September 1999, case C-232/97 — ECR [1999] I, p. 6385.

⁽²⁰⁾ OJ L 20, 26.1.1980, p. 43.

- (45) In addition, pursuant to Article 95(6) of the Treaty, where the Commission considers that such national provisions are justified, it must check whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they constitute an obstacle to the functioning of the internal market.

2.1. Creosote — General information

- (46) Creosote is a complex mixture of over 200 chemical compounds, predominantly aromatic hydrocarbons, as well as phenolic and aromatic nitrogen and sulphur compounds. It is a mid-heavy distillate of coal tar (boiling point approximately 200 to 400 °C).
- (47) Creosote can contain over 30 different polycyclic aromatic hydrocarbons (PAHs) with a possible total PAH content of 85 %. The most important ones are:
- acenaphthene,
 - naphthalene,
 - phenanthrene,
 - anthracene,
 - fluorene,
 - fluoranthene,
 - chrysene,
 - triphenylene,
 - benzo[a]anthracene,
 - benzo[b]fluoranthene,
 - benzo[k]fluoranthene,
 - benzo[a]pyrene.
- (48) Benzo[a]pyrene (B[a]P) is one of the most thoroughly investigated PAHs and the B[a]P content is used as an indicator or marker substance for classification purposes and does not, in itself, reflect the total PAH content of creosote. Depending on the type of creosote concerned, the B[a]P content may vary between 0,003 and 0,3 % by weight (30 to 3 000 ppm). A refined distillation of coal tar and selection of the fractions can lead to lower B[a]P or phenol contents. Different industry standards have been developed by the Western European Institute for Wood Preservation, characterised mainly by different contents of specified distillation fractions and, most important in this context, different contents of B[a]P. Limit values for classification standards are 500 ppm and 50 ppm.
- (49) Modifications to both the physical and chemical properties of creosote are possible if they are required for use or environmental purposes. It is possible to create a lower viscosity product, better suited to brush application, by incorporating components with a lower boiling point, which is sometimes called *carbolineum*. Directive 2001/90/EC does not make a distinction: it covers and treats in an identical way a whole range of different coal tar distillates, each of them specified by name, Eines- and CAS number.
- (50) Creosote is principally and almost exclusively used as a wood preserving agent. Large-scale industrial and professional applications are by far the most important ones: railway sleepers, poles for electricity transport, hydraulic engineering (bank protection), fences, stakes for agriculture and fruit production. Creosote and similar products are also used by individual consumers for wood preserving purposes.
- (51) The most important properties of creosote are:
- high fungicidal efficacy,
 - high insecticidal efficacy,
 - long-term persistence,
 - resistance to leaching and weathering.

- (52) A very small quantity of creosote is used in medicinal products for the treatment of certain skin diseases, such as psoriasis.

Ecotoxicological effects

- (53) Environmental contamination by creosote has been reported in a number of countries, with old wood treatment facilities often being the source of the contamination. In fact, most information on the fate of creosote in the environment has been obtained from industrial creosote spills and from contamination left from disused creosote plants. Environmental contamination has been traced by an analysis of selected PAH compounds, notably B[a]P.
- (54) Creosote is toxic to certain organisms in the soil and highly toxic for aquatic organisms (with 96h LC-50 values often below 1 mg/l). Many of its components are bioaccumulating.
- (55) The main characteristics of PAHs in the environment are:
- PAHs bind strongly to soil organic matter;
 - the rate of degradation of PAHs in soil and other environmental compartments is usually slow. Creosote residues can persist for many years in the environment (> 20 to 30 years),
 - the main breakdown processes are photodegradation (under irradiation from the sun) and microbial degradation (by certain bacteria). Microbial degradation can occur under aerobic and anaerobic conditions. PAH compounds with four rings and more may be poorly degradable,
 - PAHs reaching watercourses are rapidly transferred to sediment,
 - in watercourses, most of the lower molecular weight PAHs are removed primarily by microbial degradation and the higher molecular weight compounds by photooxidation and sedimentation. Microbial degradation of the more water soluble PAHs occurs under aerobic and anaerobic conditions. The PAH constituents have been shown to bioaccumulate in aquatic species.
- (56) Emissions of PAHs into air, water and soil can occur during the impregnation process and storage at the impregnation site, as well as during the use of treated wood. However, the PAHs found in the various environmental compartments originate from a variety of sources (all combustion processes, traffic and so on) and it is often difficult to ascribe their levels to any particular source such as creosote treated wood.
- (57) A study⁽²¹⁾ published in Sweden has shown that after 40 years in soil, creosote impregnated poles had lost some of the compounds contained in creosote, especially those with the lowest boiling point (< 270 °C). The part of the poles above the ground lost the larger amount. However, mobility of the leached compounds was very low as they could only be detected in the soil in close contact with the poles. This is consistent with the observation that the mobility of PAHs in soil is extremely low due to their strong absorption to organic matter.
- (58) The presence of elevated levels of PAH in aquatic environments has often been attributed to the presence of creosote-treated wood. Migration of creosote components from treated wood into water is higher into fresh water than into seawater and has been proven in many studies. Migration seems to be more limited in seawater; in one study, after ten years in the sea, marine pilings retained 93 % of the original composition of creosote compounds⁽²²⁾. The pollution of sediments by creosote leaching from waterbank protection has been documented in the Netherlands⁽²³⁾ and also in studies on pollution from former impregnation facilities.

⁽²¹⁾ S. Holmroos, *Analys av kreosotstolpar i Simlångsdalen efter 40 års exponering i fält*. Rapport nr. M205-252.092. Älvkarleby: Vattenfall Utveckling. 1994.

⁽²²⁾ L.L. Ingram *et. al.*, Migration of Creosote and Its Components from Treated Piling Sections in a Marine Environment, Proc. Ann. Meet. Am. Wood Preserv. Assoc. 78, 1982, p. 120. See also footnotes 8 and 18.

⁽²³⁾ BKH Consulting Engineers, Foundation of the appeal against the EC-directive on creosote, Final report, Delft, 1 July 1995.

- (59) More recently, on the basis of a study carried out in the Netherlands ⁽²⁴⁾, the SCTEE ⁽²⁵⁾ highlighted the environmental risks associated with the use of creosote-treated wood in the aquatic environment (surface water and groundwater) even at very low concentration of BaP contained in the creosote used for wood treatment.
- (60) As for human exposure via the environment, actually measured data on environmental pollution by PAHs originating in creosote are scarce.

2.2. The position of the Netherlands

- (61) The Netherlands takes the view that the national provisions are justified by the need to protect the aquatic environment from the risks posed by creosote-treated wood in contact with surface water and groundwater and by the specific exposure situation prevailing in the Netherlands.
- (62) The Netherlands refers to the evidence submitted in support of their previous notification as well as the findings of the review carried out by SCTEE ⁽²⁶⁾. A detailed description of the relevant documentary evidence referred to by the Netherlands is contained in Decision 2002/59/EC, to which reference is made for the purposes of the present Decision. Furthermore, the Netherlands points out that Directive 2001/90/EC is exclusively inspired by human health protection requirements and does not take into account either environmental concerns or the specific exposure situation prevailing in the Netherlands

2.3. Evaluation of the position of the Netherlands

2.3.1. Justification with regard to the need to protect the environment

- (63) The evidence referred to in the Netherlands notification highlights the risks to the aquatic environment from PAHs leaching out from creosote-treated wood in contact with surface water and groundwater. The assessment of the risks carried out by the Netherlands authorities addresses both wood treated with creosote containing B[a]P at concentration of less than 0,05 % by mass (hereinafter standard creosote) and that with a B[a]P content of less than 0,005 % (hereinafter modified creosote). In both cases, creosote-treated wood is reported to result in the maximum admissible concentrations of most of the selected PAHs in surface water, groundwater and sediment being considerably exceeded.
- (64) In its opinion of 21 October 2002, the SCTEE broadly confirms the environmental concerns pointed out by the Netherlands. However, as far as wood treated with standard creosote is concerned, the SCTEE observes that the environmental risks could be even greater than indicated by the Netherlands authorities. As for modified creosote, the SCTEE observes that this does not result in a substantial reduction of the levels of other PAHs and concludes that controls based on B[a]P alone are not adequate.

⁽²⁴⁾ Centrum voor Stoffen en Risicobeoordeling, CSR Adviesrapport: 08196A01, *Creosoot — Milieurisico's ten gevolge van de toepassing van gecreosoteerd hout in contact met water en bodem* — Auteurs: M.H.M.M. Monforts, E.W.M. Roex, and J.P. Rila, 5.12.2000 — RIVM (Research for man and environment) Rijksinstituut voor volksgezondheid en milieu (National Institute of public health and the environment).

⁽²⁵⁾ Opinion on creosote. — Notification of the Netherlands made under Article 95(5) of the Treaty expressed at the 24th CSTEE plenary meeting, Brussels, 12 June 2001.

⁽²⁶⁾ Opinion on creosote. — Notification of the Netherlands made under Article 95(5) of the Treaty expressed at the 24th CSTEE plenary meeting, Brussels, 12 June 2001.

- (65) Directive 2001/90/EC, which was adopted before the SCTEE delivered its opinion, merely reduced the B[a]P content permitted in creosote from 0,05 to 0,005 and thus does not adequately address the environmental risks pointed out by the Netherlands. It is exclusively inspired by human health protection requirements and, pending the evaluation by the SCTEE, does not take into consideration the environmental concerns pointed out by the Netherlands. Furthermore, in Decision 2001/59/EC, by addressing those environmental concerns and announcing its intention of reviewing those provisions accordingly, the Commission acknowledges the limitations of Directive 2001/90/EC.
- (66) The documentation referred to in the Netherlands notification also shows that a specific problem exists in the Netherlands due to the high level of exposure to PAHs from creosote-treated wood of the Netherlands surface water and groundwater areas.
- (67) In its opinion of 30 October 2001, the CSTEE recognises that creosote-treated wood in contact with waterways is used extensively in the Netherlands as riverbank protection and that the subsequent risks for the aquatic environment within the Netherlands are likely to be extensive. Further comparative information ⁽²⁷⁾ indicates that the extensive use of creosote-treated wood for riverbank protection in the Netherlands represents a major problem by comparison with other Member States. Furthermore, a recent estimate ⁽²⁸⁾ of the general concentration level of PAHs in the Netherlands surface water areas confirms that the exposure scenario prevailing in the Netherlands is particularly intensive.
- (68) Likewise, in the light of the data showing the considerable extent of low-depth groundwater areas in the Netherlands combined with the extensive use of creosote-treated wood in applications susceptible to contact with groundwater, it can reasonably be concluded that a particularly high level of exposure to PAHs from creosote-treated wood can also be expected with regard to groundwater.
- (69) In the light of the foregoing, the Commission considers that the national provisions notified by the Netherlands are justified by the need to reduce the exposure of the Netherlands aquatic environment and are proportionate to the objective pursued.

2.4. Absence of arbitrary discrimination or of any disguised restriction on trade between Member States and of any obstacle to the functioning of the Internal market

2.4.1. Absence of arbitrary discrimination

- (70) Article 95(6) obliges the Commission to verify that the envisaged measures are not a means of arbitrary discrimination. In order for there to be no discrimination, similar situations must not be treated in different ways and different situations must not be treated in the same way, is a general principle in Community law.
- (71) The national provisions are general and are intended to apply to both national and imported creosote-treated wood for the applications concerned. As a result, there is no evidence that they can be used as a means of arbitrary discrimination between economic operators in the Community.

⁽²⁷⁾ BKH Consulting Engineers, Foundation of the appeal against the EC-directive on creosote, Final report, Delft, 1 July 1995.

G. Grimmer, *Study on the Justification in Scientific Terms of Allowing The Netherlands to retain its National Laws on Creosote in Place of Council Directive 94/60/EC*. Final report, Biochemisches Institut für Umweltcarcinogene, Großhansdorf (Germany), December 1995.

⁽²⁸⁾ Centrum voor Stoffen en Risicobeoordeling, CSR Adviesrapport: 08196A01, *Creosoot — Milieurisico's ten gevolge van de toepassing van gecreosoteerd hout in contact met water en bodem* — Auteurs: M.H.M.M. Monforts, E.W.M. Roex, and J.P. Rila, 5.12.2000 — RIVM (Research for man and environment) Rijksinstituut voor volksgezondheid en milieu (National Institute of public health and the environment).

2.4.2. Absence of a disguised restriction on trade

- (72) National measures which restrict the marketing and use of products to a greater extent than a Community Directive would normally constitute a barrier to trade, in so far as products that could be legally placed on the market in the rest of the Community could not be placed on the market in the Member State concerned. The pre-conditions laid down in paragraph 6 of Article 95 are intended to prevent restrictions based on the criteria set out in paragraphs 4 and 5 thereof from being applied for inappropriate reasons, and constituting in effect economic measures to impede the importation of products from other Member States, that is to say, a means of indirectly protecting national production.
- (73) However, it has already been established that there is real cause for concern as regards the aquatic environment, because of the specific overall exposure situation in the Netherlands. The true aim of the national provisions appears, therefore, to be the protection of the environment, not the creation of disguised barriers to trade.
- (74) The national provisions provide for an exemption for creosote-treated wood intended for export. However, that exception is in line with Directive 76/769/EEC as amended by Directive 2001/90/EC, and, hence, is not concerned with this decision.
- (75) It must be concluded that there is no evidence to indicate that the envisaged national provisions are a disguised restriction on trade between Member States.

2.4.3. Absence of obstacles to the functioning of the internal market

- (76) This condition cannot be interpreted in such a way that it precludes the approval of any national measure likely to affect the establishment of the internal market. Indeed, any national measure derogating from a harmonisation measure aiming at the establishment and operation of the internal market will constitute in substance a measure likely to affect the internal market. Consequently, in order to preserve the useful character of the procedure for derogation provided for by Article 95 of the EC Treaty, the concept of obstacle to the functioning of the internal market must, in the context of Article 95(6), be understood as a disproportionate effect in relation to the pursued objective.
- (77) In the light of the environmental concerns identified and also taking into account the specific exposure situation in the Netherlands, it must be concluded that there is no evidence to indicate that the envisaged national provisions constitute an obstacle to the functioning of the internal market.

IV. CONCLUSION

- (78) In the light of the foregoing, it can be concluded that the notification by the Netherlands of the national provisions derogating from Directive 2001/90/EC with regard to creosote-treated wood, as notified on 3 May 2002, is admissible and fulfils the conditions established by Article 95(4) of the Treaty.
- (79) Furthermore, the national provisions do not constitute a means of arbitrary discrimination, or a disguised restriction on trade between Member States, or a disproportionate obstacle to the functioning of the Internal Market.
- (80) The national provisions can therefore be approved in accordance with Article 95(6) of the Treaty. In accordance with Article 95(7) of the Treaty, the Commission is currently considering an adaptation of the provisions of Directive 76/769/EC, as amended by Directive 2001/90/EC, on the basis of all available scientific evidence.

HAS ADOPTED THIS DECISION:

Article 1

The national provisions relating to the placing on the market and use of creosote-treated wood, which the Netherlands notified to the Commission on 3 May 2002, are approved.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 31 October 2002.

For the Commission

Erkki LIIKANEN

Member of the Commission

COMMISSION DECISION
of 7 November 2002

amending Council Directive 96/49/EC as regards the time-limits within which pressure drums, cylinder racks and tanks for the transport of dangerous goods by rail must comply with it

(notified under document number C(2002) 4343)

(Text with EEA relevance)

(2002/885/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 96/49/EC of 23 July 1996 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail ⁽¹⁾, as last amended by Commission Directive 2001/6/EC ⁽²⁾, and in particular Article 6(4) third subparagraph thereof,

Whereas:

- (1) The European standards laying down detailed technical specifications relating to the construction, use and conditions of carriage of pressure drums, cylinder racks and tanks for the transport of dangerous goods by rail have not yet been added to the Annex to Directive 96/49/EC, since standardisation of the CEN on them is not yet complete.
- (2) It is therefore necessary to defer the deadlines, fixed in Article 6(4) of Directive 96/49/EC, by which such pressure drums, cylinder racks and tanks must comply with Directive 96/49/EC.
- (3) Directive 96/49/EC should therefore be amended accordingly.
- (4) In order to avoid any legal uncertainty this decision should apply from 1 July 2001,

HAS ADOPTED THIS DECISION:

Article 1

In Article 6(4) of Directive 96/49/EC the first and second subparagraphs are replaced by the following:

‘A Member State may maintain national provisions in force on 31 December 1996 relating to the construction, use and conditions of carriage of new tanks, and new pressure drums and cylinder racks as defined in Class 2 of the Annex, which differ from the provisions of that Annex until references to standards for the construction and use of tanks, pressure drums and cylinder racks are added to the Annex, with the same binding force as the provisions therein, but in any event no later than 30 June 2003. Pressure drums, cylinder racks and tanks constructed before 1 July 2003 and other receptacles constructed before 1 July 2001 and maintained to the required safety levels may continue to be used under the original conditions.

The dates 30 June 2003 and 1 July 2003 shall be put back for pressure drums, cylinder racks and tanks for which there are no detailed technical requirements or for which no sufficient references to appropriate European standards have been added to the Annex.’

Article 2

This Decision shall apply from 1 July 2001.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 7 November 2002.

For the Commission

Loyola DE PALACIO

Vice-President

⁽¹⁾ OJ L 235, 17.9.1996, p. 25.

⁽²⁾ OJ L 30, 1.2.2001, p. 42.

COMMISSION DECISION

of 7 November 2002

amending Council Directive 94/55/EC as regards the time-limits within which pressure drums, cylinder racks and tanks for the transport of dangerous goods by road must comply with it*(notified under document number C(2002) 4344)***(Text with EEA relevance)**

(2002/886/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 94/55/EC of 21 November 1994 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road ⁽¹⁾, as last amended by Commission Directive 2001/7/EC ⁽²⁾, and in particular Article 6(4) third subparagraph thereof,

Whereas:

- (1) The European standards laying down detailed technical specifications relating to the construction, use and conditions of carriage of pressure drums, cylinder racks and tanks for the transport of dangerous goods by road have not yet been added to Annexes A and B to Directive 94/55/EC since standardisation of the CEN on them is not yet complete.
- (2) It is therefore necessary to defer the deadlines, fixed in Article 6(4) of Directive 94/55/EC, by which such pressure drums, cylinder racks and tanks must comply with Directive 94/55/EC.
- (3) Directive 94/55/EC should therefore be amended accordingly.
- (4) In order to avoid any legal uncertainty this decision should apply from 1 July 2001,

HAS ADOPTED THIS DECISION:

Article 1

The first subparagraph of Article 6(4) of Directive 94/55/EC is replaced by the following:

'Each Member State may maintain its national provisions in force on 31 December 1996 relating to the construction, use and conditions of carriage of new pressure drums and cylinder racks within the meaning of the special provision referred to in paragraph 4 of Annex C and new tanks which do not comply with Annexes A and B, until references to standards for the construction and use of tanks, pressure drums and cylinder racks with the same binding force as the provisions of this Directive are added to Annexes A and B and in any event no later than 30 June 2003. Pressure drums, cylinder racks and tanks constructed before 1 July 2003 and other receptacles constructed before 1 July 2001 and maintained to the required safety levels may continue to be used under the original conditions.'

Article 2

This Decision shall apply from 1 July 2001.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 7 November 2002.

For the Commission

Loyola DE PALACIO

Vice-President⁽¹⁾ OJ L 319, 12.12.1994, p. 7.⁽²⁾ OJ L 30, 1.2.2001, p. 43.