

Official Journal

of the European Communities

ISSN 0378-6978

L 14

Volume 46

21 January 2003

English edition

Legislation

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I

(Acts whose publication is obligatory)

**REGULATION (EC) No 91/2003 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 16 December 2002
on rail transport statistics**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

Having consulted the Committee of the Regions,

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

Whereas:

- (1) Railways are an important part of the Community's transport networks.
- (2) The Commission needs statistics on the transport of goods and passengers by rail in order to monitor and develop the common transport policy, as well as the transport elements of policies on the regions and on trans-European networks.
- (3) Statistics on rail safety are required by the Commission in order to prepare and monitor Community actions in the field of transport safety.
- (4) Community statistics on rail transport are also required in order to fulfil the monitoring tasks provided for in Article 10b of Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways ⁽⁴⁾.

(5) Community statistics on all modes of transport should be collected according to common concepts and standards, with the aim of achieving the fullest practicable comparability between transport modes.

(6) The restructuring of the rail industry under Directive 91/440/EEC, as well as changes in the type of information required by the Commission and by other users of Community statistics on rail transport, renders obsolete the provisions of Council Directive 80/1177/EEC of 4 December 1980 on statistical returns in respect of carriage of goods by rail, as part of regional statistics ⁽⁵⁾ in relation to the collection of statistics from specified administrations of main rail networks.

(7) The coexistence of publicly and privately owned railway undertakings operating in a commercial rail transport market requires an explicit specification of the statistical information which should be provided by all railway undertakings and disseminated by Eurostat.

(8) In accordance with the principle of subsidiarity laid down in Article 5 of the Treaty, the creation of common statistical standards which permit the production of harmonised data is an action which can only be undertaken efficiently at Community level. Such standards should be implemented in each Member State under the authority of the bodies and institutions in charge of producing official statistics.

(9) Council Regulation (EC) No 322/97 of 17 February 1997 on Community statistics ⁽⁶⁾ provides a reference framework for the provisions laid down by this Regulation.

(10) The measures necessary for the implementation of this Regulation 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 ⁽⁷⁾.

⁽¹⁾ OJ C 180 E, 26.6.2001, p. 94.

⁽²⁾ OJ C 221, 30.5.2001, p. 63.

⁽³⁾ Opinion of the European Parliament of 4 September 2001 (OJ C 72 E, 21.3.2002, p. 58), Council Common Position of 27 June 2002 (not yet published in the Official Journal) and Decision of the European Parliament of 24 October 2002 (not yet published in the Official Journal).

⁽⁴⁾ OJ L 237, 24.8.1991, p. 25. Directive as last amended by Directive 2001/12/EC of the European Parliament and of the Council (OJ L 75, 15.3.2001, p. 1).

⁽⁵⁾ OJ L 350, 23.12.1980, p. 23. Directive as last amended by the 1994 Act of Accession.

⁽⁶⁾ OJ L 52, 22.2.1997, p. 1.

⁽⁷⁾ OJ L 184, 17.7.1999, p. 23.

- (11) The Statistical Programme Committee established by Council Decision 89/382/EEC, Euratom of 19 June 1989 establishing a Committee on the Statistical Programmes of the European Communities ⁽¹⁾ has been consulted in accordance with Article 3 of the said Decision,

HAVE ADOPTED THIS REGULATION:

Article 1

Objective

The objective of this Regulation is to establish common rules for the production of Community rail transport statistics.

Article 2

Scope

This Regulation shall cover all railways in the Community. Each Member State shall report statistics which relate to rail transport on its national territory. Where a railway undertaking operates in more than one Member State, the national authorities concerned shall require the undertaking to provide data separately for each country in which it operates so as to enable national statistics to be compiled.

Member States may exclude from the scope of this Regulation:

- (a) railway undertakings which operate entirely or mainly within industrial and similar installations, including harbours;
- (b) railway undertakings which mainly provide local tourist services, such as preserved historical steam railways.

Article 3

Definitions

1. For the purposes of this Regulation the following definitions shall apply:

- (a) 'reporting country' means the Member State transmitting data to Eurostat;
- (b) 'national authorities' means national statistical institutes and other bodies responsible in each Member State for producing Community statistics;
- (c) 'railway undertaking' means any public or private undertaking which provides services for the transport of goods and/or passengers by rail.

2. The definitions referred to in paragraph 1 may be adapted, and additional definitions needed to ensure harmonisation of statistics may be adopted, in accordance with the procedure referred to in Article 11(2).

⁽¹⁾ OJ L 181, 28.6.1989, p. 47.

Article 4

Data collection

1. The statistics to be collected are set out in the Annexes to this Regulation. They shall cover the following types of data:

- (a) annual statistics on goods transport — detailed reporting (Annex A);
- (b) annual statistics on goods transport — simplified reporting (Annex B);
- (c) annual statistics on passenger transport — detailed reporting (Annex C);
- (d) annual statistics on passenger transport — simplified reporting (Annex D);
- (e) quarterly statistics on goods and passenger transport (Annex E);
- (f) regional statistics on goods and passenger transport (Annex F);
- (g) statistics on traffic flows on the rail network (Annex G);
- (h) statistics on accidents (Annex H).

2. Annexes B and D set out simplified reporting requirements, which may be used by Member States as alternatives to the normal detailed reporting set out in Annexes A and C, for undertakings for which the total volume of goods or passenger transport is less than 500 million tonne-km or 200 million passenger-km respectively. These thresholds may be adapted in accordance with the procedure laid down in Article 11(2).

3. Member States shall also provide a list of the railway undertakings for which statistics are provided, as specified in Annex I.

4. For the purposes of this Regulation, goods shall be classified in accordance with Annex J. Dangerous goods shall additionally be classified in accordance with Annex K.

5. The contents of the Annexes may be adapted, in accordance with the procedure referred to in Article 11(2).

Article 5

Data sources

1. Member States shall designate a public or private organisation to participate in collecting the data required under this Regulation.

2. The necessary data may be obtained using any combination of the following sources:

- (a) compulsory surveys;
- (b) administrative data, including data collected by regulatory authorities;
- (c) statistical estimation procedures;

- (d) data supplied by professional organisations in the rail industry;
- (e) ad hoc studies.

3. The national authorities shall take measures for the coordination of the data sources used and to ensure the quality of the statistics transmitted to Eurostat.

Article 6

Transmission of statistics to Eurostat

1. Member States shall transmit to Eurostat the statistics referred to in Article 4.
2. The arrangements for transmission of the statistics referred to in Article 4 shall be laid down in accordance with the procedure referred to in Article 11(2).

Article 7

Dissemination

1. Community statistics based on the data specified in Annexes A to H to this Regulation shall be disseminated by Eurostat. In this context, and in view of the characteristics of the European railway market, data deemed to be confidential under Article 13(1) of Council Regulation (EC) No 322/97 may be disclosed only if:

- (a) the data are already available to the public in the Member States; or
- (b) the explicit approval for such disclosure has been given in advance by the undertakings concerned.

The national authorities shall make a request to such undertakings for permission to disclose the required data and shall inform Eurostat of the result of this request when the data are transmitted to Eurostat.

2. The information reported under Annex I shall not be disseminated.

Article 8

Quality of statistics

1. In order to assist Member States in maintaining the quality of statistics in the domain of rail transport, Eurostat shall develop and publish methodological recommendations. These recommendations shall take account of the best practices of national authorities, of railway undertakings and of professional organisations for the railway industry.

2. The quality of the statistical data shall be evaluated by Eurostat. To this end, on request by Eurostat, Member States shall supply information on the methods used in producing the statistics.

Article 9

Report

After data have been collected over three years, the Commission shall send a report to the European Parliament and to the Council on experience acquired in the work carried out under

this Regulation accompanied, if necessary, by appropriate proposals. That report shall include the results of the quality evaluation referred to in Article 8. It shall evaluate the impact on the quality of rail transport statistics of the application to this Regulation of the provisions on the confidentiality of statistics laid down in Regulation (EC) No 322/97. It shall also evaluate the benefits of the availability of statistics in this domain, the costs of obtaining such statistics and the burden on enterprises.

Article 10

Implementing procedures

The following implementing measures shall be taken in accordance with the procedure specified in Article 11(2):

- (a) adaptation of the thresholds for simplified reporting (Article 4);
- (b) adaptation of the definitions and adoption of additional definitions (Article 3);
- (c) adaptation of the contents of the annexes (Article 4);
- (d) arrangements for transmitting data to Eurostat (Article 6);
- (e) definition of the guidelines for the reports on the quality and comparability of the results (Articles 8 and 9).

Article 11

Procedure

1. The Commission shall be assisted by the Statistical Programme Committee instituted by Article 1 of Decision 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.

Article 12

Directive 80/1177/EEC

1. Member States shall provide results for the year 2002 in accordance with Directive 80/1177/EEC.

2. Directive 80/1177/EEC is hereby repealed with effect from 1 January 2003.

Article 13

Entry into force

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 16 December 2002.

For the European Parliament

The President

P. COX

For the Council

The President

M. FISCHER BOEL

ANNEX A

ANNUAL STATISTICS ON GOODS TRANSPORT — DETAILED REPORTING

List of variables and units of measurement	<p>Goods transported in:</p> <ul style="list-style-type: none"> — tonnes — tonne-km <p>Goods train movements in:</p> <ul style="list-style-type: none"> — train-km <p>Number of intermodal transport units carried in:</p> <ul style="list-style-type: none"> — number — TEU (20-foot-equivalent unit) (for containers and swap bodies)
Reference period	Year
Frequency	Every year
List of tables with the breakdown for each table	<p>Table A1: goods transported, by type of transport</p> <p>Table A2: goods transported, by type of goods (Annex J)</p> <p>Table A3: goods transported (for international and transit traffic) by country of loading and country of unloading</p> <p>Table A4: goods transported, by category of dangerous goods (Annex K)</p> <p>Table A5: goods transported, by type of consignment (optional)</p> <p>Table A6: goods transported in intermodal transport units, by type of transport and by type of transport unit</p> <p>Table A7: number of loaded intermodal transport units carried, by type of transport and by type of transport unit</p> <p>Table A8: number of empty intermodal transport units carried, by type of transport and by type of transport unit</p> <p>Table A9: goods train movements</p>
Deadline for transmission of data	Five months after end of reference period
First reference period for tables A1, A2 and A3	2003
First reference period for tables A4, A5, A6, A7, A8 and A9	2004
Notes	<ol style="list-style-type: none"> 1. Type of transport is broken down as follows: <ul style="list-style-type: none"> — national — international-incoming — international-outgoing — transit 2. Type of consignment may be broken down as follows: <ul style="list-style-type: none"> — full train loads — full wagon loads — other 3. Type of transport unit is broken down as follows: <ul style="list-style-type: none"> — containers and swap bodies — semi-trailers (unaccompanied) — road vehicles (accompanied) 4. For Table A3, Eurostat and the Member States may make arrangements to facilitate consolidation of data originating from undertakings in other Member States, in order to ensure the coherence of these data. 5. For Table A4, Member States shall indicate which categories of traffic, if any, are not covered by the data. 6. For tables A2 to A8 where complete information on transit transport is not available, Member States shall report all available data.

ANNEX B

ANNUAL STATISTICS ON GOODS TRANSPORT — SIMPLIFIED REPORTING

List of variables and units of measurement	Goods transported in — tonnes — tonne-km Goods train movements in: — train-km
Reference period	Year
Frequency	Every year
List of tables with the breakdown for each table	Table B1: goods transported, by type of transport Table B2: goods train movements
Deadline for transmission of data	Five months after end of reference period
First reference period	2004
Notes	1. Type of transport is broken down as follows: — national — international-incoming — international-outgoing — transit

ANNEX C

ANNUAL STATISTICS ON PASSENGER TRANSPORT — DETAILED REPORTING

List of variables and units of measurement	<p>Passengers transported in:</p> <ul style="list-style-type: none"> — number of passengers — passenger-km <p>Passenger train movements in:</p> <ul style="list-style-type: none"> — train-km
Reference period	Year
Frequency	Every year
List of tables with the breakdown for each table	<p>Table C1: passengers transported, by type of transport (provisional data, number of passengers only)</p> <p>Table C2: international passengers transported, by country of embarkation and by country of disembarkation (provisional data, number of passengers only)</p> <p>Table C3: passengers transported, by type of transport (final consolidated data)</p> <p>Table C4: international passengers transported, by country of embarkation and by country of disembarkation (final consolidated data, number of passengers only)</p> <p>Table C5: passenger train movements</p>
Deadline for transmission of data	<p>Eight months after end of reference period (Tables C1, C2, C5)</p> <p>14 months after end of reference period (Tables C3, C4)</p>
First reference period	2004
Notes	<ol style="list-style-type: none"> 1. Type of transport is broken down as follows: <ul style="list-style-type: none"> — national — international 2. For Tables C1 and C2, Member States may report provisional data based on ticket sales in the reporting country or any other available source. For Tables C3 and C4, Member States shall report final consolidated data including information from ticket sales outside the reporting country. This information may be obtained either directly from the national authorities of other countries or through international compensation arrangements for tickets.

ANNEX D

ANNUAL STATISTICS ON PASSENGER TRANSPORT — SIMPLIFIED REPORTING

List of variables and units of measurement	Passengers transported in: — number of passengers — passenger-km Passenger train movements in: — train-km
Reference period	Year
Frequency	Every year
List of tables with the breakdown for each table	Table D1: passengers transported Table D2: passenger train movements
Deadline for transmission of data	Eight months after end of reference period
First reference period	2004
Notes	1. For Table D1, Member States may report data based on ticket sales in the reporting country or any other available source.

ANNEX E

QUARTERLY STATISTICS ON GOODS AND PASSENGER TRANSPORT

List of variables and units of measurement	Goods transported in: — tonnes — tonne-km Passengers transported in: — number of passengers — passenger-km
Reference period	Quarter
Frequency	Every quarter
List of tables with the breakdown for each table	Table E1: goods transported Table E2: passengers transported
Deadline for transmission of data	Three months after end of reference period
First reference period	First quarter of 2004
Notes	1. Tables E1 and E2 may be reported on the basis of provisional data, including estimates. For Table E2, Member States may report data based on ticket sales in the reporting country or any other available source. 2. These statistics shall be supplied for the undertakings covered by Annexes A and C.

ANNEX F

REGIONAL STATISTICS ON GOODS AND PASSENGER TRANSPORT

List of variables and units of measurement	Goods transported in: — tonnes Passengers transported in: — number of passengers
Reference period	One year
Frequency	Every five years
List of tables with the breakdown for each table	Table F1: national goods transport by region of loading and region of unloading (NUTS 2) Table F2: international goods transport by region of loading and unloading (NUTS 2) Table F3: national passenger transport by region of embarkation and region of disembarkation (NUTS 2) Table F4: international passenger transport by region of embarkation and region of disembarkation (NUTS 2)
Deadline for transmission of data	12 months after end of reference period
First reference period	2005
Notes	<ol style="list-style-type: none"> 1. Where the place of loading or unloading (Tables F1, F2) or embarkation or disembarkation (Tables F3, F4) is outside the European Economic Area, Member States shall report only the country. 2. In order to assist Member States in the preparation of these tables, Eurostat shall provide Member States with a list of UIC station codes and the corresponding NUTS codes. 3. For Tables F3 and F4, Member States may report data based on ticket sales or any other available source. 4. These statistics shall be supplied for the undertakings covered by Annexes A and C.

ANNEX G

STATISTICS ON TRAFFIC FLOWS ON THE RAIL NETWORK

List of variables and units of measurement	<p>Goods transport:</p> <ul style="list-style-type: none"> — number of trains <p>Passenger transport:</p> <ul style="list-style-type: none"> — number of trains <p>Other (service trains, etc.) (optional):</p> <ul style="list-style-type: none"> — number of trains
Reference period	One year
Frequency	Every five years
List of tables with the breakdown for each table	<p>Table G1: goods transport, by network segment</p> <p>Table G2: passenger transport, by network segment</p> <p>Table G3: other (service trains, etc.), by network segment (optional)</p>
Deadline for transmission of data	18 months after end of reference period
First reference period	2005
Notes	<ol style="list-style-type: none"> 1. Member States shall define a set of network segments to include at least the rail TEN on their national territory. They shall communicate to Eurostat: <ul style="list-style-type: none"> — the geographical coordinates and other data needed to identify and map each network segment as well as the links between segments, — information on the characteristics (including the capacity) of the trains using each network segment. 2. Each network segment which is part of the rail trans-European network (TEN) shall be identified by means of an additional attribute in the data record, in order to enable traffic on the rail TEN to be quantified.

ANNEX H

STATISTICS ON ACCIDENTS

List of variables and units of measurement	<ul style="list-style-type: none"> — Number of accidents (Tables H1, H2) — Number of persons killed (Table H3) — Number of persons seriously injured (Table H4)
Reference period	Year
Frequency	Every year
List of tables with the breakdown for each table	<p>Table H1: number of accidents, by type of accident</p> <p>Table H2: number of accidents involving the transport of dangerous goods</p> <p>Table H3: number of persons killed, by type of accident and by category of person</p> <p>Table H4: number of persons seriously injured, by type of accident and by category of person</p>
Deadline for transmission of data	Five months after end of reference period
First reference period	2004
Note	<ol style="list-style-type: none"> 1. Type of accident is broken down as follows: <ul style="list-style-type: none"> — collisions (excluding level-crossing accidents) — derailments — accidents involving level-crossings — accidents to persons caused by rolling stock in motion — fires in rolling stock — others — total. <p>The type of accident refers to the primary accident.</p> 2. Table H2 has the following breakdown: <ul style="list-style-type: none"> — total number of accidents involving at least one railway vehicle transporting dangerous goods, as defined by the list of goods covered by Annex K — number of such accidents in which dangerous goods are released. 3. Category of person is broken down as follows: <ul style="list-style-type: none"> — passengers — employees (including contractors) — others — total. 4. The data in Tables H1-H4 shall be provided for all railways covered by this Regulation. 5. During the first five years of application of this Regulation, Member States may report these statistics according to national definitions, if data conforming to harmonised definitions (adopted according to the procedure of Article 11 paragraph 2) are not available.

ANNEX I

List of variables and units of measurement	See below
Reference period	One year
Frequency	Every year
List of tables with the breakdown for each table	See below
Deadline for transmission of data	Five months after end of reference period
First reference period	2003
Note	<p>The information listed below (Table I1) shall be supplied for each railway undertaking for which data are provided according to Annexes A to H.</p> <p>This information shall be used,</p> <ul style="list-style-type: none"> — to check which undertakings are covered by the tables in Annexes A to H — to validate the coverage of Annexes A and C in relation to total rail transport activity.

Table I1

	Identification of data source	
II.1.1	Reporting country	
II.1.2	Reference year	
II.1.3	Name of undertaking (optional)	
II.1.4	Country in which undertaking is based	
	Type of activities	
II.2.1	Freight transport: international	yes/no
II.2.2	Freight transport: national	yes/no
II.2.3	Passenger transport: international	yes/no
II.2.4	Passenger transport: national	yes/no
	Data included in Annexes A to H	
	Annex A	yes/no
	Annex B	yes/no
	Annex C	yes/no
	Annex D	yes/no
	Annex E	yes/no
	Annex F	yes/no
	Annex G	yes/no
	Annex H	yes/no

	Level of transport activity (optional)	
II.3.1	Total freight transport (tonnes)	
II.3.2	Total freight transport (tonne-km)	
II.3.3	Total passenger transport (passengers)	
II.3.4	Total passenger transport (passenger-km)	

ANNEX J

CLASSIFICATION OF GOODS

The following groups of goods shall be used until such time as a new classification is laid down according to the procedure specified in Article 11(2).

Groups of goods	NST/R chapter	NST/R groups	Description
1	0	01	Cereals
2		02, 03	Potatoes, other fresh or frozen fruits and vegetables
3		00, 06	Live animals, sugar beet
4		05	Wood and cork
5		04, 09	Textiles, textile articles and man-made fibres, other raw animal and vegetable materials
6	1	11, 12, 13, 14, 16, 17	Foodstuff and animal fodder
7		18	Oil seeds and oleaginous fruits and fats
8	2	21, 22, 23	Solid mineral fuels
9	3	31	Crude petroleum
10		32, 33, 34	Petroleum products
11	4	41, 46	Iron ore, iron and steel waste and blast furnace dust
12		45	Non-ferrous ores and waste
13	5	51, 52, 53, 54, 55, 56	Metal products
14	6	64, 69	Cement, lime, manufactured building materials
15		61, 62, 63, 65	Crude and manufactured minerals
16	7	71, 72	Natural and chemical fertilisers
17	8	83	Coal chemicals, tar
18		81, 82, 89	Chemicals other than coal chemicals and tar
19		84	Paper pulp and waste paper
20	9	91, 92, 93	Transport equipment, machinery, apparatus, engines, whether or not assembled, and parts thereof
21		94	Manufactures of metal
22		95	Glass, glassware, ceramic products
23		96, 97	Leather, textile, clothing, other manufactured articles
24		99	Miscellaneous articles

ANNEX K

CLASSIFICATION OF DANGEROUS GOODS

1. Explosives
2. Gases, compressed, liquefied or dissolved under pressure
3. Flammable liquids
- 4.1. Flammable solids
- 4.2. Substances liable to spontaneous combustion
- 4.3. Substances which, in contact with water, emit flammable gases
- 5.1. Oxidising substances
- 5.2. Organic peroxides
- 6.1. Toxic substances
- 6.2. Substances liable to cause infections
7. Radioactive material
8. Corrosives
9. Miscellaneous dangerous substances

Note: these categories are those defined in the regulations concerning the international carriage of dangerous goods by rail, usually known as the RID, as adopted under 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 and subsequent amendments ⁽¹⁾.

⁽¹⁾ OJ L 235, 17.9.1996, p. 25. Directive as last amended by Commission Directive 2001/6/EC (OJ L 30, 1.2.2001, p. 42).

COMMISSION REGULATION (EC) No 92/2003
of 20 January 2003
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 1947/2002 ⁽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 21 January 2003.

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

Done at Brussels, 20 January 2003.

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

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 299, 1.11.2002, p. 17.

ANNEX

to the Commission Regulation of 20 January 2003 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	103,1
	204	48,4
	212	104,8
	999	85,4
0707 00 05	052	141,3
	220	166,2
	628	151,4
	999	153,0
0709 10 00	220	137,7
	999	137,7
0709 90 70	052	139,9
	204	99,8
	999	119,8
0805 10 10, 0805 10 30, 0805 10 50	052	50,1
	204	51,6
	212	50,7
	220	43,7
	600	73,2
	999	53,9
0805 20 10	204	84,4
	999	84,4
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	65,1
	204	65,0
	220	83,4
	464	142,2
	600	47,1
	624	77,8
0805 50 10	999	80,1
	052	63,6
	220	80,7
	600	67,9
0808 10 20, 0808 10 50, 0808 10 90	999	70,7
	060	42,4
	066	35,6
	400	97,2
	404	104,9
	720	114,0
0808 20 50	999	78,8
	388	135,1
	400	93,7
	720	50,5
	999	93,1

⁽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 93/2003
of 20 January 2003**

**fixing the minimum selling prices for beef put up for sale under the third invitation to tender
referred to in Regulation (EC) No 2042/2002**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal ⁽¹⁾, as last amended by Commission Regulation (EC) No 2345/2001 ⁽²⁾, and in particular Article 28(2) thereof,

Whereas:

- (1) Tenders have been invited for certain quantities of beef fixed by Commission Regulation (EC) No 2042/2002 ⁽³⁾.
- (2) Pursuant to Article 9 of Commission Regulation (EEC) No 2173/79 ⁽⁴⁾, as last amended by Regulation (EC) No 2417/95 ⁽⁵⁾, the minimum selling prices for meat put up for sale by tender should be fixed, taking into account tenders submitted.

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

HAS ADOPTED THIS REGULATION:

Article 1

The minimum selling prices for beef for the third invitation to tender held in accordance with Regulation (EC) No 2042/2002 for which the time limit for the submission of tenders was 13 January 2003 are as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 21 January 2003.

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

Done at Brussels, 20 January 2003.

For the Commission
Franz FISCHLER
Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 21.

⁽²⁾ OJ L 315, 1.12.2001, p. 29.

⁽³⁾ OJ L 316, 20.11.2002, p. 9.

⁽⁴⁾ OJ L 251, 5.10.1979, p. 12.

⁽⁵⁾ OJ L 248, 14.10.1995, p. 39.

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

Estado miembro	Productos	Precio mínimo Expresado en euros por tonelada
Medlemsstat	Produkter	Mindstepriser i EUR/ton
Mitgliedstaat	Erzeugnisse	Mindestpreise Ausgedrückt in EUR/Tonne
Κράτος μέλος	Προϊόντα	Ελάχιστες πωλήσεις εκφραζόμενες σε ευρώ ανά τόνο
Member State	Products	Minimum prices Expressed in EUR per tonne
État membre	Produits	Prix minimaux Exprimés en euros par tonne
Stato membro	Prodotti	Prezzi minimi Espressi in euro per tonnellata
Lidstaat	Producten	Minimumprijzen Uitgedrukt in euro per ton
Estado-Membro	Produtos	Preço mínimo Expresso em euros por tonelada
Jäsenvaltio	Tuotteet	Vähimmäishinnat euroina tonnia kohden ilmaistuna
Medlemsstat	Produkter	Minimipriser i euro per ton

a) **Carne con hueso — Kød, ikke udbenet — Fleisch mit Knochen — Κρέατα με κόκαλα — Bone-in beef — Viande avec os — Carni non disossate — Vlees met been — Carne com osso — Luullinen naudanliha — Kött med ben**

DEUTSCHLAND	— Hinterviertel	1 350
	— Vorderviertel	750
DANMARK	— Forfjerdinger	—
	— Quarti posteriori	—
ITALIA	— Quarti anteriori	—
	— Quartiers arrières	—
FRANCE	— Quartiers avants	—
	— ÖSTERREICH	— Hinterviertel
NEDERLAND	— Vorderviertel	750
	— Voorvoeten	—
ESPAÑA	— Cuartos traseros	1 350
	— Cuartos delanteros	750

b) **Carne deshuesada — Udbenet kød — Fleisch ohne Knochen — Κρέατα χωρίς κόκαλα — Boneless beef — Viande désossée — Carni senza osso — Vlees zonder been — Carne desossada — Luuton naudanliha — Benfritt kött**

DEUTSCHLAND	— Kugel (INT 12)	—
	— Oberschale (INT 13)	—
	— Unterschale (INT 14)	—
	— Filet (INT 15)	11 050
	— Hüfte (INT 16)	—
	— Roastbeef (INT 17)	—
	— Lappen (INT 18)	—
	— Hochrippe (INT 19)	—
	— Schulter (INT 22)	—
	— Vorderviertel (INT 24)	—
ESPAÑA	— Babilla de intervención (INT 12)	—
	— Tapa de intervención (INT 13)	—
	— Contratapa de intervención (INT 14)	2 305
	— Solomillo de intervención (INT 15)	—
	— Cadera de intervención (INT 16)	2 350
	— Lomo de intervención (INT 17)	—
— Entrecot de intervención (INT 19)	—	

FRANCE	— Jarret arrière d'intervention (INT 11)	—	
	— Tranche grasse d'intervention (INT 12)	—	
	— Tranche d'intervention (INT 13)	—	
	— Semelle d'intervention (INT 14)	2 311	
	— Filet d'intervention (INT 15)	11 000	
	— Rumsteck d'intervention (INT 16)	—	
	— Faux-filet d'intervention (INT 17)	5 000	
	— Flanchet d'intervention (INT 18)	—	
	— Entrecôte d'intervention (INT 19)	—	
	— Épaule d'intervention (INT 22)	—	
	— Poitrine d'intervention (INT 23)	—	
	— Avant d'intervention (INT 24)	—	
	ITALIA	— Noce d'intervento (INT 12)	—
		— Fesa interna (INT 13)	—
— Girello d'intervento (INT 14)		2 350	
— Filetto d'intervento (INT 15)		—	
— Scamone (INT 16)		—	
— Roastbeef d'intervento (INT 17)		—	
NEDERLAND	— Controfiletto d'intervento (INT 19)	—	
	— Interventievoorschenkel (INT 21)	—	
	— Interventieschouder (INT 22)	1 255	
	— Interventieborst (INT 23)	—	
	— Interventievoorvoet (INT 24)	—	

**COMMISSION REGULATION (EC) No 94/2003
of 20 January 2003**

**fixing the minimum selling prices for beef put up for sale under the third invitation to tender
referred to in Regulation (EC) No 2048/2002**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal ⁽¹⁾, as last amended by Commission Regulation (EC) No 2345/2001 ⁽²⁾, and in particular Article 28(2) thereof,

Whereas:

- (1) Tenders have been invited for certain quantities of beef fixed by Commission Regulation (EC) No 2048/2002 ⁽³⁾.
- (2) Pursuant to Article 9 of Commission Regulation (EEC) No 2173/79 ⁽⁴⁾, as last amended by Regulation (EC) No 2417/95 ⁽⁵⁾, the minimum selling prices for meat put up for sale by tender should be fixed, taking into account tenders submitted.

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

HAS ADOPTED THIS REGULATION:

Article 1

The minimum selling prices for beef for the third invitation to tender held in accordance with Regulation (EC) No 2048/2002 for which the time limit for the submission of tenders was 14 January 2003 are as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 21 January 2003.

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

Done at Brussels, 20 January 2003.

For the Commission
Franz FISCHLER
Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 21.

⁽²⁾ OJ L 315, 1.12.2001, p. 29.

⁽³⁾ OJ L 316, 20.11.2002, p. 9.

⁽⁴⁾ OJ L 251, 5.10.1979, p. 12.

⁽⁵⁾ OJ L 248, 14.10.1995, p. 39.

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

Estado miembro	Productos	Precio mínimo Expresado en euros por tonelada
Medlemsstat	Produkter	Mindstepriser i EUR/ton
Mitgliedstaat	Erzeugnisse	Mindestpreise Ausgedrückt in EUR/Tonne
Κράτος μέλος	Προϊόντα	Ελάχιστες πωλήσεις εκφραζόμενες σε ευρώ ανά τόνο
Member State	Products	Minimum prices Expressed in EUR per tonne
État membre	Produits	Prix minimaux Exprimés en euros par tonne
Stato membro	Prodotti	Prezzi minimi Espressi in euro per tonnellata
Lidstaat	Producten	Minimumprijzen Uitgedrukt in euro per ton
Estado-Membro	Produtos	Preço mínimo Expresso em euros por tonelada
Jäsenvaltio	Tuotteet	Vähimmäishinnat euroina tonnia kohden ilmaistuna
Medlemsstat	Produkter	Minimipriser i euro per ton

a) **Carne con hueso — Kød, ikke udbenet — Fleisch mit Knochen — Κρέατα με κόκαλα — Bone-in beef — Viande avec os — Carni non disossate — Vlees met been — Carne com osso — Luullinen naudanliha — Kött med ben**

DEUTSCHLAND	— Vorderviertel	650
ITALIA	— Quarti anteriori	—
FRANCE	— Quartiers avant	650
ÖSTERREICH	— Vorderviertel	—
ESPAÑA	— Cuartos delanteros	—

b) **Carne deshuesada — Udbenet kød — Fleisch ohne Knochen — Κρέατα χωρίς κόκαλα — Boneless beef — Viande désossée — Carni senza osso — Vlees zonder been — Carne desossada — Luuton naudanliha — Benfritt kött**

DEUTSCHLAND	— Hinterhese (INT 11)	701
	— Lappen (INT 18)	565
	— Vorderhese (INT 21)	—
	— Schulter (INT 22)	—
	— Brust (INT 23)	—
	— Vorderviertel (INT 24)	—
ESPAÑA	— Jarrete de intervención (INT 11)	—
	— Falda del costillar de intervención (INT 18)	—
	— Morcillo de intervención (INT 21)	—
	— Paleta de intervención (INT 22)	990
	— Pecho de intervención (INT 23)	791
	— Cuarto delantero de intervención (INT 24)	—
FRANCE	— Jarret arrière d'intervention (INT 11)	701
	— Flanchet d'intervention (INT 18)	—
	— Jarret avant d'intervention (INT 21)	696
ITALIA	— Spalla d'intervento (INT 22)	—
	— Petto di manzo d'intervento (INT 23)	—
	— Quarto anteriori d'intervento (INT 24)	—

**COMMISSION REGULATION (EC) No 95/2003
of 20 January 2003**

**fixing the minimum selling prices for beef put up for sale under the first invitation to tender
referred to in Regulation (EC) No 2249/2002**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal ⁽¹⁾, as last amended by Commission Regulation (EC) No 2345/2001 ⁽²⁾, and in particular Article 28(2) thereof,

Whereas:

- (1) Tenders have been invited for certain quantities of beef fixed by Commission Regulation (EC) No 2249/2002 ⁽³⁾.
- (2) Pursuant to Article 9 of Commission Regulation (EEC) No 2173/79 ⁽⁴⁾, as last amended by Regulation (EC) No 2417/95 ⁽⁵⁾, the minimum selling prices for meat put up for sale by tender should be fixed, taking into account tenders submitted.

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

HAS ADOPTED THIS REGULATION:

Article 1

The minimum selling prices for beef for the first invitation to tender held in accordance with Regulation (EC) No 2249/2002 for which the time limit for the submission of tenders was 13 January 2003 are as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 21 January 2003.

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

Done at Brussels, 20 January 2003.

For the Commission
Franz FISCHLER
Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 21.

⁽²⁾ OJ L 315, 1.12.2001, p. 29.

⁽³⁾ OJ L 343, 18.12.2002, p. 3.

⁽⁴⁾ OJ L 251, 5.10.1979, p. 12.

⁽⁵⁾ OJ L 248, 14.10.1995, p. 39.

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

Estado miembro	Productos	Precio mínimo Expresado en euros por tonelada
Medlemsstat	Produkter	Mindestpreis i EUR/ton
Mitgliedstaat	Erzeugnisse	Mindestpreise Ausgedrückt in EUR/Tonne
Κράτος μέλος	Προϊόντα	Ελάχιστες πωλήσεις εκφραζόμενες σε ευρώ ανά τόνο
Member State	Products	Minimum prices Expressed in EUR per tonne
État membre	Produits	Prix minimaux Exprimés en euros par tonne
Stato membro	Prodotti	Prezzi minimi Espressi in euro per tonnellata
Lidstaat	Producten	Minimumprijzen Uitgedrukt in euro per ton
Estado-Membro	Produtos	Preço mínimo Expresso em euros por tonelada
Jäsenvaltio	Tuotteet	Vähimmäishinnat euroina tonnia kohden ilmaistuna
Medlemsstat	Produkter	Minimipriser i euro per ton

a) **Carne con hueso — Kød, ikke udbenet — Fleisch mit Knochen — Κρέατα με κόκαλα — Bone-in beef — Viande avec os — Carni non disossate — Vlees met been — Carne com osso — Luullinen naudanliha — Kött med ben**

ITALIA	— Quarti posteriori	1 350
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b) **Carne deshuesada — Udbenet kød — Fleisch ohne Knochen — Κρέατα χωρίς κόκαλα — Boneless beef — Viande désossée — Carni senza osso — Vlees zonder been — Carne desossada — Luuton naudanliha — Benfritt kött**

DEUTSCHLAND	— Kugel (INT 12)	2 001
	— Oberschale (INT 13)	2 710
	— Lappen (INT 18)	801
	— Hochrippe (INT 19)	3 250
	— Schulter (INT 22)	1 270
FRANCE	— Vorderviertel (INT 24)	1 260
	— Jarret arrière d'intervention (INT 11)	1 045
	— Tranche grasse d'intervention (INT 12)	2 015
	— Tranche d'intervention (INT 13)	2 732
	— Flanchet d'intervention (INT 18)	775
	— Épaule d'intervention (INT 22)	1 270
	— Poitrine d'intervention (INT 23)	858
	— Avant d'intervention (INT 24)	1 270

COMMISSION REGULATION (EC) No 96/2003
of 20 January 2003
on the supply of white sugar as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security ⁽¹⁾, as amended by Regulation (EC) No 1726/2001 of the European Parliament and of the Council ⁽²⁾, and in particular Article 24(1)(b) thereof,

Whereas:

- (1) The abovementioned Regulation lays down the list of countries and organisations eligible for Community aid and specifies the general criteria on the transport of food aid beyond the fob stage.
- (2) Following the taking of a number of decisions on the allocation of food aid, the Commission has allocated white sugar to certain beneficiaries.
- (3) It is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EC) No 2519/97 of 16 December 1997 laying down general rules for the mobilisation of products to be supplied

pursuant to Council Regulation (EC) No 1292/96 as Community food aid ⁽³⁾. It is necessary to specify the time limits and conditions of supply to determine the resultant costs,

HAS ADOPTED THIS REGULATION:

Article 1

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

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

Article 2

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

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

Done at Brussels, 20 January 2003.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 166, 5.7.1996, p. 1.
⁽²⁾ OJ L 234, 1.9.2001, p. 10.

⁽³⁾ OJ L 346, 17.12.1997, p. 23.

ANNEX

LOTS A, B, C, D and E

1. **Action Nos:** 44/02 (A); 45/02 (B); 46/02 (C); 47/02 (D); 48/02 (E)
2. **Beneficiary** ^(?): UNRWA, Supply division, Amman Office, PO Box 140157, Amman, Jordan; telex 21170 UNRWA JO; tel. (962-6) 586 41 26; fax 586 41 27
3. **Beneficiary's representative:** UNRWA Field Supply and Transport Officer
 - A+E: PO Box 19149, Jerusalem, Israel [tel. (972-2) 589 05 55; telex 26194 UNRWA IL; fax 581 65 64]
 - B: PO Box 947, Beirut, Lebanon [tel. (961-1) 840 461-6; fax 840 467]
 - C: PO Box 4313, Damascus, Syria [tel. (963-11) 613 30 35; telex 412006 UNRWA SY; fax 613 30 47]
 - D: PO Box 484, Amman, Jordan [tel. (962-6) 474 19 14/477 22 26; telex 23402 UNRWAJFO JO; fax 474 63 61]
4. **Country of destination:** A, E: Israel (A: Gaza; E: West Bank); B: Lebanon; C: Syria; D: Jordan
5. **Product to be mobilised:** white sugar ('A' or 'B' sugar)
6. **Total quantity (tonnes net):** 1 933
7. **Number of lots:** 5 (A: 683 tonnes; B: 294 tonnes; C: 237 tonnes; D: 442 tonnes; E: 277 tonnes)
8. **Characteristics and quality of the product** ⁽³⁾ ⁽⁵⁾ ⁽⁹⁾: see OJ C 312, 31.10.2000, p. 1 (C.1)
9. **Packaging** ⁽⁷⁾: see OJ C 267, 13.9.1996, p. 1 (11.2 A 1.b, 2.b and B.4)
10. **Labelling or marking** ⁽⁶⁾: see OJ C 114, 29.4.1991, p. 1 (V.A(3))
 - language to be used for the markings: English
 - supplementary markings: 'NOT FOR SALE'
11. **Method of mobilisation of the product:** the Community market
12. **Specified delivery stage** ⁽⁸⁾: A, C, E: free at port of landing — container terminal
B, D: free at destination
13. **Alternative delivery stage:** free at port of shipment
14. a) **Port of shipment:** —
b) **Loading address:** —
15. **Port of landing:** A, E: Ashdod; C: Lattakia
16. **Place of destination:** UNRWA warehouse in Beirut (B) and Amman (D)
 - port or warehouse of transit: —
 - overland transport route: —
17. **Period or deadline of supply at the specified stage:**
 - first deadline: A, B, C, E: 23.3.2003; D: 30.3.2003
 - second deadline: A, B, C, E: 6.4.2003; D: 13.4.2003
18. **Period or deadline of supply at the alternative stage:**
 - first deadline: 24.2-9.3.2003
 - second deadline: 10-23.3.2003
19. **Deadline for the submission of tenders (at 12 noon, Brussels time):**
 - first deadline: 4.2.2003
 - second deadline: 18.2.2003
20. **Amount of tendering guarantee:** EUR 15 per tonne
21. **Address for submission of tenders and tendering guarantees** ⁽¹⁾: M. Vestergaard, European Commission, Office L130, bureau 7/46, B-1049 Bruxelles/Brussel; telex 25670 AGREC B; fax (32-2) 296 70 03/296 70 04
22. **Export refund** ⁽⁴⁾: refund applicable on 15.1.2003, fixed by Commission Regulation (EC) No 10/2003 (OJ L 1, 3.1.2003, p. 61)

Notes:

- (¹) Supplementary information: Torben Vestergaard (tel. (32-2) 299 30 50; fax (32-2) 296 20 05).
- (²) The supplier shall contact the beneficiary or its representative as soon as possible to establish which consignment documents are required.
- (³) The supplier shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.
- (⁴) Commission Regulation (EC) No 2298/2002 (OJ L 308, 27.11.2001, p. 16), is applicable as regards the export refund. The date referred to in Article 2 of the said Regulation is that indicated in point 22 of this Annex.
- (⁵) The supplier shall supply to the beneficiary or its representative, on delivery, the following documents:
— health certificate (including 'production date: ...').
- (⁶) Notwithstanding OJ C 114, point V.A(3)(c) is replaced by the following, 'the words "European Community"'.
(⁷) Since the goods may be rebagged, the supplier must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.
- (⁸) Shipment to take place in 20-foot containers: Lots A, C and E: The contracted shipping terms shall be considered full liner terms free port of landing container yard and is understood to cover 15 days — Saturdays, Sundays and official public and religious holidays excluded — free of container detention charges at the port of discharge taken from the day/time of the arrival of the vessel. The 15 day period should be clearly marked on the bill of lading. Bona fide detention charges levied in respect of container detention(s) in excess of the said 15 days as detailed above will be borne by UNRWA. UNRWA shall not pay/not be charged any container deposit fees.
After take-over of the goods at the delivery stage, the recipient will bear all costs of shifting the containers for destuffing outside the port area and of returning them to the container yard.
Ashdod: consignment to be stowed in 20-foot containers containing not more than 18 tonnes each, net.
- (⁹) Lot C: The health certificate and the certificate of origin must be signed and stamped by a Syrian Consulate, including the statement that consular fees and charges have been paid.

Before the Commission can award the supply contract, it needs various items of information about the tenderer concerned (in particular the bank account to be credited). These details are contained in a form available on the Internet at the following website:

http://europa.eu.int/comm/budget/execution/ftiers_fr.htm.

If these details are missing, the tenderer designated as the supplier may not invoke the time limit for notification referred to in Article 9(4) of Regulation (EC) No 2519/97.

You should therefore include the above form with your bid after filling in the required details.

COMMISSION REGULATION (EC) No 97/2003
of 20 January 2003
on the supply of cereals as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security ⁽¹⁾, as modified by Regulation (EC) No 1726/2001 of the European Parliament and of the Council ⁽²⁾, and in particular Article 24(1)(b) thereof,

Whereas:

- (1) The abovementioned Regulation lays down the list of countries and organisations eligible for Community aid and specifies the general criteria on the transport of food aid beyond the fob stage.
- (2) Following the taking of a number of decisions on the allocation of food aid, the Commission has allocated cereals to certain beneficiaries.
- (3) It is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EC) No 2519/97 of 16 December 1997 laying down general rules for the mobilisation of products to be supplied

under Council Regulation (EC) No 1292/96 as Community food aid ⁽³⁾. It is necessary to specify the time limits and conditions of supply to determine the resultant costs,

HAS ADOPTED THIS REGULATION:

Article 1

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

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

Article 2

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

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

Done at Brussels, 20 January 2003.

For the Commission
Franz FISCHLER
Member of the Commission

⁽¹⁾ OJ L 166, 5.7.1996, p. 1.
⁽²⁾ OJ L 234, 1.9.2001, p. 10.

⁽³⁾ OJ L 346, 17.12.1997, p. 23.

ANNEX

LOT A

1. **Action No:** 406/01
2. **Beneficiary** ⁽²⁾: EuronAid, PO Box 12, 2501 CA Den Haag, Nederland; tel.: (31-70) 330 57 57; fax: 364 17 01; telex 30960 EURON NL
3. **Beneficiary's representative:** to be designated by the beneficiary
4. **Country of destination:** Haiti
5. **Product to be mobilised:** common wheat flour
6. **Total quantity (tonnes net):** 205
7. **Number of lots:** 1
8. **Characteristics and quality of the product** ⁽³⁾ ⁽⁵⁾: see OJ C 312, 31.10.2000, p. 1 (A.10)
9. **Packaging** ⁽⁷⁾ ⁽⁸⁾: see OJ C 267, 13.9.1996, p. 1 (2.2 A 1.d, 2.d and B.4)
10. **Labelling or marking** ⁽⁶⁾: see OJ C 114, 29.4.1991, p. 1 (II.B.(3))
 - Language to be used for the markings: French
 - Supplementary markings: —
11. **Method of mobilisation of the product:** the Community market
12. **Specified delivery stage** ⁽¹⁰⁾: free at port of shipment
13. **Alternative delivery stage:** —
14. a) **Port of shipment:** —
b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:**
 - port or warehouse of transit: —
 - overland transport route: —
17. **Period or deadline of supply at the specified stage:**
 - first deadline: 24.2-16.3.2003
 - second deadline: 10-30.3.2003
18. **Period or deadline of supply at the alternative stage:**
 - first deadline: —
 - second deadline: —
19. **Deadline for the submission of tenders (at 12 noon, Brussels time):**
 - first deadline: 4.2.2003
 - second deadline: 18.2.2003
20. **Amount of tendering guarantee:** EUR 5 per tonne
21. **Address for submission of tenders and tendering guarantees** ⁽¹⁾: M. Vestergaard, European Commission, Office: L130 7/46, B-1049 Brussels; telex 25670 AGREC B; fax (32-2) 296 70 03/296 70 04
22. **Export refund** ⁽⁴⁾: refund applicable on 15.1.2003, fixed by Commission Regulation (EC) No 2307/2002 (OJ L 348, 21.12.2002, p. 100).

LOT B

1. **Action No:** 407/01
2. **Beneficiary** (?): EuronAid, PO Box 12, 2501 CA Den Haag, Nederland; tel.: (31-70) 330 57 57; fax: 364 17 01; telex: 30960 EURON NL
3. **Beneficiary's representative:** to be designated by the beneficiary
4. **Country of destination:** Haiti
5. **Product to be mobilised:** milled rice (product code 1006 30 96 9900, 1006 30 98 9900)
6. **Total quantity (tonnes net):** 1 268
7. **Number of lots:** 1
8. **Characteristics and quality of the product** (3) (5): see OJ C 312, 31.10.2000, p. 1 (A.7)
9. **Packaging** (7) (9): see OJ C 267, 13.9.1996, p. 1 (1.0 A 1.c, 2.c and B.6)
10. **Labelling or marking** (6): see OJ C 114, 29.4.1991, p. 1 (II.A(3))
 - Language to be used for the markings: French
 - Supplementary markings: —
11. **Method of mobilisation of the product:** the Community market
12. **Specified delivery stage** (10): free at port of shipment
13. **Alternative delivery stage:** —
14. a) **Port of shipment:** —
b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:**
 - port or warehouse of transit: —
 - overland transport route: —
17. **Period or deadline of supply at the specified stage:**
 - first deadline: 24.2-16.3.2003
 - second deadline: 10-30.3.2003
18. **Period or deadline of supply at the alternative stage:**
 - first deadline: —
 - second deadline: —
19. **Deadline for the submission of tenders (at 12 noon, Brussels time):**
 - first deadline: 4.2.2003
 - second deadline: 18.2.2003
20. **Amount of tendering guarantee:** EUR 5 per tonne
21. **Address for submission of tenders and tendering guarantees** (1): M. Vestergaard, European Commission, Office: L130 7/46, B-1049 Bruxelles; telex 25670 AGREC B; fax (32-2) 296 70 03/296 70 04
22. **Export refund** (4): refund applicable on 15.1.2003, fixed by Commission Regulation (EC) No 2307/2002 (OJ L 348, 21.12.2002, p. 100).

Notes:

- (1) Supplementary information: Torben Vestergaard (tel. (32-2) 299 30 50; fax (32-2) 296 20 05).
- (2) The supplier shall contact the beneficiary or its representative as soon as possible to establish which consignment documents are required.
- (3) The supplier shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.
- (4) Commission Regulation (EC) No 2298/2001 (OJ L 308, 27.11.2001, p. 16), is applicable as regards the export refund. The date referred to in Article 2 of the said Regulation is that indicated in point 22 of this Annex.
- (5) The supplier shall supply to the beneficiary or its representative, on delivery, the following document:
— phytosanitary certificate.
- (6) Notwithstanding OJ C 114 of 29 April 1991, point II.A(3)(c) or II.B(3)(c) is replaced by the following: 'the words "European Community"'.
(7) Since the goods may be rebagged, the supplier must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.
- (8) In addition to the provisions of Article 14(3) of the Regulation (EC) No 2519/97, vessels chartered shall not appear on any of the four most recent quaterly lists of detained vessels as published by the Paris Memorandum of Understanding on Port State Control (Council Directive 95/21/EC (OJ L 157, 7.7.1995, p. 1)).
- (9) Shipment to take place in 20-foot containers, condition FCL/FCL.
The supplier shall be responsible for the cost of making the container available in the stack position at the container terminal at the port of shipment. The beneficiary shall be responsible for all subsequent loading costs, including the cost of moving the containers from the container terminal.
The supplier has to submit to the beneficiary's agent a complete packing list of each container, specifying the number of bags belonging to each action number as specified in the invitation to tender.
The supplier has to seal each container with a numbered locktainer (Oneseal, Sysko Locktainer 180 or a similar high-security seal) the number of which is to be provided to the beneficiary's representative.
- (10) The tenderer's attention is drawn to the second subparagraph of Article 7(6) of Regulation (EC) No 2519/97.

Before the Commission can award the supply contract, it needs various items of information about the tenderer concerned (in particular the bank account to be credited). These details are contained in a form available on the Internet at the following website:

http://europa.eu.int/comm/budget/execution/ftiers_fr.htm.

If these details are missing, the tenderer designated as the supplier may not invoke the time limit for notification referred to in Article 9(4) of Regulation (EC) No 2519/97.

You should therefore include the above form with your bid after filling in the required details.

**COMMISSION REGULATION (EC) No 98/2003
of 20 January 2003**

establishing the supply balances and Community aid for the supply of certain essential products for human consumption, for processing and as agricultural inputs and for the supply of live animals and eggs to the outermost regions under Council Regulations (EC) No 1452/2001, (EC) No 1453/2001 and (EC) No 1454/2001

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1452/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the French overseas departments, amending Directive 72/462/EEC and repealing Regulations (EEC) No 525/77 and (EEC) No 3763/91 (Poseidom) ⁽¹⁾, and in particular Article 3(6), Article 6(5) and Article 7(2) thereof,

Having regard to Council Regulation (EC) No 1453/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the Azores and Madeira and repealing Regulation (EEC) No 1600/92 (Poseima) ⁽²⁾, and in particular Article 3(6) and Article 4(5) thereof,

Having regard to Council Regulation (EC) No 1454/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the Canary Islands and repealing Regulation (EEC) No 1601/92 (Poseican) ⁽³⁾, as last amended by Commission Regulation (EC) No 1922/2002 ⁽⁴⁾, and in particular Article 3(6) and Article 4(5) thereof,

Whereas:

- (1) Detailed rules for implementing Regulations (EC) No 1452/2001, (EC) No 1453/2001 and (EC) No 1454/2001 as regards the specific arrangements for the supply to the French overseas departments, Madeira, the Azores and the Canary Islands (hereinafter called the outermost regions) of certain agricultural products have been laid down in Commission Regulation (EC) No 20/2002 ⁽⁵⁾, as last amended by Regulation (EC) No 1215/2002 ⁽⁶⁾.
- (2) For the purposes of applying Article 2 of Regulations (EC) No 1452/2001, (EC) No 1453/2001 and (EC) No 1454/2001, supply balances must be drawn up for the products covered by specific supply arrangements and the quantities of products covered by the specific supply arrangements must be laid down, together with the aid for supplies from the Community.
- (3) In accordance with Regulations (EC) No 1452/2001, (EC) No 1453/2001 and (EC) No 1454/2001, and under Article 6 of Regulation (EC) No 20/2002, such aid shall be fixed to take account of the additional cost of trans-

port to the outermost regions and the prices applied to exports to third countries and, in the case of agricultural inputs and products intended for processing, the additional costs of living on an island or in some other remote location.

- (4) It is therefore necessary to fix flat-rate amounts of aid for each product, differentiated according to destination. Moreover, to take account, in particular, of trade flows with the rest of the Community and of the economic aspect of the proposed aid, an amount of aid should be laid down with reference to the refunds granted for the export of similar products to third countries, to be applied when this amount is greater than the above flat-rate amounts.
- (5) In the processed fruit and vegetable sector in the Azores, Madeira and the Canary Islands, fixing this aid on the basis of the additional cost of transport, remoteness and the fact that these places are islands would significantly reduce the amounts which have been granted until now. In order not to disrupt the sectors concerned and so as to ensure the harmonious development of production, the reduction should be staggered over two years, even though this might mean continuing to study trade flows, and taking account of the economic aspect of the planned aid.
- (6) Pending a more detailed examination of the development of the livestock sectors in the outermost regions, and of the conditions for supplying breeding animals, the number of eligible animals and eggs should be renewed on a temporary basis and, where applicable, the aid for these supplies, taking into account the criteria referred to in Articles 6 and 7 of Regulation (EC) No 1452/2001, Article 4 of Regulation (EC) No 1453/2001 and Article 4 of Regulation (EC) No 1454/2001.
- (7) To take account of the special features of the various products in each sector, detailed arrangements for granting aid and establishing quantities for the supply of Community products to the outermost regions, as provided for in Article 3 of Regulations (EC) No 1452/2001, (EC) No 1453/2001 and (EC) No 1454/2001 respectively, should be laid down as required.

⁽¹⁾ OJ L 198, 21.7.2001, p. 11.

⁽²⁾ OJ L 198, 21.7.2001, p. 26.

⁽³⁾ OJ L 198, 21.7.2001, p. 45.

⁽⁴⁾ OJ L 293, 29.10.2002, p. 11.

⁽⁵⁾ OJ L 8, 11.1.2002, p. 1.

⁽⁶⁾ OJ L 177, 6.7.2002, p. 3.

- (8) Commission Regulation (EC) No 21/2002 of 28 December 2001 establishing the supply balances and Community aid for the outermost regions under Council Regulations (EC) No 1452/2001, (EC) No 1453/2001 and (EC) No 1454/2001 ⁽¹⁾, as last amended by Regulation (EC) No 2225/2002 ⁽²⁾, has been amended several times. For the purposes of clarity, that Regulation should be repealed and the provisions thereof should be integrated into this Regulation.
- (9) To ensure that operations are carried out in an ordered fashion in 2003, this Regulation should apply from 1 January 2003. However, operators who have applied for certificates on the basis of the amounts applicable under Regulation (EC) No 21/2002 should be allowed to receive them. In order to ensure the necessary monitoring and identify any undesirable developments which might require corrections from 2004, this Regulation should apply until the end of 2003.
- (10) The joint meeting of the Management Committees for cereals, pigmeat, poultrymeat and eggs, milk and milk products, beef and veal, sheepmeat and goatmeat, oils and fats, sugar, processed fruit and vegetables, hops, seeds and dried fodder has not delivered an opinion within the time limit set by its Chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. The quantities of the forecast supply balance under the specific supply arrangements for products which benefit from exemption from duties on imports of products from third countries or which benefit from Community aid, and the amounts of aid granted for the supply of Community products, shall be as set out, for each product, in:

- (a) Annex I for the French overseas departments;
- (b) Annex III for Madeira and the Azores;

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

Done at Brussels, 20 January 2003.

(c) Annex V for the Canary Islands.

2. For each product:

- the amounts in column I shall apply to the supply of Community products other than agricultural inputs and products intended for processing,
- the amounts in column II shall apply to the supply of Community agricultural inputs and Community products intended for processing in the outermost regions,
- the amounts obtained by means of the references in column III, where present, shall apply to any object of supply in Community products, where these amounts are higher than those in columns I and II.

Article 2

The number of animals and of eggs intended to support livestock farming in the outermost regions and, where applicable, the aid for these supplies shall be as set out in:

- (a) Annex II for the French overseas departments;
- (b) Annex IV for Madeira and the Azores;
- (c) Annex VI for the Canary Islands.

Article 3

Regulation (EC) No 21/2002 is hereby repealed.

Article 4

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

It shall apply from 1 January to 31 December 2003. However, where the amounts laid down in Regulation (EC) No 21/2002 are higher than those laid down in this Regulation for the products concerned, the former shall apply to applications for aid granted under certificates applied for between the date of entry into force and the date of application of this Regulation.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 8, 11.1.2002, p. 15.

⁽²⁾ OJ L 338, 14.12.2002, p. 15.

ANNEX I

Part 1

Cereals and cereal products intended for human consumption and animal feed; oilseeds, protein crops, dried fodder

Forecast supply balance and Community aid for the supply of Community products per calendar year

Description	CN code	Department	Quantity (tonnes)	Aid (EUR/tonne)		
				I	II	III
Common wheat, barley, maize and malt	1001 90, 1003 00, 1005 90 and 1107 10	Guadeloupe	51 200	—	42	(¹)
Common wheat, barley, maize, products intended as animal feed and malt	1001 90, 1003 00, 1005 90, 2309 90 31, 2309 90 41, 2309 90 51, 2309 90 33, 2309 90 43, 2309 90 53 and 1107 10	Guyana	4 303	—	52	(¹)
Common wheat, barley, maize, groats and meal of durum wheat, and oats and malt	1001 90, 1003 00, 1005 90, 1103 11, 1004 00 and 1107 10	Martinique	40 250	—	42	(¹)
Common wheat, barley, maize and malt	1001 90, 1003 00, 1005 90 and 1107 10	Réunion	166 000	—	48	(¹)

(¹) The amount shall be equal to the refund for products falling within the same CN code granted under Article 7 of Regulation (EC) No 1501/95.

Part 2

Vegetable oil

Forecast supply balance and Community aid for the supply of Community products per calendar year

Description	CN code	Department	Quantity (tonnes)	Aid (EUR/tonne)		
				I	II	III
Vegetable oil (¹)	1507 to 1516 (²)	Martinique	300	—	71	(³)
		Réunion	11 000	—	91	(³)

(¹) For use in the processing industry.

(²) Except 1509 and 1510.

(³) The amount shall be equal to the refund for products falling within the same CN code granted under Article 3(3) of Regulation No 136/66/EEC.

Part 3

Products processed from fruit and vegetables

Forecast supply balance and Community aid for the supply of Community products per calendar year

Description	CN code	Department	Quantity (tonnes)	Aid (EUR/tonne)		
				I	II	III
Fruit purée obtained by cooking whether or not containing added sugar or other sweetening matter, for processing	ex 2007 91 ex 2007 99	All	0	—	395	—
— citrus fruit						
— other not including tropical fruit						

Description	CN code	Department	Quantity (tonnes)	Aid (EUR/tonne)		
				I	II	III
Fruit pulp otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included, for processing		Guyana Guadeloupe Martinique Réunion	300	— — — —	586 408 408 456	— — — —
— citrus fruit	ex 2008 30					
— pears	ex 2008 40					
— apricots	ex 2008 50					
— cherries	ex 2008 60					
— peaches	ex 2008 70					
— strawberries	ex 2008 80					
— mixtures, not including tropical fruit	ex 2008 92					
— other not including tropical fruit	ex 2008 99					
Concentrated fruit juice (including grape must), unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter, for processing		Guyana Martinique Réunion Guadeloupe	170	— — — —	727 311 311 311	— — — —
— orange juice	ex 2009 11 11, ex 2009 11 19, ex 2009 19 11, ex 2009 19 19					(¹)
— grapefruit juice	ex 2009 20 11, ex 2009 20 19					
— grape juice	ex 2009 60 11, ex 2009 60 19, ex 2009 60 51, ex 2009 60 71					
— apple juice	ex 2009 70 11, ex 2009 70 19					
— pear juice	ex 2009 80 11, ex 2009 80 19					
— other fruit juice not including tropical fruit juice	ex 2009 80 35, ex 2009 80 38					
— mixtures of apple and pear juice	ex 2009 90 11, ex 2009 90 19					
— other mixtures not including tropical fruit juice	ex 2009 90 21, ex 2009 90 29		—	—	—	—

(¹) The amount shall be equal to the refund for products falling within the same CN code granted under Article 16 of Regulation (EC) No 2201/96.

Part 4

Seeds

Forecast supply balance and Community aid for the supply of Community products per calendar year

Description	CN code	Department	Quantity (tonnes)	Aid (EUR/tonne)		
				I	II	III
Seed potatoes	0701 10 00	Réunion	200		94	

ANNEX II

Part 1

Cattle farming

Number of animals and aid for supplying animals from the Community per calendar year

Description	CN code	Department	Quantity	Aid (EUR/animal)
Breeding horses	0101 11 00	Total	1	930
Live bovine animals:				
— cattle for breeding ⁽¹⁾	0102 10	Total	400	930
— cattle for fattening ⁽²⁾ ⁽³⁾	0102 90	Total	100	—

⁽¹⁾ Entry under this subheading is subject to conditions laid down in the relevant Community provisions.

⁽²⁾ Only those originating in third countries.

⁽³⁾ Eligibility for exemption from import duties shall be subject to:

- a written declaration by the importer at the time the bovine animals arrive in the overseas departments that they are intended for fattening there for a period of 60 days from the actual date of their arrival and will be consumed there afterwards;
- a written undertaking by the importer, made at the time the bovine animals arrive, to inform the competent authorities within one month of the date of their arrival of the holding or holdings where the animals are to be fattened;
- proof to be furnished by the importer that, except in cases of *force majeure*, each animal has been fattened on the holding or holdings indicated in accordance with the second indent, that it has not been slaughtered before the end of the period provided for in the first indent, or that it has been slaughtered for health reasons or died as a result of illness or accident.

Part 2

Poultry, rabbits

Number of animals and aid for supplying animals from the Community per calendar year

Description	CN code	Department	Quantity (number of animals or units)	Aid (EUR/animal or unit)
Chicks for multiplication and reproduction ⁽¹⁾	ex 0105 11	Réunion	85 000	0,30
Eggs for hatching intended for the production of chicks for multiplication or reproduction ⁽²⁾	ex 0407 00 19	Total	0	0,24
Breeding rabbits				
— Breeding rabbits	ex 0106 00 10	Total	670	50

⁽¹⁾ In accordance with the definition in Article 1 of Council Regulation (EEC) No 2782/75 (OJ L 282, 1.11.1975, p. 100).

⁽²⁾ Entry under this split subheading is subject to conditions laid down in the relevant Community provisions.

Part 3*Pig farming*

Number of animals and aid for supplying animals from the Community per calendar year

Description	CN code	Department	Quantity	Aid (EUR/animal)
Breeding pigs				
— female animals	0103 10 00, ex 0103 91 10, ex 0103 92 19	Total	75	380
— male animals	0103 10 00, ex 0103 91 10, ex 0103 92 19	Total	15	440

Part 4*Sheep and goat farming*

Number of animals and aid for supplying animals from the Community per calendar year

Description	CN code	Department	Quantity (number of animals)	Aid (EUR/animal)
Pure-bred breeding sheep and goats	ex 0104 10 et ex 0104 20	Total	135	205

ANNEX III

Part 1

Cereals and cereal products intended for human consumption and animal feed; oilseeds, protein crops, dried fodder

Forecast supply balance and Community aid for the supply of Community products for the marketing period from 1 January to 31 December

MADEIRA

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III
Common wheat of breadmaking quality, durum wheat, barley, maize, maize meal, rye and malt	1001 90 99, 1001 10 00, 1003 00 90, 1005 90 00, 1103 13, 1002, 1107 10	61 300		34	(¹)
Soya cake	2304	8 000		34	
Dried alfalfa	1214	3 600		34	

(¹) The amount shall be equal to the refund for products falling within the same CN code granted under Article 7 of Regulation (EC) No 1501/95.

AZORES

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III
Common wheat of breadmaking quality, durum wheat, barley, maize, rye and malt	1001 90 99, 1001 10 00, 1003 00 90, 1005 90 00, 1002, 1107 10	148 300		37	(¹)
Soya beans	1201 00 90	17 000		37	
Sunflower seed	1206 00 99	3 400		37	

(¹) The amount shall be equal to the refund for products falling within the same CN code granted under Article 7 of Regulation (EC) No 1501/95.

Part 2

Rice

Forecast supply balance and Community aid for the supply of Community products per calendar year

MADEIRA

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III
Milled rice	1006 30	4 000	—	76	(¹)

(¹) The amount shall be equal to the refund applicable to products in the rice sector supplied under Community and national food aid measures.

AZORES

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III
Milled rice	1006 30	2 000	60	79	(¹)

(¹) The amount shall be equal to the refund applicable to products in the rice sector supplied under Community and national food aid measures.

Part 3*Vegetable oil*

Forecast supply balance and Community aid for the supply of Community products per calendar year

MADEIRA

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III
Vegetable oils (except olive oil): — vegetable oil	1507 to 1516 ⁽¹⁾	1 900	52	70	⁽²⁾
Olive oil: — virgin olive oil or — olive oil	1509 10 90 1509 90 00	200 —	52	—	⁽²⁾

⁽¹⁾ Except 1509 and 1510.

⁽²⁾ The amount shall be equal to the refund for products falling within the same CN code granted under Article 3(3) of Regulation No 136/66/EEC.

AZORES

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III
Olive oil: — virgin olive oil or — olive oil	1509 10 90 or 1509 90 00	400	68	87	⁽¹⁾

⁽¹⁾ The amount shall be equal to the refund for products falling within the same CN code granted under Article 3(3) of Regulation No 136/66/EEC.

Part 4*Products processed from fruit and vegetables*

Forecast supply balance and Community aid for the supply of Community products per calendar year

MADEIRA

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III
Jams, fruit jellies, marmalades, fruit purée and fruit pastes, obtained by cooking, whether or not containing added sugar or other sweetening matter: — preparations other than homogenised, containing fruit other than citrus fruit	2007 99	100	227	245	—

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III
Fruit and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:		400	193	211	—
— pineapples	2008 20				
— pears	2008 40				
— cherries	2008 60				
— peaches	2008 70				
— other, including mixtures, other than those of CN code 2008 19					
— mixtures	2008 92				
— other than palm hearts and mixtures	2008 99				
Concentrated fruit juice (including grape must), unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter					
— juice for processing	ex 2009	100		294	—

AZORES

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III
Concentrated fruit juice (including grape must), unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter					
— juice for processing	ex 2009	100		295	

Part 5

Sugar

Forecast supply balance and Community aid for the supply of Community products per calendar year

MADEIRA

Description	CN code	Quantity (tonnes of white sugar)	Aid (EUR/100 kg)		
			I	II	III
Sugar	1701 and 1702 (except glucose and isoglucose)	6 200	7,4	9,2	(¹)

(¹) For white sugar the amount shall be equal to the maximum export refund fixed for white sugar under the standing invitations to tender for the export of white sugar. Where two standing invitations to tender are issued simultaneously, the maximum to take into consideration is that most recently fixed for the standing invitation to tender for export in the forthcoming marketing year. The amount for raw sugar shall be equal to 92 % of that applicable to white sugar. If the raw sugar dispatched produces a yield different from 92 %, the amount shall be adjusted by applying Annex I to Council Regulation (EC) No 1260/2001 (OJ L 178, 30.6.2001, p. 1).

For sucrose syrups the amount shall be equal to one hundredth of the amount applicable to white sugar for each percentage point of sucrose content per 100 kilograms net of syrup. Article 7(3) of Regulation (EC) No 1260/2001 shall not apply.

AZORES

Description	CN code	Quantity (tonnes of white sugar)	Aid (EUR/100 kg)		
			I	II	III
Raw beet sugar	1701 12 10	6 500		6,4	(¹)

(¹) 92 % of the maximum export refund fixed for white sugar under the standing invitations to tender for the export of white sugar. Where two standing invitations to tender are issued simultaneously, the maximum to take into consideration is that most recently fixed for the standing invitation to tender for export in the forthcoming marketing year. If the raw sugar dispatched produces a yield different from 92 %, the amount shall be adjusted by applying Annex I to Regulation (EC) No 1260/2001 (OJ L 178, 30.6.2007, p. 1). Article 7(3) of Regulation (EC) No 1260/2001 shall not apply.

Part 6

Milk and milk products

Forecast supply balance and Community aid for the supply of Community products per calendar year

MADEIRA

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III (¹)
Milk and cream, not concentrated nor containing added sugar or other sweetening matter (²)	0401	12 000	48	66	(³)
Skimmed-milk powder (²)	ex 0402	500	48	66	(³)
Whole-milk powder (²)	ex 0402	450	48	66	(³)
Butter and other fats and oils derived from milk; dairy spreads (²)	0405 00	1 000	84	102	(³)
Cheese (²)	0406	1 500	84	102	(³)

(¹) In EUR/100 kg net weight, unless otherwise specified.

(²) The products concerned and the related footnotes are the same as those covered by the Commission Regulation fixing the export refunds under Article 31 of Regulation (EC) No 1255/1999.

(³) The amount shall be equal to the amount of the refund for products falling within the same CN code granted under Article 31 of Regulation (EC) No 1255/1999.

Where the refunds granted under Article 31 of Regulation (EC) No 1255/1999 have differentiated amounts, the amount shall be equal to the highest amount of the refund for products falling within the same CN code (Regulation (EEC) No 3846/87).

Part 7

Beef and veal sector

Forecast supply balance and Community aid for the supply of Community products per calendar year

MADEIRA

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III
Meat: — meat of bovines, fresh or chilled	0201 0201 10 00 9110 (¹) 0201 10 00 9120 0201 10 00 9130 (¹) 0201 10 00 9140 0201 20 20 9110 (¹) 0201 20 20 9120 0201 20 30 9110 (¹) 0201 20 30 9120 0201 20 50 9110 (¹) 0201 20 50 9120 0201 20 50 9130 (¹) 0201 20 50 9140 0201 20 90 9700	4 000	144	162	(*)

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III
	0201 30 00 9100 ⁽²⁾ ⁽⁶⁾ 0201 30 00 9120 ⁽²⁾ ⁽⁶⁾ 0201 30 00 9060 ⁽⁶⁾		120	138	(*)
— meat of bovines, frozen	0202 0202 10 00 9100 0202 10 00 9900 0202 20 10 9000 0202 20 30 9000 0202 20 50 9100 0202 20 50 9900 0201 20 90 9100	1 800	130	148	(*)
	0202 30 90 9200 ⁽⁶⁾		108	126	(*)

NB: The product codes and footnotes are defined in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1), as amended.

(*) The amount shall be equal to the refund for products falling within the same CN code granted under Article 33 of Regulation (EC) No 1254/1999.

Part 8

Pigmeat sector

Forecast supply balance and Community aid for the supply of Community products per calendar year

MADEIRA

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III
Meat of domestic swine, fresh, chilled or frozen:	ex 0203	2 200			
— carcasses and half-carcasses	0203 11 10 9000		85	103	(¹)
— hams and cuts thereof	0203 12 11 9100		128	146	(¹)
— shoulders and cuts thereof	0203 12 19 9100		85	103	(¹)
— fore-ends and cuts thereof	0203 19 11 9100		85	103	(¹)
— loins and cuts thereof	0203 19 13 9100		128	146	(¹)
— bellies (streaky) and cuts thereof	0203 19 15 9100		85	103	(¹)
— other: boned	0203 19 55 9110		157	175	(¹)
— other: boned	0203 19 55 9310		157	175	(¹)
— carcasses and half-carcasses	0203 21 10 9000		85	103	(¹)
— hams and cuts thereof	0203 22 11 9100		128	146	(¹)
— shoulders and cuts thereof	0203 22 19 9100		85	103	(¹)
— fore-ends and cuts thereof	0203 29 11 9100		85	103	(¹)
— loins and cuts thereof	0203 29 13 9100		128	146	(¹)
— bellies (streaky) and cuts thereof	0203 29 15 9100		85	103	(¹)
— other: boned	0203 29 55 9110		157	175	(¹)

NB: The product codes and footnotes are defined in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1).

(¹) The amount shall be equal to the refund for products falling within the same CN code, where applicable, granted under Article 13 of Regulation (EEC) No 2759/75 (OJ L 282, 1.11.1975, p.1).

Part 9*Seeds*

Forecast supply balance and Community aid for the supply of Community products per calendar year

MADEIRA

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III
Seed potatoes	0701 10 00	2 000	—	95	

AZORES

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III
Maize seed	1005 10	150	—	85	

ANNEX IV

Part 1

Cattle farming

Number of animals and aid for supplying animals from the Community per calendar year

MADEIRA

Description	CN code	Quantity	Aid (EUR/animal)
Live bovine animals:			
— breeding cattle	0102 10 10 to 0102 10 90	160	564
— cattle for fattening ⁽¹⁾	0102 90	1 000	200

⁽¹⁾ Eligibility for exemption from import duties shall be subject to:

- a written declaration by the importer or applicant at the time the bovine animals arrive in Madeira that they are intended for fattening there for a period of 60 days from the actual date of their arrival and will be consumed there afterwards;
- an undertaking by the importer or applicant, made at the time the bovine animals arrive, to inform the competent authorities within one month of the date of their arrival of the holding or holdings where the animals are to be fattened;
- proof to be furnished by the importer or applicant that, except in cases of *force majeure*, each animal has been fattened on the holding or holdings indicated in accordance with the second indent, that it has not been slaughtered before the end of the period provided for in the first indent, or that it has been slaughtered for health reasons or died as a result of illness or accident.

Part 2

Poultry

Number of animals and aid for supplying animals from the Community per calendar year

MADEIRA

Description	CN code	Quantity (number of animal or units)	Aid (EUR/animal or unit)
Breeding stock:			
— Chicks for multiplication and reproduction ⁽¹⁾	ex 1005 11	0	0,050
— Eggs for hatching intended for the production of chicks for multiplication or reproduction ⁽¹⁾	ex 0407 00 19	0	0,036

⁽¹⁾ In accordance with the definition in Article 1 of Council Regulation (EEC) No 2782/75 (OJ L 282, 1.11.1975, p. 100).

AZORES

Description	CN code	Quantity (number of animals or units)	Aid (EUR/animal or unit)
Breeding stock:			
— chicks ⁽¹⁾	ex 0105 11	20 000	0,130
— eggs for hatching ⁽¹⁾	ex 0407 00 19	1 000 000	0,036

⁽¹⁾ In accordance with the definition in Article 1 of Council Regulation (EEC) No 2782/75 (OJ L 282, 1.11.1975, p. 100).

Part 3*Pig farming***MADEIRA**

Description	CN code	Quantity	Aid (EUR/animal)
Pure-bred breeding swine ⁽¹⁾	0103 10 00		
— male animals		10	483
— female animals		60	423

⁽¹⁾ Entry under this split subheading is subject to conditions laid down in the relevant Community provisions.

AZORES

Description	CN code	Quantity	Aid (EUR/animal)
Pure-bred breeding swine ⁽¹⁾			
— male animals	0103 10 00	35	483
— Female animals	0103 10 00	400	423

⁽¹⁾ Entry under this split subheading is subject to conditions laid down in the relevant Community provisions.

Part 4*Sheep and goat farming*

Number of animals and aid for supplying animals from the Community per calendar year

MADEIRA

Description	CN code	Outermost region	Quantity (number of animals)	Aid (EUR/animal)
breeding sheep and goats:				
— male animals ⁽¹⁾	0104 10 10 0104 20 10	and	5	380
— female animals ⁽¹⁾	0404 10 10 0104 20 10	and	45	110

⁽¹⁾ The animals in this group are 100 % interchangeable.

AZORES

Description	CN code	Outermost region	Quantity (number of animals)	Aid (EUR/animal)
breeding sheep and goats:				
— male animals ⁽¹⁾	0104 10 10 0104 20 10	and	40	380
— female animals ⁽¹⁾	0404 10 10 0104 20 10	and	259	110

⁽¹⁾ The animals in this group are 100 % interchangeable.

ANNEX V

CANARY ISLANDS

Part 1

Cereals and cereal products intended for human consumption and animal feed; oilseeds, protein crops, dried fodder

Forecast supply balance and Community aid for the supply of Community products for the marketing period from 1 January to 31 December

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III
Common wheat, barley, oats, maize, meal of durum wheat, maize meal, malt and glucose ⁽¹⁾	1001 90 99, 1003 00 90, 1004 00 00, 1005 90 00, 1103 11 10, 1103 13, 1107, 1702 30, 1702 40	351 800	—	35	(²)
Lucerne (alfalfa) meal and pellets, oil-cake and other solid residues resulting from the extraction of soya, soya-bean oil, and other forms of lucerne	1214 10 00, 2304 00 and ex 1214 90 99	80 000	—	35	—

⁽¹⁾ Except products falling within CN codes 1702 30 10 and 1702 40 10.

⁽²⁾ The amount shall be equal to the amount of the refund for products falling within the same CN code granted under Article 7 of Regulation (EC) No 1501/95.

Part 2

Rice

Forecast supply balance and Community aid for the supply of Community products per calendar year

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III
Milled rice	1006 30	13 700	34	52	(¹)
Broken rice	1006 40	1 600	34	52	(¹)

⁽¹⁾ The amount shall be equal to the refund applicable to products in the rice sector supplied under Community and national food aid measures.

Part 3

Vegetable oil

Forecast supply balance and Community aid for the supply of Community products per calendar year

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III
Vegetable oils (except olive oil):					
— vegetable oils (processing and/or packaging sector)	1507 to 1516 ⁽¹⁾	20 000	—	25	(²)
— vegetable oils (direct consumption)	1507 to 1516 ⁽¹⁾	9 000	6	—	(²)
Olive oil:					
— virgin olive oil	1509 10 90	14 500	45	63	(2)
— olive oil	1509 90 00				
— olive-residue oil	1510 00 90				

⁽¹⁾ Except 1509 and 1510.

⁽²⁾ The amount shall be equal to the refund for products falling within the same CN code granted under Article 3(3) of Regulation No 136/66/EEC.

Part 4

Products processed from fruit and vegetables

Forecast supply balance and Community aid for the supply of Community products per calendar year

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III
Jam, fruit jellies, marmalades, fruit purée and fruit pastes, obtained by cooking, whether or not containing added sugar or other sweetening matter:					
— preparations other than homogenised, containing fruit other than citrus fruit	2007 99	4 250 ⁽¹⁾	257	275	—
Fruit and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:					
— pineapples	2008 20	16 850 ⁽²⁾	133	151	
— citrus fruit	2008 30				
— pears	2008 40				
— apricots	2008 50				
— peaches	2008 70				
— strawberries	2008 80				
— other, including mixtures, other than those of subheading 2008 19					
— mixtures	2008 92				
— other	2008 99				

⁽¹⁾ Including 750 tonnes for the products intended for processing and/or packaging.

⁽²⁾ Including 2 600 tonnes for the products intended for processing and/or packaging.

Part 5

Sugar

Forecast supply balance and Community aid for the supply of Community products per calendar year

Description	CN code	Quantity (tonnes of white sugar)	Aid (EUR/100 kg)		
			I	II	III
Sugar	1701 and 1702 (except glucose and isoglucose)	61 000	0	1,8	⁽¹⁾

⁽¹⁾ For white sugar the amount shall be equal to the maximum export refund fixed for white sugar under the standing invitations to tender for the export of white sugar. Where two standing invitations to tender are issued simultaneously, the maximum to take into consideration is that most recently fixed for the standing invitation to tender for export in the forthcoming marketing year.

The amount for raw sugar shall be equal to 92 % of that applicable to white sugar. If the raw sugar dispatched produces a yield different from 92 %, the amount shall be adjusted by applying Annex I to Regulation (EC) No 1260/2001.

For sucrose syrups and sugar falling within CN codes 1701 91 00 and 1701 99 90, the amount shall be equal to one hundredth of the amount applicable to white sugar for each percentage point of sucrose content per 100 kilograms net of the product concerned. Article 7(3) of Regulation (EC) No 1260/2001 shall not apply.

Part 6*Hops*

Forecast supply balance and Community aid for the supply of Community products per calendar year

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III
Hops	1210	40	—	64	

Part 7*Seed potatoes*

Forecast supply balance and Community aid for the supply of Community products per calendar year

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III
Seed potatoes	0701 10 00	9 000	—	73	

Part 8*Beef and veal sector*

Forecast supply balance and Community aid for the supply of Community products per calendar year

Description	CN code	Quantity	Aid (EUR/tonne)		
			I	II	III
Meat: — meat of bovines, fresh or chilled	0201	20 000	133	151	(*)
	0201 10 00 9110 ⁽¹⁾				
	0201 10 00 9120				
	0201 10 00 9130 ⁽¹⁾				
	0201 10 00 9140				
	0201 20 20 9110 ⁽¹⁾				
	0201 20 20 9120				
	0201 20 30 9110 ⁽¹⁾				
	0201 20 30 9120				
	0201 20 50 9110 ⁽¹⁾				
	0201 20 50 9120				
	0201 20 50 9130 ⁽¹⁾				
	0201 20 50 9140				
	0201 20 90 9700				
	0201 30 00 9120 ⁽²⁾ ⁽⁶⁾				
	0201 30 00 9060 ⁽⁶⁾				

Description	CN code	Quantity	Aid (EUR/tonne)		
			I	II	III
— meat of bovines, frozen	0202	16 500	104	122	(*)
	0202 10 00 9100				
	0202 10 00 9900				
	0202 20 10 9000				
	0202 20 30 9000				
	0202 20 50 9100				
	0202 20 50 9900				
0202 20 90 9100					
	0202 30 90 9200 (*)		87	105	(*)

NB: The product codes and footnotes are defined in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1), as amended.
 (*) The amount shall be equal to the refund for products falling within the same CN code granted under Article 33 of Regulation (EC) No 1254/1999.

Part 9

Pigmeat sector

Forecast supply balance and Community aid for the supply of Community products per calendar year

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III
Meat of domestic swine, fresh, chilled or frozen:	ex 0203	17 000 (1)			
— carcasses and half-carcasses	0203 21 10 9000		80	98	(2)
— hams and cuts thereof	0203 22 11 9100		120	138	(2)
— shoulders and cuts thereof	0203 22 19 9100		80	98	(2)
— fore-ends and cuts thereof	0203 29 11 9100		80	98	(2)
— loins and cuts thereof	0203 29 13 9100		120	138	(2)
— bellies (streaky) and cuts thereof	0203 29 15 9100		80	98	(2)
— other: boned	0203 29 55 9110		148	166	(2)

NB: The product codes and footnotes are defined in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1).

(1) Including 4 800 tonnes for the processing and/or packaging sector.

(2) The amount shall be equal to the refund for products falling within the same CN code granted under Article 13 of Regulation (EEC) No 2759/75 (OJ L 282, 1.11.1975, p. 1).

Part 10

Poultrymeat and eggs sector

Forecast supply balance and Community aid for the supply of Community products per calendar year

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III
Meat:					
— ex 0207; frozen meat and offal of fowl under CN code 0105, excluding products coming under subheading 0207 23	0207 12 10 9900 0207 12 90 9190 0207 12 90 9990 0207 14 20 9900 0207 14 60 9900 0207 14 70 9190 0207 14 70 9290	37 200 (1)	85	103	(2)

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III
Eggs: — ex 0408; birds' eggs, not in shell, and egg yolks, dried, whether or not containing added sugar or other sweetening matter, fit for human consumption	0408 11 80 9100 0408 91 80 9100	40	46	64	(³)

(¹) Including 200 tonnes for the processing and/or packaging sector.

(²) The amount shall be equal to the amount of the refund granted for products falling within the same CN code under Article 8 of Regulation (EEC) No 2777/75. Where the refunds granted under Article 8 of Regulation (EC) No 2777/75 have differentiated amounts, the amount shall be equal to the highest amount of the refund for products falling within the same CN code (Regulation (EC) No 3846/87 establishing an agricultural product nomenclature for export refunds, OJ L 366, 24.12.1987, p. 1).

(³) The amount shall be equal to the amount of the refund granted for products falling within the same CN code under Article 8 of Regulation (EEC) No 2771/75. Where the refunds granted under Article 8 of Regulation (EEC) No 2771/75 are differentiated, the amount shall be equal to the highest amount of the refund for products falling within the same CN code for export refunds (Regulation (EC) No 3846/87).

Part 11

Milk and milk products

Forecast supply balance and Community aid for the supply of Community products per calendar year

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III (¹)
Milk and cream, not concentrated nor containing added sugar or other sweetening matter (²)	0401	114 800 (³)	41	59	(⁴)
Milk and cream, concentrated or containing added sugar or other sweetening matter (²)	0402	29 000 (⁵)	41	59	(⁴)
Milk and cream, concentrated or containing added sugar or other sweetening matter of a non-fat milk solid content of 15 % or more by weight and a fat content by weight exceeding 3 % (⁶)	0402 91 19 9310		—	97	—
Butter and other fats and oils derived from milk; dairy spreads (²)	0405	3 250	72	90	(⁴)
Cheese (²)	0406 0406 30 0406 90 23 0406 90 25 0406 90 27 0406 90 76 0406 90 78 0406 90 79 0406 90 81	15 000	72	—	(⁴)
	0406 90 86 0406 90 87 0406 90 88	1 900			

Description	CN code	Quantity (tonnes)	Aid (EUR/tonne)		
			I	II	III ⁽¹⁾
Fat-free milk preparations	1901 90 99	1 000	—	59	(7)
Milk preparations for children containing no milk fat, etc.	2106 90 92	180			

⁽¹⁾ In EUR/100 kg net weight, unless otherwise specified.

⁽²⁾ The products concerned and the related footnotes are the same as those covered by the Commission Regulation fixing the export refunds under Article 31 of Regulation (EC) No 1255/1999.

⁽³⁾ Including 1 300 tonnes for the processing and/or packaging sector.

⁽⁴⁾ The amount shall be equal to the amount of the refund for products falling within the same CN code granted under Article 31 of Regulation (EC) No 1255/1999.

Where the refunds granted under Article 31 of Regulation (EC) No 1255/1999 have differentiated amounts, the amount shall be equal to the highest amount of the refund for products falling within the same CN code (Regulation (EC) No 3846/87).

⁽⁵⁾ to be broken down as follows:

— 7 250 tonnes falling within CN codes 0402 91 and/or 0402 99 for direct consumption,

— 7 250 tonnes falling within CN codes 0402 91 and/or 0402 99 for the processing and/or packaging sector,

— 14 500 tonnes falling within CN codes 0402 10 and/or 0402 21 for the processing and/or packaging sector.

⁽⁶⁾ Where the milk protein content (nitrogen content $\times 6,38$) in the non-fatty milk solid of a product under this position is less than 34 %, no aid shall be granted. Where the water content by weight of the powdered products under this position is greater than 5 %, no aid shall be granted.

When completing customs formalities, the applicant shall state on the declaration provided for this purpose the minimum milk protein content in the non-fatty milk solid, and the maximum water content for powdered products.

⁽⁷⁾ The amount shall be equal to the refund set in the Commission Regulation fixing the refund rates applicable to certain milk products exported in the form of goods not covered by Annex I, granted under Regulation (EC) No 1520/2000.

ANNEX VI

Part 1*Cattle farming*

Number of animals and aid for supplying animals from the Community per calendar year

Description	CN code	Quantity	Aid (EUR/animal)
Live bovine animals: — pure-bred breeding cattle	0102 10 10 to 0102 10 90	3 200	648

Part 2*Pig farming*

Number of animals and aid for supplying animals from the Community per calendar year

Description	CN code	Quantity	Aid (EUR/animal)
Pure-bred breeding swine ⁽¹⁾ — male animals	0103 10 00	200	483
— female animals	0103 10 00	5 500	423

⁽¹⁾ Entry under this split subheading is subject to conditions laid down in the relevant Community provisions.

Part 3*Poultry and rabbits*

Number of animals and aid for supplying animals from the Community per calendar year

Description	CN code	Quantity (number of animals or units)	Aid (EUR/animal or unit)
Breeding stock: — chicks weighing not more than 185 g	ex 0105 11 91 ex 0105 11 99	935 000	0,12
Breeding rabbits: — pure-bred (grandparents)	ex 0106 19 10	2 200	30
— parents		5 200	24

COMMISSION REGULATION (EC) No 99/2003
of 20 January 2003
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 25,673/100 kg.

Article 2

This Regulation shall enter into force on 21 January 2003.

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

Done at Brussels, 20 January 2003.

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 100/2003
of 20 January 2003

fixing Community producer and import prices for carnations and roses with a view to the application of the arrangements governing imports of certain floricultural products originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4088/87 of 21 December 1987 fixing conditions for the application of preferential customs duties on imports of certain flowers originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip ⁽¹⁾, as last amended by Regulation (EC) No 1300/97 ⁽²⁾, and in particular Article 5(2)(a) thereof,

Whereas:

Pursuant to Article 2(2) and Article 3 of abovementioned Regulation (EEC) No 4088/87, Community import and producer prices are fixed each fortnight for uniflorous (bloom) carnations, multiflorous (spray) carnations, large-flowered roses and small-flowered roses and apply for two-weekly periods. Pursuant to Article 1b of Commission Regulation (EEC) No 700/88 of 17 March 1988 laying down detailed rules for the application of the arrangements for the import into the Community of certain floricultural products originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the

Gaza Strip ⁽³⁾, as last amended by Regulation (EC) No 2062/97 ⁽⁴⁾, those prices are determined for fortnightly periods on the basis of weighted prices provided by the Member States. Those prices should be fixed immediately so the customs duties applicable can be determined. To that end, provision should be made for this Regulation to enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

The Community producer and import prices for uniflorous (bloom) carnations, multiflorous (spray) carnations, large-flowered roses and small-flowered roses as referred to in Article 1b of Regulation (EEC) No 700/88 for a fortnightly period shall be as set out in the Annex.

Article 2

This Regulation shall enter into force on 21 January 2003.

It shall apply from 22 January to 4 February 2003.

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

Done at Brussels, 20 January 2003.

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

⁽¹⁾ OJ L 382, 31.12.1987, p. 22.
⁽²⁾ OJ L 177, 5.7.1997, p. 1.

⁽³⁾ OJ L 72, 18.3.1988, p. 16.
⁽⁴⁾ OJ L 289, 22.10.1997, p. 1.

ANNEX

to the Commission Regulation of 20 January 2003 fixing Community producer and import prices for carnations and roses with a view to the application of the arrangements governing imports of certain floricultural products originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip

(EUR/100 pieces)

Period: from 22 January to 4 February 2003

Community producer price	Uniflorous (bloom) carnations	Multiflorous (spray) carnations	Large-flowered roses	Small-flowered roses
	11,02	11,68	41,03	15,29
Community import prices	Uniflorous (bloom) carnations	Multiflorous (spray) carnations	Large-flowered roses	Small-flowered roses
Israel	7,19	7,43	13,07	12,21
Morocco	14,08	13,19	—	—
Cyprus	—	—	—	—
Jordan	—	—	—	—
West Bank and Gaza Strip	8,06	7,24	—	—

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 5 June 2002

on the measures to restructure and privatise Koninklijke Schelde Groep implemented by the Netherlands

(notified under document number C(2002) 2007)

(Only the Dutch version is authentic)

(Text with EEA relevance)

(2003/45/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽¹⁾ and having regard to their comments,

Whereas:

1. PROCEDURE

(1) In May and June 2000 the Commission received two letters from third parties on alleged aid to Koninklijke Schelde Groep BV (hereinafter KSG) in connection with the sale of the company to Damen Shipyards Group (hereinafter Damen). It requested information on this matter by letter dated 30 May 2000 (D/53220).

(2) By letter of 6 July 2000 (registered under A/35591 on 7 July) the Dutch authorities informed the Commission of the planned measures in favour of KSG. They stated that Article 296 of the EC Treaty applied to all these measures; however, if that proved not to be the case, the letter should be considered as notification pursuant to Article 88(3). The Minister for Economic Affairs provided further explanations on the 'conditional notification' in a meeting with Mr Monti on 4 September 2000. The Commission requested information by letters

dated 8 September 2000 (D/54316) and 1 March 2001 (D/50927). By letter dated 12 March 2001 (registered under A/32227 on 15 March), the Dutch authorities asked for time in which to reply to the letter of 1 March and this request was granted by letter dated 23 March 2001 (D/51254). They replied by letters dated 5 October 2000 (registered under A/38308 on 11 October) and 11 July 2001 (registered under A/35724 on 16 July).

(3) As early as 1998 the Dutch Minister for Economic Affairs informed Mr Van Miert of measures taken at that time (letter of 4 December 1998, registered on 8 December under C/06585). The Commission subsequently requested information by letters dated 7 January 1999 (D/50038) and 26 February 1999 (D/50890). The Dutch authorities replied by letters dated 2 February 1999 (registered under A/30915 on 4 February) and 23 March 1999 (registered under A/32377 on 25 March).

(4) By decision of 25 July 2001 the Commission initiated the Article 88(2) procedure in respect of these measures, informing the Netherlands by letter dated 30 July 2001 (D/290603). Two further requests from the Dutch authorities for time in which to reply (letters dated 31 August and 27 September 2001, registered under A/36875 on 31 August and A/37626 on 1 October respectively) were granted by letters dated 11 September 2001 (D/53695) and 5 October 2001 (D/54096). The Dutch authorities responded to the decision by letter dated 15 October 2001 (registered under A/38035 that same day).

⁽¹⁾ OJ C 254, 13.9.2001, p. 6.

- (5) The decision was published in the *Official Journal of the European Communities* ⁽²⁾. Interested third parties were invited to submit their comments on the aid. The Commission received four replies. The Dutch authorities were asked to react by letter dated 25 October 2001 (D/54431). The Commission raised further questions by letters dated 6 November 2001 (D/54572), 24 January 2002 (D/50281) and 4 March 2002 (D/50919). After requesting time in which to reply by letter dated 29 November 2001 (registered under A/39352 on 3 December), a request which was granted by letter dated 11 December 2001 (D/55144), the Dutch authorities gave their reactions to the interested parties' comments and answers to the aforementioned questions by letters dated 14 December 2001 (registered on the same day under A/39978), 7 February 2002 (registered on 13 February under A/31096) and 25 March 2002 (registered on 2 April under A/32413). Damen sent its own comments, answers and further information by letters dated 17 December 2001 (registered on the same day under A/39992) and 17 April 2002 (registered on the same day under A/32876). Meetings between representatives of the Commission, Damen and the Dutch authorities took place on 3 and 15 April 2002.
- (6) One of the questions raised by the Commission concerned the price paid by Damen for KSG. The Dutch authorities submitted a consultant's report on KSG's value at the time of privatisation. The Commission instructed an independent expert to prepare a second expert opinion on the methodology and financial details of this report. The expert started working in January 2002 and submitted the final report in March of that year.

2. DETAILED DESCRIPTION OF THE MEASURES

2.1. Koninklijke Schelde Groep

- (7) KSG was founded in 1875 as Koninklijke Maatschappij 'De Schelde' (hereinafter KMS). Its main shipbuilding location has always been Flushing in the province of Zeeland. Following several mergers in the 1960s and early 1970s, KMS became part of Rijn-Schelde-Verolme Scheepswerven en Machinefabrieken N.V. When this company went bankrupt in 1983, central government and the province of Zeeland acquired 90 % and 10 % respectively of KMS shares. In 1992 KMS was renamed KSG ⁽³⁾.
- (8) Ever since it was founded, KMS, and later KSG, has supplied vessels for the Dutch Navy, but it has also built commercial vessels. Over the last 40 years or so it has developed various other industrial activities. Some of the

subsidiaries involved in these activities formed an integral part of the KSG holding company, while others were only partly owned by KSG. The company's structure was frequently changed. An overview of the legal entities and the corresponding activities in 1999 is set out below.

Schelde Maritiem BV (marine division):

- Schelde Scheepsnieuwbouw: naval and commercial shipbuilding
- Scheldepoort: ship repairs
- Schelde Offshore: offshore activities

Schelde Industriële Productiebedrijven BV (industrial products division):

- Schelde Machinefabriek BV: machine working of intermediate and finished parts, assembly of machines and machine structures, trade in spare parts for marine engines (later Schelde Marine Services BV)
- Schelde Gears: gear transmissions for ships and industrial applications
- Schelde Technology Services BV: consultancy and technical services in the field of material and welding technology
- Schelde Exotech: specialist equipment and high-grade repair work for the processing industry and power stations (among others)
- Rederij 'De Schelde BV': management of vessels built by KSG
- Schelde Onroerend goed BV: ownership and management of real estate

KSG Deelnemingen BV (shareholdings):

- Fabricom Installation Technology (45 %): industrial construction
- Schelde Industrial Engineers & Contractors (100 %): boiler construction, energy-conversion systems, thermal waste-processing installations
- Schelde Heron (60 %): turbines for combined heat and power generation
- Polymerin BV (100 %): high-grade, fibre-reinforced composite structures for aerospace, shipbuilding, etc.; mouldings in thermoplastic and thermosetting resins
- KNM Steel Construction SDN BHD (36 %): combined heat and power installations, waste incinerators and industrial construction in South-East Asia
- (until 1998) Schelde Apparaten- en Ketelfabriek (AKF): machine engineering

⁽²⁾ See footnote 1.

⁽³⁾ <http://www.schelde.com>.

(9) Total turnover in 1999 amounted to EUR 226,7 million, 64 % of which concerned shipbuilding and ship repairs. The Royal Dutch Navy is KSG's main customer. Construction of its most important order, four frigates, started in 1998 (negotiations started as early as 1992). In April 2000 the first frigate was launched; the last one is to be delivered in 2004. Their total value is roughly EUR 1,5 billion; KSG's share of the contract is worth about EUR 540 million. Many of the parts are supplied direct to the navy but are then fitted into the vessels by KSG. On account of the workload represented by these frigates, commercial shipbuilding declined to zero in 2000/2001. In the past, however, KSG built various commercial vessels which were caught by Council Regulation (EC) No 1540/98 of 29 June 1998 establishing new rules on aid to shipbuilding ⁽⁴⁾ (hereinafter the Shipbuilding Regulation).

2.2. Damen Shipyards Group

(10) Damen was founded by two brothers in Hardinxveld-Giessendam in 1927. In 1970 the company was split and the site in Beneden-Hardinxveld was taken over by the son of one of the two brothers. The main customers at that time were large dredging companies. By the early 1980s Damen had developed into a specialist in tugs and small utility vessels. In subsequent years several other companies merged with the group, including two large ship-repair yards and a yard specialising in large luxury yachts. Control of Damen is still in the hands of Mr Damen, who owns the company together with his children. The consolidated turnover of Damen, including KSG, currently amounts to about EUR 680 million; the group had about 7 000 employees in 2000 ⁽⁵⁾.

2.3. Measures taken by the Netherlands

(11) During 1998 KSG got into serious financial difficulties, particularly as a result of its non-shipbuilding activities. In order to avoid immediate bankruptcy and to tide KSG over until privatisation, the Dutch authorities provided in January 1999 a convertible subordinated loan of NLG 35 million (EUR 15,9 million) ⁽⁶⁾ and an additional advance payment of NLG 15 million (EUR 6,8 million) for the frigates. It was also agreed that, subject to further conditions, the Dutch navy would buy from KSG an additional amphibious transport ship that was to be completed in 2007 ⁽⁷⁾. The measures were conditional on a sound business plan and cooperation in finding a private party for KSG's privatisation.

⁽⁴⁾ OJ L 202, 18.7.1998, p. 1.

⁽⁵⁾ <http://www.damen.nl>.

⁽⁶⁾ The loan was provided by Nederlandse Investeringsbank and was financed in part by the Ministry of Economic Affairs (NLG 25 million (EUR 11,3 million)) and the Ministry of Defence (NLG 10 million (EUR 4,5 million)).

⁽⁷⁾ Delay has occurred owing to the uncertainty surrounding the navy's equipment policy. In the summer of 1998 the new government decided on a substantial cut in the defence budget. It was decided to prepare a Cabinet paper setting out a framework within which this cut could be achieved. The paper was finalised in January 1999 and forms the basis of the navy's equipment policy until 2010.

(12) The loan and advance payment were provided to KSG Maritiem en Industriële Bedrijven, within which one - month deposits plus 175 base points; KSG paid a provision of NLG 175 000 (EUR 79 000). The loan was to be repaid by 1 October 1999, or earlier in the event of the Dutch authorities taking a final decision on a capital injection. As privatisation negotiations took longer than expected, repayment was postponed.

(13) The additional advance payment concerned profits that otherwise would have been paid in two equal amounts in 2002 and 2003. Accordingly, the interest subsidy for the advance payment amounts to EUR 1,41 million (discounted to end-2000 value).

(14) The Dutch authorities held talks with several candidates with a view to privatising KSG. In the end, Damen was the only company that wanted to buy KSG. Negotiations continued during 1999. In February 2000 the Dutch State and Damen reached agreement on the basic principles of the takeover. After a due-diligence investigation, negotiations were concluded on 14 July 2000.

(15) The privatisation consisted of the following measures:

The Dutch authorities provided a new convertible subordinated loan of NLG 70 million (EUR 31,8 million) ⁽⁸⁾ to KSG.

The Ministry of Defence agreed to provide an interest-free loan of NLG 45 million (EUR 20,4 million) for the relocation of the military activities from the current location in the centre of Flushing to KSG's site some 10 km further east, which was deemed necessary in view of the limited size of the sluices providing access to the current site. The loan is conditional on the construction of the new location, which is to be completed in five years at a total cost of NLG 125 million (EUR 56,7 million). If after five years the cost turns out to be lower, Damen will pay back the corresponding part of the loan in the sixth year. The remainder is to be paid back in 10 annual instalments. The loan will be paid out in 2002 and 2003. The current estimated cost of the relocation remains limited to EUR 45,4 million ⁽⁹⁾, and so the interest subsidy amounts to EUR 6,0 million (discounted to end-2000 value).

(16) Apart from the amphibious transport ship already announced in 1998, the government has indicated that it plans to buy some additional naval vessels from KSG.

⁽⁸⁾ This is the net value of the loan. The gross value was EUR 38,2 million, which was partially offset by a related corporate tax claim of EUR 6,4 million.

⁽⁹⁾ An independent expert has confirmed that the figure of NLG 100 million is the most realistic.

- (17) Having taken these measures, the Dutch authorities on 29 September 2000 transferred the new loan, the 1998 subordinated loan and the shares in KSG to Damen for the symbolic price of NLG 4. Damen has undertaken to complete the four frigates in accordance with the existing contracts.

3. GROUNDS FOR INITIATING THE ARTICLE 88(2) PROCEDURE

- (18) When the Commission initiated the Article 88(2) procedure, it explained that the measures concerned KSG's military and commercial activities alike but that, on the basis of the information available, it was unable to determine whether the measures were caught by Article 296 of the Treaty. In addition, it could not rule out the possibility that state aid was involved and it had doubts as to whether the measures complied with the rules laid down in the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁽¹⁰⁾ (hereinafter the rescue and restructuring aid guidelines) and with the Shipbuilding Regulation. These doubts concerned in particular the relationship between the measures and the restructuring plan, the abandonment of structurally loss-making activities, the effects of the restructuring on competitors and whether the aid was limited to the minimum.
- (19) In addition, the Commission could not be sure that Damen had paid a market price for KSG, in particular because there had not been an open call for tender placing all competitors on an equal footing and providing them with the same information and access to a transparent procedure at the same moment in time.

4. COMMENTS FROM INTERESTED PARTIES

- (20) Following the publication of the decision to initiate the procedure⁽¹¹⁾, the Commission received comments from the United Kingdom and Spain, a competing ship-repair yard and the recipient. The recipient's comments largely coincide with those of the Netherlands. Both sets of comments are summarised in Section 5.

4.1. Comments by the United Kingdom authorities

- (21) The United Kingdom shares the Commission's concerns and notes that both KSG and Damen are direct competitors of United Kingdom shipyards. It seems clear that the aid involves support for commercial shipbuilding. Mega yachts are a growing market for several United Kingdom shipyards and any aid given to competitor yards in the Netherlands is likely to distort competition. In the case of a mixed yard being bought by a commercial shipbuilder, the United Kingdom takes the view that

this does not fall entirely within the scope of Article 296 of the Treaty as it clearly involves commercial shipbuilding.

- (22) The United Kingdom has little confidence in the claim that all interested companies were aware of the efforts of the Dutch authorities to find a candidate with a view to selling the KSG shares, as they would have expected United Kingdom companies to show interest.

4.2. Comments by Spain

- (23) Spain takes the view that the measures fall completely outside the scope of the Treaty because (i) KSG's main customer is the Dutch navy, (ii) most of its activities concern defence, (iii) the four frigates will form the backbone of the Dutch navy and (iv) the only requirement of privatisation was that military capacity should be safeguarded. Moreover, in the event of doubts as to the applicability of Article 296 of the Treaty, the Commission should, pursuant to Article 298, have examined, together with the Netherlands, whether the aid affected the production of or trade in products not intended for specific military uses and how the aid measures could be adjusted to comply with the rules laid down in the Treaty. In any case, the Article 88(2) procedure should have been restricted to KSG's commercial production, i.e. products not intended for specific military purposes.
- (24) Lastly, Spain questions whether Regulation (EC) No 1540/98 applies, given that the measures concern the period 1998-2000 and that no new contracts for commercial vessels were won by KSG during this period.

4.3. Comments by a competing ship-repair yard

- (25) A competing ship-repair yard takes the view that the measures distort competition and allow KSG to compete in the ship-repair market on unfair terms and on the basis of unrealistically low prices. Any aid would directly harm this competitor's competitive position.

5. COMMENTS FROM THE NETHERLANDS AND FROM DAMEN

- (26) The comments from Damen and the Netherlands coincide as regards the main conclusions and reinforce each other as regards the details. They are therefore presented together.
- (27) The Netherlands makes the general comment that it informed the Commission of the measures in 1998 and 2000. It regrets that the Commission did not express its doubts at an earlier stage.

⁽¹⁰⁾ OJ C 288, 9.10.1999, p. 2.

⁽¹¹⁾ See footnote 1.

5.1. On the application of Article 296 of the Treaty

- (28) The Netherlands takes the view that Article 296 of the Treaty applies in view of the short-term importance of having the four frigates delivered on time and of the military and strategic importance of safeguarding naval shipbuilding in the Netherlands over the medium and long term. Maintaining a sufficient contribution from the Dutch defence industry should be seen in the context of other aspects of security policy.
- (29) Dutch security policy is described in the *Hoofdlijnennotitie* of January 1999 and the *Defensienota* of November 2000⁽¹²⁾. It is deemed essential to maintain a specific industrial capacity for fundamental military technology in the field of naval vessels with a view to protecting essential interests of national security. This is the case for most NATO members. Taking account of the provisions of Article 296 of the Treaty, military equipment is normally procured from Dutch suppliers. Several further arguments were put forward, including the following.
- (30) The Dutch navy must be operationally independent, e.g. for military and other assistance in the Netherlands or in its overseas territories. The capacity for and intensity of cooperation with other NATO members and EU Member States is another important aspect.
- (31) The four LCF frigates form the backbone of the navy and are deemed essential for the performance of its duties. If they are not delivered on time, the navy will not be able to provide an adequate command platform and sufficient air defence capacity for its task groups.
- (32) Intensive international cooperation takes place on sensor, weapon and command systems. If delivery of the LCFs is delayed and/or disrupted, this cooperation would be jeopardised. In that case the assumptions on which defence and security policy is based would be directly compromised.
- (33) Apart from the LCFs, the navy also needs a second landing platform dock (hereinafter LPD). Like the first LPD, the intention is that the second should be built by KSG. It is increasingly important to have direct access to transport capacity, as illustrated by recent crises in, for example, the former Yugoslavia and Ethiopia/Eritrea. The Helsinki European Council of December 1999 underlined the need for transport capacity and laid down specific objectives. The second LPD is very important if these objectives are to be achieved.
- (34) Intensive technical cooperation takes place between the navy and KSG. Continuity is essential to this cooperation.

- (35) The relocation to Flushing East and access to a covered dock of an appropriate size are essential for naval shipbuilding. The interest-free loan must be considered within the context of defence and security policy.

5.2. The State acted as a private company would have done

- (36) The Dutch authorities agree that private companies are not responsible for defence and security policy. Nevertheless, they took the same actions that a private company would have taken.
- (37) As a shareholder, the State had no influence on KSG until 1998. KSG was a company under the *structuur-regime* (structural scheme). Under Dutch law this means that the board of directors is subject to the supervision of the Board of Commissioners. The latter consisted of five persons, two of whom were appointed by the State. However, the law requires the commissioners to act solely in the interests of the company, without instructions or consultation. Only in 1998, when the financial situation deteriorated, could the State set conditions before providing new capital.
- (38) The State did set such conditions. First, KSG had to shed all its non-core business, retaining only naval and commercial shipbuilding. Second, it had to cooperate with the State to find a strategic partner for the takeover. Third, it had to cooperate with a potential candidate on a common business plan. The measures decided on in December 1998 constituted an interim solution, also with a view to the awaited Cabinet paper on defence policy. Suspension of payments was unacceptable in view of the risks associated with completion of the LCFs and uncertainty surrounding naval shipbuilding in the Netherlands.
- (39) In addition, finishing the LCFs in a bankruptcy situation would have involved much higher costs, even on the basis of 'business-like' costs only⁽¹³⁾. These were estimated at a minimum of EUR 123 million, while guarantees to suppliers were estimated at a further EUR 131 million. As the financial problems were concentrated in the area of non-shipbuilding activities, the Netherlands looked at the possibility of splitting the company. However, that would have infringed the legal rights of creditors. As such, any buyer of KSG would have to take over the whole company.

⁽¹²⁾ *Defensienota* 2000, Lower House of the Dutch Parliament, 1999-2000, 26900, Nos 1-2.

⁽¹³⁾ These additional costs are caused by (i) creditors who are prepared to deliver basic products for the frigates only on condition that the government also pays the debts on other contracts; (ii) increased personnel costs to prevent employees from leaving; (iii) additional costs after delivery of the frigates; (iv) a bankruptcy scenario, which would entail at least one year's delay, resulting in additional costs in related supply contracts for the frigates and higher maintenance costs for the old frigates.

- (40) At the start of the 1990s the Netherlands started proceedings with a view to selling its shares in KSG. With the help of an investment bank, several candidates were approached. In the second half of the 1990s the State made renewed efforts. Efforts to find a buyer for KSG were widely reported in the press. In addition, companies in this particular market are well aware of what is going on in Europe. One of the candidates was a German industrial group. The State did not rule out any company in advance. However, in the end only Damen remained. The only condition for privatisation was that military interests had to be safeguarded; no other non-commercial conditions were imposed.
- (41) Lastly, the relationship between the Dutch navy and KSG has always been businesslike. The fact that the State was a shareholder was of no relevance when orders were placed with KSG. In 1992, when the process was launched to place the LCF order with KSG, it could not have been foreseen that the company would run into difficulties eight years later.

5.3. No undue distortion of competition

- (42) The Dutch authorities do not accept that the rescue and restructuring aid guidelines are applicable, but confirm that they acted in the spirit of those guidelines. An initial indication of this is the fact that the measures taken in 1998 were strictly necessary for KSG's continued existence and included a subordinated loan at a market rate.
- (43) According to the Dutch authorities, undue distortion of competition was avoided by terminating activities between 1998 and 2000. Staff cuts concerned around 500 jobs, i.e. 30 % of the total workforce. Damen's business plan provides for further concentration on core business: naval shipbuilding, mega yachts, ship repairs and the associated engineering works. The outlook for these activities is favourable.
- (44) Aid would be limited to the minimum and the causes of the losses have been dealt with. KSG's restructuring entailed high costs, mainly in connection with the closure of the boiler construction plant, reorganisations and the finalisation of a foreign defence contract. Lack of experience with large projects abroad gave rise to enormous losses and high risks. The losses in commercial shipbuilding are a result of the strategy followed since the mid-1990s of building new types of ship with which KSG had insufficient experience. KSG recorded significant losses in the gas turbines sector as well. All these activities have been closed down and/or sold or, as regards production of gas turbines, are to be closed down/sold in the short term. Ship-repair activities will be brought in line with the Damen group's other activities. Naval shipbuilding will be continued and yacht construction has been started. From this the Netherlands concludes that the business plan will enable KSG's viability to be restored without spillover effects and at a minimum cost to the State.

- (45) The Netherlands states that the State's contribution corresponds to the negative value of KSG at the time of privatisation. This contribution has enabled Damen to restore KSG's viability without spillover effects. The State has not provided funds in excess of what was strictly necessary for privatisation. According to Damen the agreement reached between it and the Dutch Government was essentially that Damen would ensure the long-term profitability of KSG's shipbuilding and ship-repair activities (in synergy with its own activities in these sectors), while the Dutch Government would bear the financial costs of closing down KSG's unprofitable non-shipbuilding activities. Damen explained that KSG had used the 1998 loan in full prior to privatisation and that it used the new loan purely to settle KSG's outstanding debts. It subsequently emerged that the capital injection was insufficient to cover all the debts for which Damen had assumed liability.

5.4. Damen's restructuring plan for KSG

- (46) Damen referred to the business plan which it had drawn up for KSG and which had been submitted at an earlier stage, and commented on the ongoing implementation of the restructuring plan. The details are provided in the next section.

5.5. Market price

- (47) The Netherlands and Damen submitted a consultant's report containing an assessment of KSG's value at the time when the shares were sold to Damen. This report concludes that the value of the KSG shares at the time was negative to the tune of between EUR [...] (*) million and EUR [...] million. While core activities showed a slightly positive result, the negative value resulted, *inter alia*, from high financial claims and risks, low capacity utilisation and uncertainty surrounding future orders for operational activities. Accordingly, the report concluded that the sale would not entail any advantage for the buyer, Damen.

5.6. Observations on third-party comments

- (48) In general, the Netherlands refers to the comments by Damen. Damen welcomes and endorses the comments made by Spain; the Netherlands refers to its previous positions. Damen confirms the remark by the United Kingdom to the effect that the market for mega yachts is growing. It is surprised by the United Kingdom's comment that it does not believe that all interested parties were aware of the Dutch Government's plan to privatise KSG. Not only was this widely reported at the time in both the national and international press, but other non-Dutch shipbuilders showed they were aware of it by requesting from the Dutch authorities further

(*) Business secret.

information about the possibility of acquiring KSG. Damen asked an independent British yacht dealer for his comments. The dealer mentioned five United Kingdom shipyards which had recently expressed an interest in building large motor yachts or sailing yachts, three of which were basically sailing yacht builders as opposed to motor yacht builders. He could not identify any company in the United Kingdom at the time that could be compared or could compete with Dutch yacht builders such as Amels.

(49) With regard to the comments by the competing ship-repair yard, the Netherlands and Damen note that KSG's ship-repair activities are subsidiary to its (naval) ship-building activities. None of the aid has benefited KSG's ship-repair activities or has been used for that purpose.

6. THE RESTRUCTURING PLAN

(50) During negotiations with the Netherlands, Damen carried out a due-diligence investigation and devised a restructuring plan. The main components of the restructuring plan are (i) concentrating on core business and developing the construction of mega yachts, (ii) terminating or selling off most of KSG's non-core business, (iii) focusing future shipbuilding activities on the segments for which KSG is best equipped, and (iv) streamlining the management structure and simplifying the legal structure. As indicated above, the closure of loss-making non-core business was imposed as a condition for the 1998 measures. Consequently, restructuring started even before the privatisation agreement had been finalised.

6.1. Concentrating on core business and developing the construction of mega yachts

(51) Naval shipbuilding will remain KSG's core activity. Being the Dutch navy's preferred supplier is, of course, a major asset and the outlook for future orders is relatively healthy. In addition, shipbuilding is expected to benefit from Damen's sales organisation and from the way in which the company wins orders and follows through the building process. The product range will be geared towards patrol tasks. Military vessels will be smaller and less complicated than was the case in the 1970s and 1980s. With a view to achieving full capacity utilisation, particularly after the frigates are completed in 2003/2004, marketing efforts will focus on emerging economies such as India and Malaysia. Shipbuilding may increasingly be located in those countries.

(52) An important feature of the business plan is the relocation of the military activities from the centre of Flushing to Flushing East, some eight kilometres away. Relocation is necessary because of the small size of the sluice, which limits the maximum size of naval vessels that can be built there. Production facilities will be constructed on two existing docks in Flushing East and the welding shop, the blocks factory and section building will be relocated.

(53) Specific restructuring measures for the ongoing construction of four frigates were not deemed necessary. Damen found in its due-diligence investigation that work on the frigates was on schedule. Although some risks were identified, there was no reason to expect them to jeopardise the company's expected profits on the order. Negotiations are currently under way with the Dutch navy on two hydrographic registration vessels, an amphibious transport vessel and unmanned minesweepers. Apart from the relocation, no further restructuring measures are necessary for naval activities.

(54) KSG's plans to start yacht construction form an important part of the restructuring plan. Damen is already engaged in building mega yachts with Amels in Makkum, and one of the [...] motivations for the takeover of KSG was the need to acquire additional capacity for yacht construction with a view to meeting demand. The restructuring plan assumes that at least one yacht with a value of between EUR [...] million and EUR [...] million will be built each year. Current orders total EUR [...] million for 2003, rising to EUR [...] million for 2006. KSG's facilities could be adapted relatively easily for yacht construction. The relocation of some activities to Flushing East has permitted the refurbishment of a former dock that was filled with sand. The construction of private yachts does not fall within the scope of the Shipbuilding Regulation, which applies to commercial vessels only⁽¹⁴⁾.

(55) According to Damen, the market for mega yachts (i.e. custom-designed motor yachts with a steel hull and an aluminium structure of more than 40 metres in length) is global and booming. More than 80 such yachts were being built around the world in 2000, compared with 25 in 1995. Damen's main competitors are Feadship (the Netherlands), Lürssen (Germany) and Benetti (Italy). This is an extremely specialised market comparable to the market for racing cars. The customer selects the yard on the basis of specific design requirements and technical expertise rather than price. According to Damen,

⁽¹⁴⁾ Article 1 of Council Regulation (EC) No 1540/98 of 29 June 1998.

there is no question of any surplus capacity: Amels' current order-book is the best in the company's history. Its competitors' order books are believed to be similar or even healthier in terms of total length being built. Apart from these four yards, there is a large number of smaller mega yacht builders with a production capacity of around one yacht every two years.

6.2. Closing down or selling off most of KSG's non-core business

- (56) The restructuring plan provides for the continuation of three activities which are related to shipbuilding but do not constitute shipbuilding itself: process technology (Exotech), the engineering works and trade in machine spare parts. [...].
- (57) By far the most significant losses occurred in non-shipbuilding activities, notably boiler construction and, to a lesser extent, gas turbines. The main reasons for these losses were a lack of experience when entering new markets, insufficient hedging against technical risks in large individual projects and insufficient size to benefit from economies of scale and to gain experience. Another major loss-making project concerned the construction of a [...] for [...].
- (58) Almost all these activities have now been terminated or sold off and the main outstanding claims have been settled. SIEC (boiler construction) went bankrupt in 1999, NEM-Schelde (industrial engineering) and Schelde-Heron (gas turbines) were wound up in 2000/2001. Other non-core activities have been hived off: activities in process management and technology (Franken & Goes) and equipment technology (Fabricom Installatie-techniek) were sold in 1999. Activities in steel construction (KNM Steel Construction) and, after restructuring, plastic products (Polymarin) were sold off in 2000. A start was recently made on winding up [...].
- (59) There has been no need to restructure Exotech or trading activities in ship diesel engine spare parts. However, in view of the persistently bleak market outlook, the engineering works was restructured. It was halved in size in 1999. A reasonable degree of capacity utilisation is expected for 2001, and the works should break even. [...].

6.3. Refocusing future shipbuilding activities

- (60) Compared with non-shipbuilding activities, losses in commercial shipbuilding have remained relatively small. Although it is possible to attribute losses on individual orders to specific causes, more general factors are at play. Of course, the difficult market in which the

European shipbuilding industry operates at present is one of them. In addition, as a result of the limited orders from the Dutch navy and the relatively small size of the yard, KSG is faced with a structural difficulty in achieving full capacity utilisation by booking appropriate orders that can be fitted in between military orders. To cover at least the fixed costs, any owner will be tempted to accept low profit margins or even small losses on 'topping-up orders'. The problem is exacerbated by the fact that KSG's workforce is generally highly skilled and specialises in naval shipbuilding. That means that they may either lack experience or simply be overqualified for work on other types of ship. As a result, KSG's management has accepted orders with expected low profit margins and high risks. In addition, KSG has had to cope with difficult market conditions for carriers as a result of the strength of the United States dollar.

- (61) Damen's approach is to focus on building ships for which KSG is best suited, which correspond to the skills of KSG's workforce and for which there is no surplus capacity. The restructuring plan provides for the complete termination of cargo vessel construction because Damen is convinced that, in the current circumstances, KSG will never be able to make a profit on these activities. Instead, KSG will concentrate on building naval vessels for third countries and special, highly specialised utility vessels, such as buoy handling and maintenance vessels and R&D ships ⁽¹⁵⁾.
- (62) Damen already has a strong market position in the special utility vessels segment. In addition, its sales organisation is particularly large by shipbuilding standards. It is difficult to predict how the market for special utility vessels will evolve. These vessels are not used intensively and, as such, their lifetime is quite long.
- (63) Losses in the ship repairs segment resulted from difficult market conditions and a number of ill-judged projects (two in 1999). Again, the problems are due partly to large conversion projects [...]. Damen intends to put a stop to projects of this kind and in 2000 the organisation was thoroughly restructured. Damen expects Scheldepoort to benefit from the synergy with its ship-repair activities, in particular for 'distant' markets, and possibly to take over its ship-repair activities for which it is best equipped. Damen does not expect market conditions for ship repairs to improve in the near future, but Scheldepoort has a strategic location on the busy River Schelde and may benefit from the increasingly strict safety standards for ships. Damen therefore expects that KSG's ship-repair activities can be maintained more or less at the current level, which is significantly below that at the end of the 1990s.

⁽¹⁵⁾ Yacht construction will not be able to absorb capacity available elsewhere in KSG because it is a separate business requiring different skills and facilities.

(64) The following table summarises developments:

(EUR million)

Employment	31.12.1998	25.2.2000	29.9.2000	Future	Turnover 1998	Turnover September 2000
New shipbuilding	755	638	590	-	171,1	123
Yachts	—	—	—	+		
Ship repair	155	154	145	=/-	25,4	17,2
Gear wheel transmission	39	46	51	[...]	10,4	14,5
Engineering works/naval services	132	108	84	[...]	14,5	13,2
Boiler construction	109	96	0	0	35,4	0
Industrial construction	0	0	0	0	22,7	0
Process management and technology	134	91	86	[...]	15,0	8,2
Synthetic products	77	73	0	0	7,7	0
Gas turbines	6	5	5	0		

(0: (no activities),

+: (increase),

-: (decrease),

=: (stable)).

6.4. Simplifying the legal structure, reducing overheads and new ICT infrastructure

- (65) Immediately after the takeover, Damen simplified the company's legal and management structure and reduced KSG's overheads. The relocation will result in further savings in management costs.
- (66) Lastly, the ICT infrastructure is too extensive and cumbersome for KSG's activities. Investments in new ICT infrastructure are planned.

6.5. Restructuring costs, financing and planned financial situation

- (67) The following restructuring costs have been identified.
- (68) Privatisation negotiations started in 1999. At the same time, KSG started restructuring but also incurred further losses. Those losses can be regarded as restructuring costs given that they were unavoidable and necessary to restore profitability. The 1999 loss was huge: NLG 137 million (EUR 62,2 million), of which NLG 43 million (EUR 19,5 million) was due to operational losses, interest and taxation. The remaining losses, NLG 94 million, represent one-off costs relating to the winding-up of SIEC and NEM, reorganisations and the write-down of shareholdings. Only a small amount, NLG 15 million (EUR 6,8 million), was incurred in 1999, the remainder being set aside as provisions for later years. Since Damen has provided figures on restructuring costs for later years, the relevant figure for 1999 is the sum of NLG 43 million and NLG 15 million, i.e. NLG 58 million (EUR 26,3 million). Discounted to end-2000, this amounts to EUR 27,8 million.
- (69) From the point at which it was privatised until December 2001, Damen incurred costs for closing down loss-making activities totalling EUR 71,7 million (see following table). Further costs are likely to be incurred for some items; however, the Commission takes the view that they cannot be considered as relating directly to the restructuring plan but should be treated as normal business costs. The same applies to the minor costs relating to the construction of the frigates and to the unspecified provision that must be created to cover claims by former employees who have come into contact with asbestos.

(EUR million)

Restructuring measure	Realised costs until December 2001
SIEC (boiler construction):	
— bank loans and guarantees	[...]
— various projects	[...]
— payment to receiver	[...]
— claims for damages	[...]
SIEC total	[...]
NEM (industrial engineering)	[...]
Heron (gas turbines)	[...]
Schelde gears ⁽¹⁶⁾	[...]
[...] project ⁽¹⁷⁾	[...]
Reorganisation costs (including redundancy costs, accountancy costs and legal costs) ⁽¹⁸⁾	[...]
Total	71,7

⁽¹⁶⁾ Costs up to April 2002.

⁽¹⁷⁾ Costs up to April 2002.

⁽¹⁸⁾ Estimate: up to April 2002 EUR [...] million had been spent.

- (70) In 2000 the total cost of relocating naval shipbuilding to Flushing East was estimated at about EUR 56,7 million, but the current estimate is EUR 45,4 million. Discounted to end-2000, this amounts to EUR 38,8 million ⁽¹⁹⁾.
- (71) Investments in mega yacht construction amounted to EUR 5,4 million. The expected investment in ICT infrastructure amounts to EUR 2,3 million. Discounted to end-2000, this amounts to EUR 2,1 million.
- (72) The restructuring has been financed by aid measures, the proceeds of divestments, the proceeds of the sale of surplus land in the centre of Flushing and additional own resources from KSG and banks. A complete financial overview is provided in the following table:

(EUR million)

Restructuring costs		Financing	
1999 losses	27,8	1998 Subordinated loans	15,9
2000-01 closure of non-core business and claims	71,7	1998 Additional advance payment	1,4
Relocation	38,8	2000 Subordinated loan	31,8
Investments in yacht construction	5,4	Interest-free loan	6,0
		<i>Total aid:</i>	55,1
ICT infrastructure	2,1	Divestments	22,1
		Land sales ⁽²⁰⁾	19,3
		Other contributions from KSG/Damen (including increase in bank financing)	43,5
		<i>Investor contribution</i>	90,7
Total	145,8		145,8

⁽²⁰⁾ Estimated value in 1999/2000.

⁽¹⁹⁾ This is based on the assumption that costs are evenly spread over the 2002-2007 period. Neither Damen nor the Netherlands has provided a detailed schedule.

7. ASSESSMENT

7.1. Application of Article 296

- (75) Article 296(1)(b) stipulates that: 'any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes.' Conversely, where a measure caught by the definition of state aid within the meaning of Article 87(1) affects military production as well as commercial or dual-use production, it cannot be fully justified on the basis of Article 296. The Commission does not share the viewpoint of the Dutch and Spanish authorities to the effect that, by virtue of the military aspects, the whole measure is caught by Article 296, even if there is a clear effect on competition in non-military sectors. That interpretation clearly conflicts with the wording of the Article.
- (76) The Netherlands has provided information regarding the essential security interests involved in this case. The Commission cannot deny that such interests exist. At the same time, it is clear that the Netherlands has rescued and restructured the whole company and not just the military part. First, the financial resources provided to KSG have not been used for its military activities, but for its commercial activities. It is therefore clear that the measures have indeed affected the conditions of competition as regards commercial products. Therefore, in accordance with its standard practice, the Commission must assess the measures in the light of the State aid rules in so far as they distort, or threaten to distort, competition in markets for products that are not caught by Article 296.

7.2. The business-like behaviour of the Netherlands

- (77) The Commission does not dispute that the sale of KSG to Damen was perhaps the least costly way of safeguarding the State's interest as a customer ⁽²²⁾ and that a private customer in the same situation would have tried to minimise its losses in a similar way. The Dutch authorities do not refer explicitly to the Court decision in Joined Cases C-278/92, C-279/92 and C-280/92 (*Hytasa*) ⁽²³⁾, but their reasoning is similar in some respects. In paragraphs 21 and 22 of that judgment the Court states:

'In order to determine whether such measures are in the nature of state aid, it is necessary to consider whether in similar circumstances a private investor of a size comparable to that of the bodies administering the public sector might have provided capital of such an amount [...]. In that respect a distinction must be drawn between the obligations which the State must assume as owner of the share capital of a company and its obligations as a public authority.'

The reasoning of the Dutch authorities is based on the distinction that must be made between the State's obligations as a customer with a contract for four frigates and its obligations as a public authority.

- (78) However, a private customer would never find itself in that situation. The State was placed in this unfortunate position not as a result of normal, competitive (business-like) procurement, but in connection with procurement of military vessels, which is not organised on a 'business-like' basis. As is common in national defence policy throughout the European Union, the Netherlands reserved the order in principle for its own industry, in this case KSG. There was no open competitive tender procedure. This political decision does not become a commercial one when the shipyard gets into difficulties and needs state support in order to survive and ensure that the frigates are finished. In other words, given that this is a political decision which must be safeguarded, the State cannot claim that the aid for the yard is justified because a private company would have done the same in similar circumstances. Given the original political decision and the intent to safeguard its implementation, the State always acts in its capacity as a public authority. It is not appropriate therefore to distinguish between the obligations which the State must assume as a customer with a contract for four frigates and its obligations as a public authority. Accordingly, the measures cannot avoid being assessed in the light of Articles 87 and 296 of the Treaty.

⁽²²⁾ The Commission would, however, not take into account the guarantees that the government would have to provide to suppliers. Being the customer, such guarantees do not constitute a cost that would be additional to signing the original contract. Nevertheless, it is clear that the cost of privatisation was below the cost of bankruptcy.

⁽²³⁾ Joined Cases C-278/92, C-279/92 and C-280/92 *Spain v Commission* [1994] ECR 4103.

7.3. Privatisation: potential aid to Damen

- (79) The Commission acknowledges that the Netherlands has followed relatively open procedures and that competitors may well have been aware of the plan to privatise KSG and may have had an opportunity to express an interest. The consultant's report submitted by the Netherlands confirmed that Damen paid (more than) KSG's market value. It found a negative value of between NLG 150 million and NLG 200 million, which is significantly below the negative price. The Commission asked an independent expert to prepare a second expert opinion on the report. That expert criticised various elements of the calculation of KSG's value in the original report. However, when these various criticisms are considered, the effect on the final result is largely neutral, with the result that the expert's value calculation is more or less the same. The Commission therefore takes the view that the price for which KSG was sold to Damen did not contain an element of State aid in the buyer's favour.

7.4. Assessment in the light of the rescue and restructuring aid guidelines

- (80) There is no doubt that the measures taken by the Netherlands have been financed through state resources and that they favour certain undertakings, namely KSG and — indirectly — its new shareholder, Damen. Nor is there any doubt that the measures affect trade between Member States since the types of product that KSG manufactures are widely traded. The measures are therefore caught by the definition of State aid within the meaning of Article 87(1) of the Treaty.
- (81) The Commission has examined whether the exemptions set out in Article 87(2) and (3) of the EC Treaty apply. The exemptions in Article 87(2) should be able to serve as a basis for declaring the aid compatible with the common market. However, the aid measures (a) do not have a social character and are not granted to individual consumers, (b) are not designed to make good the damage caused by natural disasters or exceptional occurrences and (c) are not required in order to compensate for the economic disadvantages caused by the division of Germany. The exemptions in Article 87(3)(a), (b) and (d) of the EC Treaty do not apply either in that the measures are not designed to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. Nor are the measures designed to promote the execution of projects of common European interest, culture or heritage conservation.
- (82) Indeed, the Dutch authorities did not attempt to justify the aid on the grounds specified in the preceding paragraph.
- (83) As far as the first part of the exemption in Article 87(3)(c) is concerned, namely aid to facilitate the development of certain economic activities, the Commission notes that the aid did not relate to R&D, environmental objectives or investment by SMEs. It is clear that the purpose of the aid was to rescue and restructure KSG. Consequently, the Commission has assessed the aid in the light of the rescue and restructuring aid guidelines and, in part, the Shipbuilding Regulation.
- (84) The Netherlands rescued the whole company and the restructuring plan concerned all its activities. In addition, the activities caught by the Shipbuilding Regulation are inextricably linked to naval shipbuilding because they have common facilities and, to some extent, a common workforce and a common legal structure. Accordingly, the following assessment also concerns KSG's military activities. In fact, except for the assessment of rescue aid, there is no need to make a distinction between the measures justified under Article 296 and those affecting commercial and dual-use production. However, as explained below, it was necessary to determine the extent to which restructuring measures had affected commercial shipbuilding within the scope of the Shipbuilding Regulation. Under Article 5 of that Regulation, the Commission may exceptionally consider rescue and restructuring aid compatible with the common market provided that it complies with the rescue and restructuring aid guidelines. However, that Article lays down a number of additional conditions that must also be complied with. In this section, the measures are assessed in the light of the rescue and restructuring aid guidelines. The assessment in the light of the Shipbuilding Regulation is carried out in Section 7.5.

Firm in difficulty

- (85) From 1998 until it was privatised in 2000, KSG can properly be considered as a firm in difficulty. It was unable, using its own resources or funds obtained from its creditors, to stem losses which would almost certainly have put it out of business in the short term had the authorities not intervened. The figures in the annual accounts show beyond doubt that the threat of bankruptcy was real. As explained above, the measures taken by the State in 1998 cannot be compared to a capital injection on commercial terms.

Rescue aid

- (86) The measures taken at the end of 1998 have the effect of rescue aid to their full nominal value of EUR 22,7 million. They enabled KSG to stay afloat for the time needed to find a buyer and work out a restructuring plan. The rescue and restructuring aid guidelines ⁽²⁴⁾ set out clear conditions for such aid.
- (87) First, the aid must consist of liquidity help in the form of loan guarantees or loans bearing normal commercial interest rates. The subordinated loans comply with this requirement. The additional advance payment serves the same purpose as a loan, but no interest is charged on it.
- (88) Second, the aid must be restricted to the amount needed to keep a firm in business. In the Commission's view, this condition is fulfilled. A larger amount was allocated to the restructuring measures taken prior to privatisation. In addition, the 1999 annual report refers to the difficult financial situation, notwithstanding the aid provided.
- (89) Third, the aid must be paid only for the time needed to devise the necessary and feasible recovery plan. This should generally not exceed six months, but in this case the final privatisation, which was an absolute condition for the recovery plan, was not carried out until September 2000. To a certain extent, the delay resulted from the fact that the Cabinet had agreed a substantial reduction in the defence budget, creating uncertainty for future naval procurement policy. Further delay was caused by the difficulties encountered in concluding the privatisation agreement, while the situation of KSG deteriorated significantly. In this particular case the Commission can accept the longer period.
- (90) The subordinated loans were originally granted for a period of less than twelve months. When it was realised that privatisation would not be possible within that period, reimbursement was tacitly postponed until the privatisation agreement had been finalised. In contrast, the advance payment's effect extends over a longer period since those payments were originally scheduled for 2002 and 2003.
- (91) Lastly, the aid must be warranted on grounds of serious social difficulties and have no undue adverse effects on the industrial situation in other Member States. Besides the military argument, the Commission can also take account of the fact that KSG is the largest employer in the province of Zeeland. Immediate, uncontrolled bankruptcy without any social plan would result in serious social difficulties. For the bridging period, the Commission regards the adverse effects on the industrial situation in other Member States as limited and not undue. Indeed, the aid has been used to settle claims on various projects, most of which were carried out for foreign customers.
- (92) In conclusion, the subordinated loan meets the criteria set out in the guidelines, but the additional advance payment fails to meet those criteria as regards its form and the period during which it has effect. However, it represents only 30 % of total rescue aid, which corresponds to the share of naval activities in total turnover. Accordingly, it can be justified under Article 296 of the Treaty. In so far as the rescue aid does not affect the conditions of competition in the common market for products which are not intended for specifically military purposes, the Commission concludes that the rescue aid decided in December 1998 is compatible with the common market.

⁽²⁴⁾ Since the rescue aid was granted in full in the period before the entry into force of the 1999 rescue and restructuring guidelines, the Commission has assessed it in the light of the 1994 Community guidelines for rescuing and restructuring firms in difficulty (OJ C 368, 23.12.1994, p. 12). The extension of those guidelines until the entry in force of the new guidelines was published in 1998 (OJ C 74, 10.3.1998, p. 31).

Restructuring aid

- (93) The following aid components, discounted to end-2000, are caught by the definition of restructuring aid within the meaning of point 11 of the rescue and restructuring aid guidelines. In the first place, with the new subordinated loan KSG obtained resources that it would not have been able to obtain under market conditions. The loan formed part of the privatisation agreement between central government, the province of Zeeland and Damen, which, as explained in Section 7.2, cannot be justified on the basis of private investor or private customer behaviour. The aid component therefore consists of the nominal value of NLG 70 million (EUR 31,8 million). The same applies to the original subordinated loan of NLG 35 million (EUR 15,9 million) granted in 1998 ⁽²⁵⁾. These points are confirmed by the fact that Damen converted NLG 100 million (EUR 45,4 million) of the loans into equity capital. Second, the aid component of the advance payment — EUR 1,41 million — must also be considered as restructuring aid since it was used for that purpose over a period extending beyond the completion of privatisation. Lastly, as described in paragraph 15 above, the expected aid component of the interest-free loan amounts to EUR 6,0 million. It has to be concluded that KSG benefited from restructuring aid totalling EUR 55,1 million.
- (94) Below the Commission assesses the aid in the light of the criteria set out in Section 3.2.2 of the rescue and restructuring aid guidelines.

Eligibility of the firm

- (95) As explained in paragraph 85 above, KSG constitutes a firm in difficulty within the meaning of the guidelines.

Restoration of viability

- (96) As indicated in points 31-34 of the rescue and restructuring aid guidelines, the Commission can find restructuring aid compatible with the common market only where there is a restructuring plan that restores the viability of the firm. First and foremost, in the Commission's view, the fact that Damen was willing to buy the company and invest significant amounts in it is a strong indication of the viability of KSG's remaining activities.
- (97) The restructuring plan provides for the closure or sale of most of KSG's non-core activities. For the remaining parts, as described in Section 6, Damen has tackled the underlying causes of losses over the last few years and has established a sound basis for a return to profitability. The Commission regards the outlook for shipbuilding for the Dutch navy, yacht construction and ship repairs as good. It notes that none of the third parties has argued that the market segments for mega yachts and the construction of special utility vessels would encounter difficulties. On the contrary, the United Kingdom stated in its comments that the market for mega yachts is growing. As regards ship repairs, Damen's restructuring plan is based on a careful assessment of the relevant market.
- (98) The greatest uncertainty surrounds future shipbuilding activities. As already stated, KSG has a structural problem with achieving full capacity utilisation by obtaining appropriate orders that can be fitted in between military orders. Since the Dutch navy has no specific plans for orders, the outlook is uncertain, especially from 2007 onwards.
- (99) Whether Damen will be successful in attracting naval shipbuilding orders for third countries remains to be seen: the conclusion of contracts is normally preceded by five years of contacts and negotiations. The Commission notes that there is fierce competition in this segment but, at the same time, it realises that a relatively small number of orders may suffice for the purpose of 'topping up' capacity and, in any case, it has no evidence to suggest that Damen's plans in this area would fail. It also points out that Damen already has a strong market position in the special utility vessels segment and that its sales organisation is exceptionally large by shipbuilding standards. Clearly, Damen might

⁽²⁵⁾ Since a commercial interest rate applied to the 1998 loan, the aid component on the occasion of the transfer to Damen still amounted to its nominal value.

be forced to accept lower profit margins on commercial shipbuilding, and the possibility of its incurring incidental losses cannot be ruled out, but it would be unduly pessimistic to regard its commercial shipbuilding as 'structurally loss-making' within the meaning of rescue and restructuring aid guidelines.

- (100) The Commission concludes that the assumptions as to future operating conditions must be regarded as reasonable and realistic. Damen's restructuring plan provides the Commission with the requisite confidence that KSG's viability will be restored.

Avoidance of undue distortions of competition

- (101) According to points 35–39 of the guidelines, measures must be taken to mitigate as far as possible any adverse effects of the aid on competitors. In this case, KSG and Damen limited the adverse effects to a great extent by closing down/selling off most of their non-core business and by switching commercial shipbuilding to the more dynamic market segments of mega yachts and specialised utility vessels. In terms of employment and turnover, production levels decreased significantly. Between 1994 and September 2000 employment fell by 2309 full-time equivalents. Turnover declined by 50 %.
- (102) The Commission concludes that the capacity reductions made in non-core business are sufficient to mitigate the adverse effect of the aid and that undue distortions of competition as regards non-core business have been avoided. The assessment of shipbuilding and ship repairs in the light of the Shipbuilding Regulation is set out in Section 7.5.

Aid limited to the minimum

- (103) The amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken in the light of the existing financial resources of the company, its shareholders or the business group to which it belongs (point 40 of the guidelines). In this case, however, the amount of the aid corresponds to the 'negative price' which Damen was willing to pay for KSG, including all its liabilities and outstanding contracts⁽²⁶⁾. This implies that the aid was expected not only to cover the cost of restructuring in so far as KSG's own resources were inadequate, but also to enable a sufficient profit to be realised on the capital invested in the remaining activities. From this perspective, the profit forecasts contained in the restructuring plan do not seem disproportionately high.
- (104) The Commission has investigated the level of KSG's liabilities and notes that there were persistent financing difficulties prior to privatisation in spite of the rescue aid. The banks had significantly reduced their credit facilities and the State did not want to provide additional capital before a privatisation agreement was signed. Following privatisation, the net cash flow moved sharply into the black. The balance sheet as per 31 December 2000 showed a cash position of EUR [...] million instead of the planned EUR [...] million. This corresponds, however, to the payment of instalments on the frigates (the balance-sheet item 'work in progress less instalments' amounted to -EUR [...] million instead of the planned -EUR 8,0 million) and the to financial requirements resulting from the [...] project and relocation. There was no surplus cash for aggressive, market-distorting activities not linked to the restructuring process.
- (105) Damen's contribution consists firstly of the substantial risks it took by guaranteeing to finish the frigates under construction. Secondly, as indicated above, Damen converted NLG 100 million (EUR 45,4 million) of the subordinated loans into equity capital.
- (106) From the above the Commission concludes that the aid is limited to the minimum as required by the rescue and restructuring aid guidelines.

⁽²⁶⁾ Section 6.6 assesses whether or not the negotiations between the Netherlands and Damen have ensured a proper 'market price'.

Further conditions

- (107) As indicated in point 43 of the rescue and restructuring aid guidelines, the Commission regards any failure to implement the plan as misuse of aid. Pursuant to points 45 and 46 of the guidelines, it will require an annual report on the restructuring.
- (108) In conclusion, the Commission finds that the conditions laid down in the rescue and restructuring aid guidelines have been complied with.

7.5. Assessment in the light of the Shipbuilding Regulation

- (109) In view of the structural difficulties in the shipbuilding sector, the Commission has a strict policy on restructuring aid for companies active in that sector. That policy is set out in particular in Article 5 of the Shipbuilding Regulation, which concerns restructuring aid. Such aid must comply not only with the rescue and restructuring aid guidelines but also with a set of additional specific conditions.
- (110) The restructuring measures affect commercial shipbuilding caught by the Shipbuilding Regulation in the following way:
- of the 1999 losses, EUR 7,1 million is caused by or attributable to commercial shipbuilding ⁽²⁷⁾,
 - all costs associated with the closure of non-core business and the settlement of outstanding claims concern non-shipbuilding sectors and the [...] project. They bear no relation to commercial shipbuilding activities,
 - the relocation affects military shipbuilding, commercial shipbuilding caught by the Shipbuilding Regulation and some of the yacht construction activities. On the basis of turnover forecasts for these activities, the Commission attributes 8 % of the cost, i.e. EUR 3,1 million, to activities caught by the Shipbuilding Regulation ⁽²⁸⁾,
 - the investments in yacht construction do not affect commercial shipbuilding caught by the Shipbuilding Regulation,
 - the expected investment in ICT infrastructure will benefit all shipbuilding activities, including yacht construction and ship repairs. On the basis of a calculation comparable to the one effected for the relocation, the Commission arrives at a figure equal to 11,9 % of the costs, i.e. EUR 0,3 million.

⁽²⁷⁾ (EUR 4,9 million is directly attributable to commercial shipbuilding activities. An amount of EUR 9 million concerns both commercial and military activities. The share attributed to commercial shipbuilding was calculated on the basis of commercial production as a percentage of total production over the period 1995-1999. The amount of (EUR 7,1 million is discounted to end-2000.

⁽²⁸⁾ Turnover forecasts were included in the comments by the Netherlands and by Damen since they had been incorporated into the expert's study on the value of KSG at the time of privatisation. The figures are based on Damen's expectations at the time of the due-diligence investigation. The Commission considers the scenario of intensive yacht construction to be the most appropriate for this calculation, something which has been confirmed by Damen. In the Commission's view, the period 2002-2007 is the most appropriate: although the relocation began as early as 2000, its effects in terms of capacity utilisation were not felt until 2002. Figures for the post-2007 period are not available and would not in any case be reliable. The relocation affects yacht construction only to the extent that the workload exceeds the capacity of the dock refurbished for this purpose (the corresponding turnover is estimated at NLG [...] million, which is the figure in the order book for that year and which will be realised in full in the refurbished dock, whereas the somewhat higher 2004 figure will partly be realised in the 'old' military dock). On the basis of those assumptions, it is calculated that 'topping-up orders' constitute [...] % of total expected turnover that is affected by the relocation. It is true that such orders may also comprise naval shipbuilding for third countries, which implies that, as a percentage of total turnover affected by the relocation, commercial shipbuilding caught by the Shipbuilding Regulation should be lower. The current order book also suggests that commercial shipbuilding activities were more limited than expected at the time of privatisation. On the other hand, after 2007, commercial shipbuilding caught by the Shipbuilding Regulation may increase, in particular when military orders are limited. The Commission therefore regards 8 % as the best estimate available.

It must be concluded that some EUR 10,5 million (7,2 %) of total restructuring costs can be regarded as destined for shipbuilding activities caught by the Shipbuilding Regulation. Consequently, 7,2 % of the total aid, or EUR 4 million, can be regarded as favouring those activities. In order to determine whether that part of the aid is compatible with the common market, the Commission must ascertain whether the conditions set out in the Shipbuilding Regulation have been met.

- (111) The first condition (Article 5(1), first indent) has been met, given that KSG has not been granted rescue or restructuring aid pursuant to Council Regulation (EC) No 1013/97 of 2 June 1997 on aid to certain shipyards under restructuring ⁽²⁹⁾.
- (112) As required by the second indent of Article 5(1), the Netherlands has not given clear and unequivocal undertakings that no further rescue or restructuring aid will be granted to the firm or its legal successors in the future.
- (113) The third indent of Article 5(1) requires there to be a genuine and irreversible reduction in the shipbuilding, ship repair or ship conversion capacity of the firm concerned commensurate with the level of aid involved. However, the restructuring actually increased capacity. The following effects have been identified:
- the relocation of military activities to the Flushing East site entails a significant reduction in the surface area used for assembly, panel building, steel welding, piping and various other activities. However, the overall effect is an increase in efficiency and capacity due to the new hall on the docks. The main dock in Flushing centre, currently used for the military frigates, is not to be closed. The fact that it may be used principally for shipbuilding not caught by Shipbuilding Regulation does not constitute closure: it may be used for commercial shipbuilding caught by the Regulation for a period of ten years and use of the dock for the stated purposes is not independent of Damen (fifth and sixth indents of Article 5(1)),
 - part of the site in the centre of Flushing, including 500 metres of quay, will be sold. However, alongside the main dock, KSG will construct a new, 200-metre-long quay on the site. In Flushing East a quay has been extended by a 66-metre-long pier so that two frigates can be finished together. As a result, the overall length of the quays and piers has been reduced by 234 metres. However, it appears that the length of piers and quays did not represent a bottleneck as regards production in the period preceding the aid measures. Damen has demonstrated that all the quays and piers have been usable to date and that they may all have been used in the recent past. However, it has not been demonstrated that the reduction would entail a capacity reduction in relation to the level of actual production in the preceding five years,
 - as regards ship repairs, the restructuring has entailed a reduction in the workforce from 155 in 1998 to 139 in 2000 (down 10 %). Damen and KSG have not made any significant investments in the ship-repair yard. The value of production is estimated at EUR [...] million per annum, significantly below the corresponding levels in 1998 and 1999. However, neither Damen nor the Netherlands has undertaken to limit production in the event of demand trends proving more favourable than expected.
- (114) The Commission's requests notwithstanding, neither Damen nor the Netherlands has submitted an acceptable proposal for a capacity reduction within the meaning of the Shipbuilding Regulation. On the basis of all the aforementioned effects, the Commission concludes that there is no capacity reduction commensurate with the aid within the meaning of the third to sixth indents of Article 5(1) of the Shipbuilding Regulation. Accordingly, the aid allocated to commercial shipbuilding caught by this Regulation, i.e. EUR 4 million, is not compatible with the common market.

8. CONCLUSIONS

- (115) The 1998 subordinated loan and the additional advance payment constitute state aid within the meaning of Article 87(1) of the Treaty. They constitute rescue aid. The part not caught by Article 296 is compatible with the common market pursuant to the rescue and restructuring aid guidelines.

⁽²⁹⁾ OJ L 148, 6.6.1997, p. 3.

- (116) The privatisation agreement whereby both the KSG shares and the subordinated loans were transferred to Damen for a symbolic price does not contain a State aid component in favour of Damen.
- (117) The 1998 subordinated loan, the interest on the additional advance, the new subordinated loan and the interest-free loan constitute State aid within the meaning of Article 87(1) of the Treaty in favour of KSG. The fact that KSG's bankruptcy would have increased the cost of the frigates by a greater amount than the aid in question does not affect this analysis. The Netherlands has invoked Article 296 of the Treaty, but this is not relevant since most of the aid can be regarded as compatible with the common market pursuant to the rescue and restructuring aid guidelines. The Commission has established that the restructuring plan provides a sound basis for restoring viability and that the aid is limited to the minimum. Undue distortion of competition has been avoided in so far as activities not caught by the Shipbuilding Regulation are concerned. However, the aid attributable to activities that are caught by that Regulation, i.e. EUR 4 million, is not compatible with the common market since there is no capacity reduction commensurate with it. This part of the aid should be recovered from the recipient,

HAS ADOPTED THIS DECISION:

Article 1

The privatisation agreement between the Netherlands and Damen Shipyards Group (Damen) does not contain State aid pursuant to Article 87(1) of the EC Treaty and Article 61(1) of the EEA Agreement in favour of Damen.

The measures in support of the restructuring of Koninklijke Schelde Groep ('KSG') constitute State aid pursuant to Article 87(1) of the EC Treaty and Article 61(1) of the EEA Agreement in favour of KSG.

Article 2

The State aid which the Netherlands has implemented in favour of KSG, in so far as it can be attributed to activities that are not caught by the Shipbuilding Regulation, is compatible with the common market.

Article 3

The State aid of EUR 4 million which the Netherlands has implemented in favour of KSG, in so far as it can be attributed to activities not caught by Regulation (EC) No 1540/98, is incompatible with the common market.

Article 4

1. The Netherlands shall take all necessary measures to recover from the recipient the aid referred to in Article 3 and unlawfully made available to the recipient.
2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the Decision. The aid to be recovered shall include interest from the date on which it was at the disposal of the recipient until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.

Article 5

The Netherlands shall submit an annual report on implementation of the restructuring plan for the period until 2007, or until a later date if the implementation of the restructuring is delayed.

Article 6

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

Article 7

This Decision is addressed to Kingdom of the Netherlands.

Done at Brussels, 5 June 2002.

For the Commission
Mario MONTI
Member of the Commission
