

English edition

Legislation

Contents

I	<i>Acts whose publication is obligatory</i>	
	Commission Regulation (EC) No 905/2003 of 23 May 2003 establishing the standard import values for determining the entry price of certain fruit and vegetables	1
	Commission Regulation (EC) No 906/2003 of 23 May 2003 suspending the buying-in of butter in certain Member States	3
	Commission Regulation (EC) No 907/2003 of 23 May 2003 determining the allocation of export licences for certain milk products to be exported to the Dominican Republic under the quota referred to in Article 20a of Regulation (EC) No 174/1999	4
*	Commission Regulation (EC) No 908/2003 of 23 May 2003 fixing the compensatory aid for bananas produced and marketed in the Community in 2002 and the unit value of the advances for 2003	5
*	Commission Regulation (EC) No 909/2003 of 23 May 2003 amending Regulation (EC) No 1693/2002 as regards registration of imports of certain malleable cast iron tube or pipe fittings produced by one Argentinian exporting producer	7
	Commission Regulation (EC) No 910/2003 of 23 May 2003 fixing the maximum export refund on wholly milled long grain B rice to certain third countries in connection with the invitation to tender issued in Regulation (EC) No 1898/2002	9
	Commission Regulation (EC) No 911/2003 of 23 May 2003 fixing the maximum export refund on wholly milled round grain rice to certain third countries in connection with the invitation to tender issued in Regulation (EC) No 1896/2002	10
	Commission Regulation (EC) No 912/2003 of 23 May 2003 fixing the maximum export refund on wholly milled round grain, medium grain and long grain A rice to be exported to certain third countries in connection with the invitation to tender issued in Regulation (EC) No 1897/2002	11

Commission

2003/373/EC:

- * **Commission Decision of 11 December 2002 on the State aid which Germany is planning to implement for BMW AG in Leipzig ⁽¹⁾ (notified under document number C(2002) 4830)** 12

2003/374/EC:

- * **Commission Decision of 21 May 2003 on the implementation of Decision No 507/2001/EC of the European Parliament and of the Council concerning a set of actions relating to the trans-European network for the collection, production and dissemination of statistics on the trading of goods within the Community and between the Community and non-member countries (Edicom) (notified under document number C(2003) 1598)** 20

2003/375/EC:

- * **Commission Decision of 21 May 2003 on the designation of the .eu Top Level Domain Registry ⁽¹⁾ (notified under document number C(2003) 1624)** 29

Notice to readers (see page 31)

⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 905/2003
of 23 May 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 24 May 2003.

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

Done at Brussels, 23 May 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 23 May 2003 establishing the standard import values for determining the entry price of certain fruit and vegetables

<i>(EUR/100 kg)</i>		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	81,8
	096	100,5
	999	91,2
0707 00 05	052	110,9
	999	110,9
0709 90 70	052	87,2
	999	87,2
0805 10 10, 0805 10 30, 0805 10 50	052	83,4
	204	41,1
	220	41,0
	382	63,3
	388	53,1
	400	42,8
	524	65,6
	600	54,3
	624	54,2
0805 50 10	999	55,4
	382	63,8
	388	53,1
	512	66,9
	528	66,4
	999	62,6
0808 10 20, 0808 10 50, 0808 10 90	388	85,9
	400	108,6
	404	78,2
	508	84,1
	512	77,9
	528	76,7
	720	131,9
	804	94,3
0809 20 95	999	92,2
	400	272,5
	999	272,5

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

COMMISSION REGULATION (EC) No 906/2003
of 23 May 2003
suspending the buying-in of butter in certain Member States

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Commission Regulation (EC) No 509/2002 ⁽²⁾,

Having regard to Commission Regulation (EC) No 2771/1999 of 16 December 1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream ⁽³⁾, as last amended by Regulation (EC) No 359/2003 ⁽⁴⁾, and in particular Article 2 thereof,

Whereas:

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

- (2) Commission Regulation (EC) No 769/2003 suspending the buying-in of butter in certain Member States ⁽⁵⁾ establishes the most recent list of Member States in which intervention is suspended. This list must be adjusted as a result of the market prices communicated by Sweden under Article 8 of Regulation (EC) No 2771/1999. In the interests of clarity, the list in question should be replaced and Regulation (EC) No 769/2003 should be repealed,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

Regulation (EC) No 769/2003 is hereby repealed.

Article 3

This Regulation shall enter into force on 24 May 2003.

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

Done at Brussels, 23 May 2003.

For the Commission
Franz FISCHLER
Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 79, 22.3.2002, p. 15.

⁽³⁾ OJ L 333, 24.12.1999, p. 11.

⁽⁴⁾ OJ L 53, 28.2.2003, p. 17.

⁽⁵⁾ OJ L 109, 1.5.2003, p. 25.

COMMISSION REGULATION (EC) No 907/2003
of 23 May 2003

determining the allocation of export licences for certain milk products to be exported to the Dominican Republic under the quota referred to in Article 20a of Regulation (EC) No 174/1999

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Commission Regulation (EC) No 509/2002 ⁽²⁾,

Having regard to Commission Regulation (EC) No 174/1999 of 26 January 1999 laying down detailed rules for the application of Council Regulation (EEC) No 804/68 as regards export licences and export refunds in the case of milk and milk products ⁽³⁾, as last amended by Regulation (EC) No 833/2003 ⁽⁴⁾, and in particular Article 20a(11) thereof,

Whereas:

Article 20a of Regulation (EC) No 174/1999 determines the procedure for allocating export licences for certain milk products to be exported to the Dominican Republic under a quota opened for that country. Applications submitted for the 2003/2004 quota year cover quantities greater than those available. As a result, allocation coefficients should be set for the quantities applied for,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities covered by export licence applications for the products referred to in Article 20a(3) of Regulation (EC) No 174/1999 submitted for the period 1 July 2003 to 30 June 2004 shall be multiplied by the following allocation coefficients:

- 0,633049 for applications submitted for the part of the quota referred to in Article 20a(4)(a) of Regulation (EC) No 174/1999,
- 0,093333 for applications submitted for the part of the quota referred to in Article 20a(4)(b) of Regulation (EC) No 174/1999.

Article 2

This Regulation shall enter into force on 1 June 2003.

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

Done at Brussels, 23 May 2003.

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

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 79, 22.3.2002, p. 15.

⁽³⁾ OJ L 20, 27.1.1999, p. 8.

⁽⁴⁾ OJ L 120, 15.5.2003, p. 18.

COMMISSION REGULATION (EC) No 908/2003

of 23 May 2003

fixing the compensatory aid for bananas produced and marketed in the Community in 2002 and the unit value of the advances for 2003

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organisation of the market in bananas ⁽¹⁾, as last amended by Regulation (EC) No 2587/2001 ⁽²⁾, and in particular the first subparagraph of Article 12(6) and Article 14 thereof,

Whereas:

- (1) Pursuant to Article 12(3) of Regulation (EEC) No 404/93, compensatory aid to Community producers for any loss of income is calculated on the basis of the difference between the flat-rate reference income and the average production income from bananas produced and marketed in the Community during the year in question.
- (2) Article 2(2) of Commission Regulation (EEC) No 1858/93 of 9 July 1993 laying down detailed rules for applying Council Regulation (EEC) No 404/93 as regards the aid scheme to compensate for loss of income from marketing in the banana sector ⁽³⁾, as last amended by Regulation (EC) No 471/2001 ⁽⁴⁾, fixes the flat-rate reference income at EUR 64,03 per 100 kilograms net weight of green bananas ex-packing shed.
- (3) In 2002, the average production income, calculated on the basis of the average of the prices for bananas marketed outside the producer regions at the stage of delivery at first port of unloading (goods not unloaded), on the one hand, and the selling prices on local markets for bananas marketed in their producer region, on the other, less the flat-rate amounts laid down in Article 3(2) of Regulation (EEC) No 1858/93, was less than the flat-rate reference income fixed for 2002. The compensatory aid to be granted in respect of 2002 should be fixed accordingly.
- (4) Pursuant to the second subparagraph of Article 12(6) of Regulation (EEC) No 404/93, supplementary aid is granted in one or more producer regions where the average income from production is significantly lower than the average for the Community.
- (5) The annual average production income from the marketing of bananas produced in Martinique and Guadeloupe has proved to be significantly lower than

the Community average during 2002. As a result, supplementary aid should be granted in the producer regions of Martinique and Guadeloupe, in accordance with the practice followed in recent years. Supplementary aid covering a percentage of the difference between the average income in the Community and the average income recorded on selling products in those regions should be fixed, using a degressive calculation method in which the first 10 % of this difference is not compensated for.

- (6) The unit amount of the advances and the amount of the relevant security are established, in accordance with Article 4(2) and (3) of Regulation (EEC) No 1858/93, on the basis of the aid fixed for the preceding year.
- (7) Given that not all the necessary data were available, it has not hitherto been possible to determine the compensatory aid for 2002. Provision should be made for the balance of the aid for 2002 and of the advances for bananas marketed during January and February 2003 to be paid within two months of the entry into force of this Regulation.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Bananas,

HAS ADOPTED THIS REGULATION:

Article 1

1. The compensatory aid provided for in Article 12 of Regulation (EEC) No 404/93 for fresh bananas falling within CN code ex 0803, excluding plantain bananas, produced and marketed in the Community in 2002 shall be EUR 30,33 per 100 kilograms.
2. The aid fixed in paragraph 1 shall be increased by EUR 3,34 per 100 kilograms for bananas produced in Martinique and by EUR 4,57 per 100 kilograms for bananas produced in Guadeloupe.

Article 2

Advances for bananas marketed from January to December 2003 shall amount to EUR 21,23 per 100 kilograms. The relevant security shall be EUR 10,62 per 100 kilograms.

⁽¹⁾ OJ L 47, 25.2.1993, p. 1.

⁽²⁾ OJ L 345, 29.12.2001, p. 13.

⁽³⁾ OJ L 170, 13.7.1993, p. 5.

⁽⁴⁾ OJ L 67, 9.3.2001, p. 52.

Article 3

Notwithstanding Article 10 of Regulation (EEC) No 1858/93, the competent authorities of the Member States shall pay the balance of the compensatory aid to be granted in respect of 2002 and the advance for bananas marketed during January and February 2003 within two months of the entry into force of this Regulation.

Article 4

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

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

Done at Brussels, 23 May 2003.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION REGULATION (EC) No 909/2003

of 23 May 2003

amending Regulation (EC) No 1693/2002 as regards registration of imports of certain malleable cast iron tube or pipe fittings produced by one Argentinian exporting producer

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾, as last amended by Regulation (EC) No 1972/2002 ⁽²⁾, and in particular Articles 13 and 14 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) In accordance with Regulation (EC) No 1784/2000 ⁽³⁾ (the 'definitive Regulation'), the Council imposed an anti-dumping duty of 34,8 % on imports of threaded malleable cast iron tube or pipe fittings (malleable fittings) originating in Brazil.
- (2) On 12 August 2002, the Commission received a request, pursuant to Article 13(3) of Regulation (EC) No 384/96 (the 'basic Regulation'), from the Defence Committee of the Malleable Cast Iron Pipe Fittings Industry of the European Union. The request alleged the existence of circumvention of the anti-dumping duties imposed by the definitive Regulation on imports of malleable fittings originating in Brazil. According to the request, the circumvention practice consisted of transshipment of malleable fittings originating in Brazil via Argentina to the Community. This request was submitted on behalf of producers representing a major proportion of the Community production of malleable fittings and contained sufficient evidence regarding the factors set out in Article 13(1) of the basic Regulation.
- (3) The Commission initiated an investigation into the alleged circumvention pursuant to Regulation (EC) No 1693/2002 ⁽⁴⁾ (the 'initiating Regulation').
- (4) Pursuant to Articles 13(3) and 14(5) of the basic Regulation, Article 2 of the initiating Regulation instructed the customs authorities to register imports of malleable fittings consigned from Argentina, whether declared as originating in Argentina or not, as of 26 September 2002.

- (5) Article 2(3) of the initiating Regulation provided that imports should be exempted from registration if the exporters having applied for an exemption of registration were found not to be circumventing the anti-dumping duties.

B. REQUESTS FOR EXEMPTION

- (6) Within the deadlines laid down in Article 3 of the initiating Regulation, the Commission received a request for exemption from the registration and measures from one exporting producer, DEMA SA, San Justo, Buenos Aires.
- (7) In December 2002, one month after the expiry of the deadline for receipt of replies to the questionnaire, the Commission received a submission on behalf of Industrias Aguila Blanca SA (Argentina), claiming to be a producer of malleable fittings in Argentina. The submission contained a request by this company to be considered as an interested party in the investigation and a request to be exempted from extension of measures. Given that the submission was received at such an advanced stage of the investigation and well beyond the deadlines laid down in Article 3 of the initiating Regulation and, in addition, would have required further explanations and verification, the company was informed that it could not be considered as cooperating in the investigation. Accordingly, the company was informed that findings in respect of it had to be made on the basis of the facts available in accordance with Article 18(1) of the basic Regulation.
- (8) Any decision concerning exporters should be limited to exemption from registration at this stage. If the Council subsequently adopts a regulation extending the anti-dumping measures pursuant to Article 13 of the basic Regulation, it may also decide to exempt certain exporters from such extended measures.

C. INVESTIGATION PERIOD

- (9) The investigation period covered the period 1 July 2001 to 30 June 2002 (the 'IP'). Data were collected from 1998 up to the IP to investigate the change in the pattern of trade.

D. FINDINGS IN RESPECT OF DEMA SA

- (10) DEMA SA replied to the questionnaire sent by the Commission in the course of the investigation. The Commission did carry out a verification visit at the premises of DEMA SA.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 305, 7.11.2002, p. 1.

⁽³⁾ OJ L 208, 18.8.2000, p. 8.

⁽⁴⁾ OJ L 258, 26.9.2002, p. 27.

- (11) It is noted that, during the IP, DEMA SA only exported one container to the Community. No other exports to the Community took place during the IP or in the period for which data were collected. In fact, the only export preceding the one during the IP took place in 1992. Therefore, there was no clear pattern of trade prior to or after the imposition of measures concerning Brazilian exports to the Community, and consequently no change thereof. Moreover it has also been established that DEMA SA is a manufacturer and exporter of malleable fittings operating its own production facilities for the complete production process of the product concerned. It only sells its own products and never purchased any malleable fittings from Brazil during the IP. It is therefore considered that DEMA SA demonstrated to the satisfaction of the Commission that it did not circumvent the measures imposed on malleable fittings originating in Brazil.
- (12) In the light of the above findings, registration of imports of malleable fittings consigned from Argentina and produced by DEMA SA should cease.
- (13) The Commission therefore considers it appropriate to amend its initiating Regulation in so far as it provides for the registration of imports of malleable fittings consigned from Argentina (whether declared as originating in Argentina or not).
- (14) This Regulation is based on findings specific to DEMA SA and does not prejudice any decision which the Council may take to extend the existing anti-dumping

measures on malleable fittings originating in Brazil to the same product consigned from Argentina (whether declared as originating in Argentina or not).

- (15) Interested parties were informed of the essential facts and considerations on the basis of which the Commission intended to cease the registration of imports of malleable fittings produced by DEMA SA and were given the opportunity to comment. No objections were received,

HAS ADOPTED THIS REGULATION:

Article 1

The following paragraph shall be added to Article 2 of Regulation (EC) No 1693/2002:

‘4. Notwithstanding paragraph 1, imports of the product identified in Article 1 which are produced by the following companies shall not be subject to registration:

Producer	TARIC additional code
DEMA SA, Av. Pte Perón 3750, San Justo, Buenos Aires, Argentina	A438'

Article 2

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

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

Done at Brussels, 23 May 2003.

For the Commission
Pascal LAMY
Member of the Commission

COMMISSION REGULATION (EC) No 910/2003**of 23 May 2003****fixing the maximum export refund on wholly milled long grain B rice to certain third countries in connection with the invitation to tender issued in Regulation (EC) No 1898/2002**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Commission Regulation (EC) No 411/2002 ⁽²⁾, and in particular Article 13(3) thereof,

Whereas:

(1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 1898/2002 ⁽³⁾.

(2) Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 1948/2002 ⁽⁵⁾, allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

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

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled long grain B rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 1898/2002 is hereby fixed on the basis of the tenders submitted from 19 to 22 May 2003 at 295,00 EUR/t.

Article 2

This Regulation shall enter into force on 24 May 2003.

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

Done at Brussels, 23 May 2003.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 62, 5.3.2002, p. 27.

⁽³⁾ OJ L 287, 25.10.2002, p. 11.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 299, 1.11.2002, p. 18.

**COMMISSION REGULATION (EC) No 911/2003
of 23 May 2003**

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Commission Regulation (EC) No 411/2002 ⁽²⁾, and in particular Article 13(3) thereof,

Whereas:

(1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 1896/2002 ⁽³⁾.

(2) Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 1948/2002 ⁽⁵⁾, allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

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

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled round grain rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 1896/2002 is hereby fixed on the basis of the tenders submitted from 19 to 22 May 2003 at 152,00 EUR/t.

Article 2

This Regulation shall enter into force on 24 May 2003.

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

Done at Brussels, 23 May 2003.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 62, 5.3.2002, p. 27.

⁽³⁾ OJ L 287, 25.10.2002, p. 5.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 299, 1.11.2002, p. 18.

COMMISSION REGULATION (EC) No 912/2003
of 23 May 2003

fixing the maximum export refund on wholly milled round grain, medium grain and long grain A rice to be exported to certain third countries in connection with the invitation to tender issued in Regulation (EC) No 1897/2002

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Commission Regulation (EC) No 411/2002 ⁽²⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 1897/2002 ⁽³⁾.
- (2) Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 1948/2002 ⁽⁵⁾, allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

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

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled grain, medium grain and long grain A rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 1897/2002 is hereby fixed on the basis of the tenders submitted from 19 to 22 May 2003 at 152,00 EUR/t.

Article 2

This Regulation shall enter into force on 24 May 2003.

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

Done at Brussels, 23 May 2003.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 62, 5.3.2002, p. 27.

⁽³⁾ OJ L 287, 25.10.2002, p. 8.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 299, 1.11.2002, p. 18.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 11 December 2002

on the State aid which Germany is planning to implement for BMW AG in Leipzig

(notified under document number C(2002) 4830)

(Only the German text is authentic)

(Text with EEA relevance)

(2003/373/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 those provisions ⁽¹⁾,

Whereas:

I. PROCEDURE

- (1) On 3 December 2001 Germany notified the Commission of a proposal to grant aid to Bayerische Motorenwerke AG (BMW). The Commission asked for additional information by letter dated 16 January 2002, to which Germany replied on 20 February.
- (2) By letter dated 3 April 2002, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid (hereinafter referred to as the decision to initiate the procedure). By letter dated 17 May 2002, Germany submitted comments on the initiation of the procedure.

- (3) The decision to initiate the procedure was published in the *Official Journal of the European Communities* of 30 May 2002 ⁽²⁾. The Commission called on interested parties to submit their comments. It received comments from France on 3 July 2002; these were forwarded to Germany. Germany responded to those comments by letter dated 16 August 2002.

II. DESCRIPTION

A. The proposal and the planned aid

- (4) BMW plans to set up a new passenger-vehicle production plant in Leipzig with an eligible investment volume of some EUR 1 204,9 million (net present value). It is initially planned to manufacture passenger vehicles of the [...] ^(*) 3-series model at the new plant. However, it will also be possible in the medium and long term to manufacture other BMW models there. The project is expected to create some 5 400 direct new jobs.
- (5) The aid recipient is BMW. According to the notification, the total amount of planned aid is EUR 418,6 million (net present value). It is to be granted under the *Gemeinschaftsaufgabe Verbesserung der regionalen Wirtschaftsstruktur (GA) — 30. Rahmenplan* (30th outline plan for the joint Federal Government/Länder scheme for improving regional economic structures) and under the *Investitionszulagengesetz 1999* (1999 Investment Allowance Law). The aid intensity is 34,74 %.

⁽¹⁾ OJ C 128, 30.5.2002, p. 15.

⁽²⁾ See footnote 1.

^(*) [...] represents confidential information.

- (6) Leipzig was recognised by the Commission as an area eligible for regional aid under Article 87(3)(a) of the EC Treaty in the regional aid map for 2000 to 2003. The regional aid ceiling for large companies in Leipzig, a 'structurally stronger' region in the new *Länder*, is 28 %. However, at the request of one *Land* (Saxony) and with the approval of the GA subcommittee, which is responsible for regional aid at national level, up to 35 % (gross) may be granted to large companies in such regions. Germany has stated that these conditions have been met and has submitted the relevant minutes of the committee in question.
- (7) Germany has also indicated that the most viable alternative location to Leipzig would be Kolin (Czech Republic). After BMW issued a public call for expressions of interest in serving as a location for the new plant, around 250 locations submitted a questionnaire concerning the main selection criteria. Following an extensive selection procedure, the five most attractive locations (Augsburg in Bavaria, Arras in France, Leipzig in Saxony, Kolin in the Czech Republic and Schwerin in Mecklenburg-Western Pomerania) were identified. These locations were analysed in detail and assessed over several months, and specific siting and land-purchase contracts were negotiated with the respective authorities. Finally, Leipzig [...] was identified as the best location in Germany and Kolin [...] as the best alternative location abroad. On 18 July 2001 the BMW board decided in favour of Leipzig.

B. Decision to initiate the procedure

- (8) The Commission justified its decision to initiate the procedure on the basis of the following factors:
- (9) Firstly, the notified cost handicap for Leipzig was EUR 591,4 million (net present value). The planned aid of EUR 418,6 million (net present value) would thus still leave additional costs of EUR 172,8 million to be borne by BMW if it located there. The Commission therefore doubted whether Leipzig's regional handicap is in fact as great as indicated.
- (10) As regards the level of regional handicap indicated in the cost-benefit analysis (hereinafter referred to as CBA), the Commission considered that, in the case of Kolin, it might be necessary to take into account and quantify certain risks related to BMW's brand image or to the start-up of production, including the integration of suppliers. Germany was asked to provide an estimate of the costs associated with those risks.
- (11) Secondly, as regards labour costs, the Commission doubted that a sufficiently high convergence factor for the level of wages had been applied in the CBA to take account of labour-market developments after enlargement. The CBA assumed a real convergence rate lower than applied by the Commission in similar cases (5 % annually).
- (12) Thirdly, the Commission had doubts concerning the estimated number of jobs at both sites. Although productivity is lower in Kolin than in Leipzig, the number of jobs was assumed in the CBA to be higher in Leipzig than in Kolin during the reference period.
- (13) Finally, the Commission doubted whether account had been taken at both sites of all the training measures that would be needed during the reference period of the CBA, i.e. the five years after the commercial start-up of production.

III. COMMENTS FROM INTERESTED PARTIES

- (14) France presented comments on the decision to initiate the procedure in which it essentially supported the doubts raised by the Commission, in particular as regards the extent of Leipzig's regional handicap as compared with Kolin. These comments were received on 3 July 2002, i.e. after the expiry of the one-month deadline set by the Commission. France did not apply for an extension of the deadline or provide any due justification for such an extension. France's comments have therefore not been formally taken into account in the Commission's assessment. Germany, which had the opportunity to respond to France's comments, has backed the Commission's position.
- (15) France pointed out that such a high level of aid would lead to distortions of competition between BMW and the other European car manufacturers. French manufacturers would be particularly affected as the French market would be targeted by BMW and as French manufacturers operated in the same market segment. The aid for the plant in Leipzig would not compensate for any regional handicap and was therefore not necessary. Three press articles were submitted to the Commission in support of these arguments^(?).

^(?) La Tribune, 19 July 2001 (BMW préfère Leipzig à Arras pour sa nouvelle usine de production); Les Echos, 7 July 2001 (BMW construira sa nouvelle usine à Leipzig); Les Echos, 10 July 2001 (Arras serait hors course pour la future usine de BMW).

- (16) As regards the proportionality of the aid, France considered that Leipzig's geographical location represented an industrial and economic advantage for BMW. The company already had established suppliers in the region. Moreover, it could more easily profit from an exchange of workers between production plants, depending on demand. France also pointed to the quality, availability and competitiveness of local labour. Finally, the construction of a new car plant by a producer of premium cars in a central European country would involve industrial and economic risks which could be reduced only by means of additional expenditure. A greenfield investment in the Czech Republic, where BMW did not yet have an assembly plant, would involve higher costs and risks, particularly since there might be difficulties with the start-up of production. In addition, manufacturing motor vehicles in central Europe would require additional marketing costs to maintain the BMW's image as a producer of premium cars.

IV. COMMENTS FROM GERMANY

- (17) In its reply to the comments from France, Germany considered that, for procedural reasons, these comments should not be taken into account by the Commission since they had been received after the deadline laid down in the decision to initiate the procedure. The main purpose of setting a deadline in accordance with the first sentence of Article 6(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty⁽⁴⁾ is to ensure a correct procedure for treating all parties equally. There did not seem to be any duly justified case for extending the deadline pursuant to the second sentence of Article 6(1).
- (18) As for the substance of France's comments, Germany pointed out that they were essentially based on French press articles concerning the Arras site and not on information concerning the two remaining options, Leipzig and Kolin. As regards the question whether regional aid was necessary, Germany rejected France's comments as unjustified, stressing, *inter alia*, that the region was classified as an Objective 1 area. As regards the credibility of Kolin as a viable alternative location, Germany argued that the Commission had not questioned the mobility of the project when initiating the procedure. Moreover, a French motor-vehicle manufacturer (together with a non-European producer) had recently announced its intention to set up a new car plant at the site which BMW had examined as an alternative location. This proved the feasibility and viability of the alternative location. Any effect the project might have on the industry and on competition would be taken into account by the Commission in its 'top-up analysis'. As regards the proportionality of the aid, Germany noted among other things that the French comments on this matter referred
- to criteria indicated in the French press as grounds for the decision not to choose the Arras site. Such considerations could not be applied to the Kolin site. Germany submitted information on specific points raised by France and concluded that the latter's comments did not contain any tangible elements which called into question the aid's compatibility with the common market.
- (19) As regards the doubts raised in the decision to initiate the procedure concerning the level of Leipzig's regional handicap, Germany stated that there would be no significant differences in logistical costs between Leipzig and Kolin since, in contrast to Arras, they are both located at the same distance from the existing BMW production network. As for training costs, the main measures would be implemented before the start-up of production (start of the CBA period). Costs relating to vocational training at both sites and further training at both sites had been taken into account during the reference period. Labour costs relating to the exchange of workers between different sites had been included in the CBA. Germany justifies the increase of less than 5 % in real wages in Kolin as compared with Leipzig by pointing out in particular that, for the Leipzig site, a special agreement had been concluded with employees to take account of the specific characteristics of the local wage structure. Under this agreement, individual working hours would be reduced in Leipzig. This implied a real rise in wages and thus a reduction of the real convergence rate of 5 %. As regards productivity and the number of employees, lower productivity and longer working hours per employee had been assumed for Kolin.
- (20) With regard to the doubts expressed in the decision to initiate the procedure concerning possible production risks, Germany pointed to the successful Skoda plant in Mlada Boleslav and the recent decision by PSA/Toyota to locate in Kolin. Although Germany considered that the start-up risks in Kolin did not have to be taken into account, this element had been included in a worst-case scenario. The CBA was also based on the conservative and risk-minimising assumption that both sites would receive identical investment in buildings and machinery. On the question of risks to BMW's image, Germany pointed out that BMW successfully operated production plants in different continents. The quality of cars produced in South Africa was the same as in Germany. The BMW 3-series was currently assembled at various locations. Customers who were concerned solely with quality would not normally know where a car had been manufactured.

V. ASSESSMENT OF THE AID

- (21) The measure notified by Germany in favour of BMW constitutes State aid within the meaning of Article 87(1)

⁽⁴⁾ OJ L 83, 27.3.1999, p. 1.

of the EC Treaty. It is to be financed by the State or through State resources. Furthermore, as it would finance a significant proportion of the costs of the project, the aid is liable to distort competition in the Community by giving BMW an edge over competitors not receiving aid. There is also extensive trade between Member States in the motor-vehicle market.

- (22) The aid is to be granted to a company which manufactures and assembles motor vehicles. The company thus forms part of the motor vehicle industry within the meaning of the Community framework for State aid to the motor vehicle industry⁽⁵⁾ (hereinafter referred to as the relevant Community framework).
- (23) The relevant Community framework specifies that aid which the public authorities plan to grant to an individual project under an authorised aid scheme for a firm operating in the motor vehicle industry must, in accordance with Article 88(3) of the EC Treaty, be notified before being granted if either of the following thresholds is reached: (i) total cost of the project equalling EUR 50 million; or (ii) total gross aid for the project; whether state aid or aid from Community instruments, equalling EUR 5 million. Both the total cost of the project and the amount of aid exceed the notification threshold. Thus, in notifying the proposed aid for BMW, Germany complied with the requirements of Article 88(3).
- (24) In view of the nature and purpose of the aid and the location of the investment, Article 87(2) is not relevant. Under Article 87(3), certain other types of aid may be regarded as compatible with the common market. Compatibility must be assessed from the standpoint of the Community as a whole and not simply from the point of view of a single Member State. In order to safeguard the proper functioning of the common market and to comply with the principle established in Article 3(g) of the Treaty, the exceptions in Article 87(3) must be interpreted narrowly. With regard to the derogations in Article 87(3)(b) and (d), it is clear that the aid in question is not intended for an important project of common European interest, to remedy a serious disturbance in the German economy or to promote culture and heritage conservation.
- (25) As regards the derogations in Article 87(3)(a) and (c), the Commission notes that investments projects implemented in areas of Saxony qualify for aid under subparagraph (a). Under the new regional aid map for Germany, approved by the Commission on 29 July 1999 for assisted areas covered by Article 87(3)(a), the project is located in an area with a regional aid ceiling for large companies of 28 % gross grant equivalent. However, at the request of one *Land* (Saxony) and with the approval of the GA subcommittee, which is responsible for regional aid at national level, up to 35 % (gross) may be granted to large companies in these regions⁽⁶⁾. Germany has confirmed that these conditions have been met and has submitted the relevant minutes of the GA subcommittee.
- (26) In assessing the aid's compatibility with the common market, the Commission has not, as explained in recital 14, formally taken account of the comments submitted during the procedure by France. Since these comments nevertheless repeat and support many of the doubts expressed by the Commission in its decision to initiate the procedure, an indirect response is given to them in this assessment.
- (27) In order to be able to determine whether regional aid consistent with Article 87(3)(a) of the Treaty may be deemed compatible with the common market, the Commission must check whether the conditions specified in the relevant Community framework have been met.
- (28) To authorise aid under this framework, the Commission, after checking that the region in question is eligible for aid under Community law, establishes whether the investor could have chosen an alternative site for its project so as to establish the need for the aid, with particular reference to the mobility of the project.
- (29) Taking into account the nature of the investment (on a greenfield site) and on the basis of the documents received (e.g. location studies, correspondence with the Czech authorities), it is to be assumed that the project was mobile and that Kolin was a viable alternative location.
- (30) Regional aid for modernisation and rationalisation measures, which are generally not mobile, is not authorised in the motor vehicle sector. However, the project in question involves setting up a completely new production plant and may therefore be eligible for regional aid. The eligible investment costs amount to EUR 1 204,9 million (net present value).

⁽⁵⁾ OJ C 279, 15.9.1997, p. 1.

⁽⁶⁾ N 195/99, regional aid area for Germany (2002 to 2003) for regions covered by Article 87(3)(a).

- (31) Together with an external expert on the motor vehicle industry, the Commission has evaluated the notified CBA with a view to ascertaining whether the proposed aid is proportional to the regional problems. The main reason for Leipzig's regional handicap is the significantly higher level of labour costs in Germany. Following the initiation of the procedure, Germany clarified some aspects of the CBA which had given rise to doubts. These related in particular to the productivity assumptions, the number of employees at both plants and the necessary skill-training measures. The CBA assumes identical investment in buildings and machinery at both locations and thus the same level of automation. However, labour productivity would have been lower in Kolin, reflecting a lower level of skills and a possible need to train the local workforce. Skill-training costs after the start-up of production were taken into account in the CBA. It was also assumed that the working time per employee would be longer in Kolin than in Leipzig. As regards the number of employees at both locations, lower productivity in Kolin would have been more than offset by the longer working hours. On the basis of the information submitted, the Commission considers the assumptions concerning the number of employees and the weekly working hours at both locations to be plausible. Since the labour-cost handicap is the decisive factor in determining the regional handicap, it is of crucial importance that the assumed labour costs are in fact incurred *ex post*.
- (32) With regard to productivity, the number of employees and the site-specific working hours, the following assumptions are applicable to Leipzig:

	2002	2003	2004	2005	2006	2007	2008	2009	2010
Weekly working hours	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*
Local workers	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*
Relocated workers	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*
Total	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*

- (33) With regard to productivity, the number of employees and the site-specific working hours, the following assumptions are applicable to Kolin:

	2002	2003	2004	2005	2006	2007	2008	2009	2010
Weekly working hours	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*
Local workers	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*
Relocated workers	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*
Total	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*

- (34) However, doubts raised in the decision to initiate the procedure concerning other aspects of the CBA cannot be dispelled. These relate to the assumed level of convergence of wage costs, the quantification of certain risks related to the effects of the location decision on BMW's image and possible difficulties in starting up production.

- (35) The Commission considers the real convergence of wages in Kolin to have been understated. It has been the consistent practice of the Commission in cases where the comparator plant is located in a central or eastern European country to apply a convergence factor to the level of wages in order to take account of labour-market developments in the wake of enlargement. Although Germany does not, in principle, oppose the application of such a factor, the CBA assumes a lower convergence rate than hitherto applied by the Commission in similar cases. In cases where the chosen location is in the Community and the comparator location is in central or eastern Europe, the Commission consistently assumes a convergence rate of 5 %. Examples of this are Decisions 2002/143/EC (VW/Dresden) ⁽⁷⁾, 2002/781/EC (Daimler-Chrysler/Kölleda) ⁽⁸⁾, and 2002/900/EC (Renault/Valladolid) ⁽⁹⁾, and the decision to initiate the procedure in respect of Opel/Azambuja ⁽¹⁰⁾. Germany justifies assuming a rate of convergence lower than 5 % by claiming that, under an agreement with its employees ⁽¹¹⁾, the workers in Leipzig would benefit from a variety of measures, in particular a likely reduction in weekly working hours ⁽¹²⁾, (which would implicitly increase 'real' wage costs). The Commission considers that such a gradual reduction of weekly working hours in Leipzig from [...] * hours in 2002 to [...] * hours from 2008 may be regarded as plausible. However, the assumption of a 'real' increase in wage costs in Leipzig cannot necessarily be inferred from this since this assumption would lead to a different wage convergence factor than the consistently applied rate of 5 % and particularly since such an effect could theoretically also be assumed for Kolin. This is why the Commission's assessment is based on a real convergence of wages for Kolin of 5 % per annum. This calculation leads to a labour cost handicap of EUR 332,01 million rather than the notified figure of EUR 433,55 million. Consequently, the regional handicap of Leipzig is reduced to EUR 101,54 million.
- (36) As regards the quantification of image risks associated with the location decision, the Commission does consider that a decision to locate in the Czech Republic would have had a negative effect on the image and sales of BMW, in particular in Germany. Germany argues that image risks need not be taken into account in this case since the crucial factor for customers is quality, which is as high at non-German BMW production sites as in Germany. Although Germany was asked to provide an estimate of the costs related to these risks, no such data were submitted.
- (37) However, the Commission considers that image risks must be taken into account. In another case concerning the possible production of Rover models in Hungary, this risk was taken into account by BMW itself (loss of 10 % in UK sales or increase in advertising) ⁽¹³⁾. Moreover, BMW models produced at non-German sites (such as South Africa or Spartanburg in the United States) are not primarily intended for the German or European market. However, the situation in the case under consideration is that premium vehicles would be produced in a central or eastern European country largely for sale on the European or German market. It is very likely a decision by BMW to implement a major investment project giving rise to extensive job creation not in a region in the new *Länder* with high unemployment but in Kolin would have had a negative impact on BMW's public image in Germany. In addition, it is plausible to assume that customers' subjective perception of the quality of a premium car produced in an eastern European location might also have a negative impact on sales. The image effect must therefore be included in the CBA.
- (38) As Germany has not quantified these risks, the Commission must estimate the costs related to them. As in previous aid cases, these risks have been quantified by assuming that potential negative effects might be offset by additional marketing expenditure. In a prudent estimate made by the Commission together with the external expert, it is assumed that the necessary additional marketing expenditure would represent 1 % of total turnover (ex-factory unit price multiplied by production volume) during the five-year assessment period. The estimate is based on an earlier decision in a comparable case where the comparator plant was also located in an eastern European country ⁽¹⁴⁾. The resulting additional marketing costs are EUR 85,37 million.
- (39) Account must likewise be taken in the CBA of the start-up risks (i.e. the time needed to reach full production capacity) in the event of production in Kolin. These risks also include possible quality problems (because, for example, the workforce is less skilled or it is more difficult for equipment manufacturers to transfer technology or provide support), potential difficulties arising from language barriers and the possibility that suppliers might be more difficult to integrate. However, the last-mentioned risk is limited, as the external expert has confirmed, because virtually the same supplier structure was assumed for both locations. In addition, BMW has confirmed that it generally pursues a policy of global sourcing and that the best suppliers worldwide are chosen for the whole production network of a specific model.

⁽⁷⁾ OJ L 48, 20.2.2002, p. 25.

⁽⁸⁾ OJ L 282, 19.10.2002, p. 23.

⁽⁹⁾ OJ L 314, 18.11.2002, p. 92.

⁽¹⁰⁾ OJ C 151, 25.6.2002, p. 2.

⁽¹¹⁾ This agreement has not been submitted to the Commission.

⁽¹²⁾ Employees will also increasingly benefit from other measures, e.g. allowances exceeding agreed rates, Christmas bonuses and the 'BMW allowance'.

⁽¹³⁾ OJ C 62, 4.3.2000, p. 12.

⁽¹⁴⁾ OJ L 48, 20.2.2002, p. 25. This case concerned the production of a luxury car by VW in Dresden/Mosel. The alternative site was in the Czech Republic.

- (40) Germany considers that the start-up risks for Kolin are relatively minor and do not need to be taken into account. However, the risk was quantified by BMW for the worst-case scenario. This calculation is based on the nominal output being achieved with a delay of [...]*. In Kolin, this would lead to a lower volume of [...]* vehicles, which would have to be manufactured at other, existing sites. The BMW 3-series model is produced at several different plants within the BMW network (Munich, Regensburg, Rosslyn (South Africa) and Dingolfing). Temporary output reductions in Kolin of [...]* vehicles could be offset by increased production of [...]* vehicles at the other plants manufacturing the same model (in particular Munich and Regensburg). Such a shift of production within the BMW network would lead to additional costs of EUR [...]* per vehicle. In the event of start-up difficulties, additional expenditure of EUR 29,32 million would thus arise. This amount for the start-up risks must be taken into account in the CBA, in particular considering that BMW does not currently produce passenger vehicles in eastern Europe and that it experienced considerable start-up problems at its (greenfield) plant in Spartanburg (United States of America).[...]*. Such quantification of the start-up risks includes possible quality problems. It recognises that the Spartanburg project is not entirely comparable given that it involved setting up a new production plant for a completely new model at some distance from BMW's other plants, whereas the project involved in this case is concerned with the production of an existing model which is already manufactured at three relatively nearby plants (Munich, Regensburg and Dingolfing).
- (41) Including these considerations in the CBA gives rise to a different result from that indicated in the original notification. The net present value of the regional handicap of Leipzig becomes EUR 375,16 million. Since the net present value of the eligible costs in Leipzig is now EUR 1 204,9 million, the site handicap compared to Kolin is 31,14 %.
- (42) Lastly, the relevant Community framework requires that account be taken of the change in the group's production capacity before and after the project (according to a top-up analysis). As a result of the so-called 'top-up', the permissible aid intensity changes according to variations in production capacity and the assisted-area status of the region. According to Germany, the group's production capacity is [...]* million vehicles/year before the investment and [...]* million vehicles/year after the investment. This means that the increase in capacity is attributable solely to the 160 000-vehicle rise in capacity provided by the Leipzig plant. Taking account of this significant capacity increase and the region's status as an area eligible for regional aid under Article 87(3)(a), the relevant Community framework requires a reduction of the 'regional handicap ratio' by one percentage point in this case. Consequently, the Commission has reduced the permissible aid intensity for the investment in Leipzig by one percentage point to 30,14 %.

VI. CONCLUSION

- (43) The Commission notes that the project is mobile and that the aid is necessary for its implementation. The net present value of the aid to be granted to BMW for the project in Leipzig is EUR 418,6 million, with an aid intensity of 34,7 % gge. Even though this is lower than the regional aid ceiling of 35 % gge, it is nevertheless higher than the regional handicap ratio, as calculated in the CBA and reduced in accordance with the 'top-up' procedure, of 30,14 % of the eligible investment costs.
- (44) Consequently, the Commission can only authorise aid of 30,14 % of the eligible investment costs of EUR 1 204,9 million (net present value), or EUR 363,16 million (net present value). Any aid exceeding this amount is incompatible with the common market.
- (45) In view of the potential distortion of competition arising from the high aid amount and aid intensity in this case, the Commission deems it necessary for Germany to monitor the implementation of the eligible investment and the precise amount of aid granted. The relevant Community framework stipulates that *ex post* monitoring and assessment of aid already granted may be required, the amount of detail varying according to the case and the potential distortion of competition. The Commission accordingly requires Germany to submit its annual reports concerning the result of such monitoring before the aid is disbursed.
- (46) The purpose of such monitoring and reporting is not only to ensure that the regional aid intensity expressed in terms of gross grant equivalent, as defined in this Decision, is complied with by Germany but also to confirm the assumptions in the CBA concerning the labour-cost handicap, which is the crucial factor in determining the regional handicap. Although the Commission has no prior doubts as to the plausibility of the labour-cost handicap, Germany should be required to submit annual reports to the Commission over the reference period of the CBA (2005 to 2010) indicating total labour costs, the number of jobs created, weekly working hours and the number of vehicles manufactured. Should the labour costs differ from those notified in the CBA, the Commission reserves the right to reduce the amount of compatible aid accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany is planning to implement for Bayerische Motorenwerke AG (BMW) in respect of its investment project in Leipzig is compatible with the common market to the extent of EUR 363,16 million (net present value), corresponding to an aid intensity of 30,14 % of the eligible investment costs, subject to the conditions set out in Article 3.

Article 2

The amount of the planned aid for BMW's investment project in Leipzig that exceeds this aid intensity is incompatible with the common market and may not therefore be granted.

Article 3

Germany shall submit annual reports concerning the implementation of the eligible investment under the project and the precise amounts of aid disbursed. It shall also submit annual reports covering the period 2005 to 2010 indicating total labour costs, the number of jobs created, weekly working hours and the number of vehicles manufactured.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 11 December 2002.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION

of 21 May 2003

on the implementation of Decision No 507/2001/EC of the European Parliament and of the Council concerning a set of actions relating to the trans-European network for the collection, production and dissemination of statistics on the trading of goods within the Community and between the Community and non-member countries (Edicom)

(notified under document number C(2003) 1598)

(2003/374/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Decision No 507/2001/EC of the European Parliament and of the Council of 12 March 2001 concerning a set of actions relating to the trans-European network for the collection, production and dissemination of statistics on the trading of goods within the Community and between the Community and non-member countries (Edicom) ⁽¹⁾, and in particular Article 3 thereof,

Whereas:

- (1) Decision No 507/2001/EC lays down the reference framework for an information network for the collection, production and dissemination of statistics on the trading of goods within the Community and between the Community and non-member countries and entrusts the Commission with implementing it.
- (2) The measures set out in this decision meet the aims and conditions established by Decision No 507/2001/EC and therefore qualify for Community funding.
- (3) In order to meet the aims established by Decision No 507/2001/EC, part of the resources are directly allocated in the form of subsidies only to national authorities or organisms which are directly implicated in the collection, production and dissemination of statistics on the trading of goods within the Community and between the Community and non-member countries.
- (4) The Commission should therefore approve the annual work programme including the distribution of annual expenditure.

- (5) The measures set out in this decision are in accordance with the opinion of the Committee on Statistics relating to the Trading of Goods between Member States and the Committee on Statistics relating to the Trading of Goods with Non-Member Countries, established by Council Regulation (EEC) No 3330/91 ⁽²⁾, as last amended by Regulation (EC) 1624/2000 of the European Parliament and of the Council ⁽³⁾, and Council Regulation (EEC) No 1172/95 ⁽⁴⁾, as last amended by Regulation (EC) No 374/98 ⁽⁵⁾,

HAS ADOPTED THIS DECISION:

Article 1

For the 2003 work programme, the measures qualifying for Community funding are set out in Annex I up to the amounts stated in Annex II of this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 21 May 2003.

For the Commission

Pedro SOLBES MIRA

Member of the Commission

⁽¹⁾ OJ L 76, 16.3.2001, p. 1.

⁽²⁾ OJ L 316, 16.11.1991, p. 1.

⁽³⁾ OJ L 187, 26.7.2000, p. 1.

⁽⁴⁾ OJ L 118, 25.5.1995, p. 10.

⁽⁵⁾ OJ L 48, 19.2.1998, p. 6.

ANNEX I

EDICOM MEASURES — GENERAL WORK PROGRAMME

Measures relating to the implementation of a higher-quality information network which is less costly and available more quickly, in line with the requirements of Community policy

The 2003 work programme will pursue the following objectives.

1. *Production of advanced estimators*

The objective of the proposed measures is to produce preliminary results at European level (EU and euro zone) which comply with the minimum quality requirements at their level of aggregation. By comparing monthly statistics, as published initially and after revision, it will be possible to anticipate the final values of regularly revised data using appropriate econometric modelling or other suitable methodologies. The impact of enlargement will have to be anticipated, particularly in order to limit any effect it might have on the timetable for publication of the results for the European Union.

2. *Improvement in the quality of basic statistics in external trade*

The objective of the proposed measures is to improve the quality of statistics by adapting and harmonising methods intended to check data supplied by enterprises and those which Member States submit to Eurostat.

3. *Improvement in quality measurement and control of external trade statistics*

Traditionally, external flows have been measured by the customs administration, which has its own culture. In particular, as a tax administration, it makes extensive use of accounting practices, i.e. an apparently clear-cut distinction between true values and errors. Therefore, there is no tradition of quality control, error measurement and communication on reliability of external trade statistics in many Member States.

The aim of the proposed measures is to continue the efforts to remedy this unsatisfactory situation by enhancing quality measurement, quality control and quality assurance.

4. *Improvement in the updating process for statistical results*

The aim of the proposed measures is to define a harmonised updating procedure for reducing the impact of factors affecting the quality of statistics. A high level of variability in the updating process applied to monthly data reduces the degree of harmonisation of external trade statistics. Therefore, once the best methods have been identified by studying the updating process applied by each Member State, a more harmonised procedure/approach at EU level will be proposed.

5. *Improvement in the methods of adjusting statistical results*

In both Intrastat and Extrastat, thresholds for data collection are used by the Member States in order to limit the burden on traders. There is currently no harmonisation of the methods or the tools used for the adjustments made necessary by applying thresholds or to compensate for any non-responses. The objective of the proposed measures is to adjust the statistics on the basis of the most suitable methods and to have these methods adopted by all the Member States.

6. *Dealing with asymmetries in Intrastat and reconciling data*

The collection system for statistics on intra-EU trade, Intrastat, generates sets of statistics which contain some inconsistencies. The main reasons for this are known. The asymmetries are a very important problem because they affect the reliability of the euro zone trade balance as well as the balance of payments and national accounts. They are not limited to intra-EU trade and may occur with extra-EU trading partners.

In order to address these problems and improve the situation of users at European level (EU, euro zone), the aim of the proposed measures is to compare and implement specific models to reconcile the divergent data on the basis of several methods. At the same time, some Member States will carry out detailed 'mirror' comparison exercises aimed at correcting any anomalies.

Measures relating to the implementation of a network of information that is relevant and appropriate to users' changing needs, within the framework of economic and monetary union and the international economic environment

The 2003 work programme will pursue the following objectives.

1. *Improvement in the management of disclosure avoidance for foreign trade statistics*

The collection and dissemination of foreign trade statistics is a very detailed process. In many cases, this level of detail is not compatible with the rules on confidentiality which protect individual data provided by enterprises. Where necessary, the Member States apply their own rules for disguising data at national level and forward the initial data and the relevant authorised levels of publication to the Commission (Eurostat).

The aim of the measure will be firstly, to propose more consistent rules on disclosure avoidance, and secondly, to look at the possibility of reducing or eliminating the impact of confidentiality on the aggregated results for the European Union's and the euro zone's trade.

2. *Analysis of seasonal adjustment quality*

Eurostat produces and disseminates monthly foreign trade indicators which are seasonally adjusted and corrected for working days.

However, there are different methods of seasonal adjustment and correcting for working days and several ways of specifying the models. There is a need to measure the quality of the indicators produced according to the main parameters for quality. The objectives of the proposed measures are therefore:

- to define and assess quality indicators for seasonally adjusted data, drawing a distinction between general indicators and those which might be specific to foreign trade data,
- on the basis of genuine data, to test and assess the impact the main assumptions made in the seasonal adjustment calculation have on the quality indicators defined in the previous stage,
- to provide a comprehensive assessment and detailed recommendations.

3. *Improvement in the information on foreign trade indices*

Eurostat and most Member States publish unit value indices. In particular, Eurostat has developed an application for new external trade indices (NICE) enabling unit value indices to be calculated every month. Some Member States also produce specific price indices for foreign trade.

The objectives of the proposed measures are:

- to ensure development of the NICE application continues,
- to increase the content of the accessible information by adding backward-extrapolated and, if necessary, seasonally adjusted data,
- to conduct a comparative analysis in some Member States of unit value indices and price indices,
- to define methodological constraints that must be met in order to produce price indices for foreign trade that can be aggregated at the level of the EU and the euro zone,
- to foster progressive implementation of price indices for foreign trade in the Member States which do not have them.

4. *Improvement in the information on the value of trade*

Statistics on the trading of goods are valued on a fob (free on board) basis for dispatches/exports and on a cif basis (cost, insurance, and freight) for arrivals/imports. Publishing statistics on a fob basis for arrivals and imports, at least for aggregated results, would provide users with very useful information. This method is used in the area of the balance of payments, and the production of information on a double cif/fob basis is recommended by the United Nations. Pilot projects will be implemented in some Member States with the aim of making this information available.

Measures relating to the implementation of an information network which is better integrated into the general statistical system and adapted to developments in the administrative environment

The 2003 work programme will pursue the following objectives.

1. *Development of trade registers and attention to globalisation*

For the open economies of the EU, external trade statistics are a major source of information that is widely used by economists, policy-makers and business associations. However, to make full use of these data, most users need them to be linked with enterprise statistics, for which a full set of variables is already available at EU level. On the other

hand, it is important to provide the users with additional data measuring the impact of international groups on trade statistics. To achieve these goals, an action plan has been proposed that is divided into the two following areas: trade registers and globalisation.

— Trade registers

The objective of the proposed measures is to establish connections between the trade and business registers so that a broad range of new analysis of external trade statistics can be carried out. For instance, it would be possible to measure the part of trade carried out by each economic sector. The links between statistics on trade and structural business statistics could also be analysed.

— Globalisation

A fundamental implication of globalisation is that the activities of enterprises need to be analysed and measured in a global as well as a national context. Traditionally, statistical data have focused on the international trade area with much less attention to other important cross-border economic relationships such as the activities of multinational firms and intra-firm flows. The result is that statistics may fail to fully capture the scope of cross-border economic activities.

The objective of the proposed measures is to examine the extent to which existing external trade statistics can contribute to the collection of this information and determine possible technical modifications to existing systems which can facilitate this collection.

2. *Improvement in user access to customs statistics*

Eurostat has developed an application (Taristat) which provides access to some of the data in the TARIC customs database. This tool is sufficiently operational as far as the display of specific and isolated information is concerned. However, combining external trade statistics with customs data and using the latter data as reference data when processing external trade data could be envisaged. This information would be very useful for those who use statistics for analysis, particularly in the context of trade negotiations.

The objective of the measure is therefore to provide Comext database users with easy access to basic information on tariff measures and customs duties.

3. *Adaptation of Intrastat and Extrastat legislation*

A plan for adapting the Intrastat system (statistics on trade in goods between Member States) is under way. Its objectives are to make the rules more transparent and comprehensible, take greater account of changes in national practices in certain fields (adjustments, timetables, quality, etc.) and set system parameters to provide results that meet Community needs in terms of quality requirements relating to coverage, reliability and availability.

A new plan for adapting the Extrastat system (statistics on trading of goods with non-member countries) is to begin in 2003. In accordance with the guidelines for the Eurostat strategic plan 1999, its main aims are:

- to improve the content of the relevant acts, so as to render them more comprehensible and transparent,
- to take greater account of EMU requirements (particularly as regards the rapid availability of aggregate euro zone trade data),
- to examine possible/necessary amendments in the light of the United Nations recommendations (concepts and definitions (see documentation)),
- to examine possible/necessary amendments in the light of customs legislation developments (Customs Code),
- to focus more on users' needs (tariff statistics, globalisation, sectoral statistics, etc.).

Within this framework, the proposed measures will aim to perform the analyses needed to carry out the project and assist Eurostat in revising legislation and preparing recommendations on their implementation.

4. *Improvement of the links between statistical and customs administrations*

Within Extrastat, primary information is collected from customs declarations. The collection procedures and the extent of cooperation between the customs administrations and the authorities responsible for statistics vary throughout the EU countries. Strengthening these ties and adapting or modernising the procedures for collecting and transmitting the customs information are likely to improve the quality and the timeliness of the statistics. A number of measures concerning these objectives have been proposed by Member States.

Measures relating to the implementation of a network improving the statistical service provided to administrations and users and providers of data

The 2003 work programme will pursue the following objectives.

1. Consolidation of dissemination products

The users of external trade statistics require rapid access to pertinent data. Rapid dissemination of data which are as up to date as possible and adapted to the needs of different users will establish the European statistical system as the preferred supplier of data on the external and intra-Community trade of the EU and euro zone. A number of projects designed to meet this goal will be initiated or continued.

2. Improvement of service regarding product nomenclatures

Product nomenclatures are a crucial source of information for those who use statistics on the trading of goods. But they also cause difficulties for the enterprises which must classify their products under one of the many headings of the Combined Nomenclature, and for the national administrations responsible for dealing with respondents.

Several measures have been proposed with the aim of modernising the Combined Nomenclature, while at the same time maintaining the precise and relevant information on the goods traded and simplifying access to the information in the nomenclature.

3. Adapting the methods of transmitting data to Eurostat

The plans for revising Intrastat and Extrastat legislation focus particularly on satisfying users' needs better. More specifically, it is apparent that economic and monetary union requires rapid production of aggregated euro zone trade data, and that the content of the detailed data could be adapted in order to meet current needs better and satisfy new requirements.

Against this background, it is proposed that the methods of transmitting information to Eurostat be re-examined at the same time as the plans for revising the reference regulations.

Measures relating to the implementation of a network based on tools for the collection of information in the light of the latest technological advances in order to improve functions available to information providers

The 2003 work programme aims to develop the tools for collecting statistical information

The collection of data from companies and their treatment is a fundamental component of the external trade statistic system. One of the successes of the programme Edicom I was the development and implementation of collection tools for the Intrastat system used by a large number of companies (electronic forms IDEP/CN8 and IRIS, and web forms). Owing to changes in the technological environment, and in the light of the experience gained, the objectives of the measures proposed will be to:

- ensure the continuity and development of these tools by making the necessary technological and functional modifications,
- take into account new methodological requirements,
- take into account developments in message standardisation,
- ensure the promotion of modern collection tools, especially web forms.

Measures relating to the implementation of an integrated and interoperable network

The 2003 work programme will pursue the following objectives.

The Edicom programme has methodological, organisational, legislative and computer components which require a coherent, integrated and synergetic approach. The following measures are therefore proposed.

1. Network modernisation

Measures will be taken to modernise the various elements of the trans-European network for the collection, production and dissemination of statistics on the trading of goods within the Community and between the Community and non-member countries. They will focus on the tools and methods used in:

- processing and validating data,
- communication between national administrations and Eurostat,
- user access to statistical data and metadata, including greater use of the Internet and improvements to the software for disseminating statistics on the trading of goods (Comext).

2. *Development of an information system on methodology*

All of the methodological measures proposed must be coordinated to ensure their consistency and must aim at better integration of statistics on the trade of goods into the European statistical system. The measures must also be linked to existing methodology (including the *acquis communautaire*) and accompanied by teaching guides.

Within this general context, it is proposed to continue the development of a comprehensive, coherent and consistent documentary base to support the overall project and enable the methodological information to be disseminated interactively in a user-friendly way using the latest technology.

ANNEX II

EDICOM MEASURES — INDICATIVE COST BREAKDOWN

2003

*(in EUR)***Measures relating to the implementation of a higher-quality information network which is less costly and available more quickly, in line with the requirements of Community policy**

— Centralised measures	718 155
— Measures to be taken in the Member States:	718 200
Belgium	
Denmark	126 000
Germany	81 200
Greece	50 000
Spain	161 000
France	40 000
Ireland	
Italy	63 000
Luxembourg	18 100
The Netherlands	
Austria	55 000
Portugal	42 000
Finland	
Sweden	81 900
United Kingdom	

Measures relating to the implementation of a network of information that is relevant and appropriate to users' changing needs, within the framework of economic and monetary union and the international economic environment

— Centralised measures	525 774
— Measures to be taken in the Member States:	835 000
Belgium	
Denmark	
Germany	70 600
Greece	50 000
Spain	
France	115 000
Ireland	
Italy	185 000
Luxembourg	
The Netherlands	
Austria	135 000
Portugal	
Finland	117 000
Sweden	95 400
United Kingdom	67 000

(in EUR)

Measures relating to the implementation of an information network better integrated into the general statistical system and adapted to developments in the administrative environment

— Centralised measures	252 670
— Measures to be taken in the Member States:	725 700
Belgium	
Denmark	54 000
Germany	164 200
Greece	50 000
Spain	
France	30 000
Ireland	
Italy	175 000
Luxembourg	
The Netherlands	185 000
Austria	
Portugal	
Finland	33 300
Sweden	34 200
United Kingdom	

Measures relating to the implementation of a network improving the statistical service provided to administrations and users and providers of data

— Centralised measures	1 132 030
— Measures to be taken in the Member States:	163 000
Belgium	103 000
Denmark	
Germany	
Greece	
Spain	60 000
France	
Ireland	
Italy	
Luxembourg	
The Netherlands	
Austria	
Portugal	
Finland	
Sweden	
United Kingdom	

Measures relating to the implementation of a network based on tools for the collection of information in the light of the latest technological advances in order to improve functions available to information providers

— Centralised measures	590 000
— Measures to be taken in the Member States:	2 194 912
Belgium	284 000
Denmark	221 400
Germany	100 600
Greece	90 000

	<i>(in EUR)</i>
Spain	
France	157 000
Ireland	240 000
Italy	335 000
Luxembourg	7 000
The Netherlands	213 000
Austria	60 000
Portugal	186 000
Finland	127 212
Sweden	173 700
United Kingdom	
 Measures relating to the implementation of an integrated and interoperable network	
— Centralised measures	1 541 000
— Measures relating to technical and administrative assistance, support measures	567 000
TOTAL	9 963 441

COMMISSION DECISION
of 21 May 2003
on the designation of the .eu Top Level Domain Registry

(notified under document number C(2003) 1624)

(Text with EEA relevance)

(2003/375/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 733/2002 of the European Parliament and of the Council of 22 April 2002 on the implementation of the .eu Top Level Domain⁽¹⁾, and in particular Article 3(1)(a), (b) and (c) thereof,

Whereas:

- (1) According to Article 3(1)(b) of Regulation (EC) No 733/2002 (hereinafter referred to as the Regulation), the Commission is required to designate the Registry which shall be entrusted with the organisation, administration and management of the .eu Top Level Domain after publishing a call for expressions of interest in the *Official Journal of the European Union*.
- (2) The Commission published a Call for expressions of interest (2002/C 208/08) in the *Official Journal of the European Communities* on 3 September 2002, inviting applications from organisations wishing to be selected as the Registry to be entrusted with the organisation, management and administration of the .eu Top Level Domain.
- (3) The call was closed on 25 October 2002.
- (4) An evaluation of the applications based on the eligibility criteria and selection criteria provided for in the call for expressions of interest was conducted with the assistance of independent experts evaluators.
- (5) The evaluators examined the applications and established a priority list ranking the applications according to their overall quality in view of the selection criteria; the application ranking first on the priority list is European Registry for Internet Domains (EURID), second is European Domain Registry Asbl (EUDR) and third is EUREG; the Commission has examined the results arrived at by the evaluators and on this basis endorses the priority list.
- (6) As provided for in Article 3(1)(c) of the Regulation, the Commission shall enter into a contract with the designated Registry, which shall specify the conditions according to which the Commission supervises the organisation, administration and management of the .eu Top Level Domain by the Registry.

(7) A draft service concession contract to be concluded between the Commission and the .eu Top Level Domain Registry was adopted by Commission Decision C(2002) 3161 of 28 August 2002 and published within the call for expressions of interest. Should the condition set forth for the designation of the Registry not be fulfilled or should the contractual negotiations with the organisation designated as the Registry be terminated before the signature of a contract as a result either of the withdrawal of the organisation or where in the opinion of the Commission the conclusion of an appropriate contract is not possible, the Commission reserves the right to open negotiations with another applicant which has submitted an eligible application and has fulfilled the selection criteria.

(8) In accordance with Article 6(2) of the Regulation, the Commission sought the opinion of the Communications Committee established by Article 22.1. of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)⁽²⁾; the opinion of the Committee on the designation of the Registry to be entrusted with the organisation, management and administration of the .eu Top Level Domain was delivered on 10 April 2003,

HAS ADOPTED THIS DECISION:

Article 1

European Registry for Internet Domains (EURID) is designated, as the .eu Top Level Domain Registry entrusted with the organisation, management and administration of the .eu Top Level Domain.

Article 2

The designation is subject to the condition that the members of the European Registry for Internet Domains (EURID) consortium, within three months of the date of entry into force of this decision, submit to the Commission the proof concerning the final establishment of the not-for-profit organisation in accordance with the application of the members of EURID consortium.

⁽¹⁾ OJ L 113, 30.4.2002, p. 1.

⁽²⁾ OJ L 108, 24.4.2002, p. 33.

Article 3

This Decision is addressed to the members of the European Registry for Internet Domains (EURID) consortium namely:

- DNS Belgium vzw/asbl
Koning Leopold I straat 1 bus 2
B-3000 Leuven
- Istituto di Informatica e Telematica
Consiglio Nazionale delle Ricerche
Area della Ricerca di Pisa
Via Giuseppe Moruzzi 1
I-56124 Pisa

- Network Information Centre Sweden AB (NIC SE).
Sehlstedtgatan 7
SE-115 28 Stockholm.

Done at Brussels, 21 May 2003.

For the Commission
Erkki LIIKANEN
Member of the Commission



Freedom – Security – Justice Building Europe without borders

Directorate-General
for Justice and Home Affairs



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