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## Legislation

Contents



[1] Text with EEA relevance



EN

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

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

I

*(Acts whose publication is obligatory)*

# COMMISSION REGULATION (EC) No 1256/2003

## of 15 July 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 16 July 2003.

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

Done at Brussels, 15 July 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 15 July 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 | 48,9 |
| | 096 | 46,1 |
| | 999 | 47,5 |
| 0707 00 05 | 052 | 73,3 |
| | 999 | 73,3 |
| 0709 90 70 | 052 | 83,4 |
| | 999 | 83,4 |
| 0805 50 10 | 388 | 56,1 |
| | 524 | 69,7 |
| | 528 | 46,9 |
| | 999 | 57,6 |
| 0808 10 20, 0808 10 50, 0808 10 90 | 064 | 113,5 |
| | 388 | 79,8 |
| | 400 | 102,2 |
| | 508 | 74,2 |
| | 512 | 62,6 |
| | 524 | 28,7 |
| | 528 | 70,6 |
| | 720 | 136,3 |
| | 800 | 189,7 |
| | 804 | 102,6 |
| | 999 | 96,0 |
| 0808 20 50 | 388 | 101,4 |
| | 512 | 86,7 |
| | 528 | 78,9 |
| | 999 | 89,0 |
| 0809 10 00 | 052 | 194,1 |
| | 064 | 135,5 |
| | 066 | 118,0 |
| | 094 | 130,8 |
| | 999 | 144,6 |
| 0809 20 95 | 052 | 257,2 |
| | 060 | 115,5 |
| | 061 | 279,8 |
| | 400 | 287,2 |
| | 999 | 234,9 |
| 0809 40 05 | 064 | 135,3 |
| | 624 | 138,3 |
| | 999 | 136,8 |

(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 1257/2003

## of 15 July 2003

## supplementing the Annex to Regulation (EC) No 2400/96 on the entry of certain names in the 'Register of protected designation of origin and protected geographical indications' provided for in Council Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (Molise, Alto Crotonese, Welsh Lamb, Nürnberger Bratwürste or Nürnberger Rostbratwürste)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ([1]), as last amended by Commission Regulation (EC) No 806/2003 ([2]), and in particular Article 6(3) and (4) thereof,

Whereas:

(1) In accordance with Article 5 of Regulation (EEC) No 2081/92, the United Kingdom forwarded to the Commission an application for the registration of the name 'Welsh Lamb' as a geographical indication, Italy forwarded to the Commission two applications for the registration of the names 'Molise' and 'Alto Crotonese' as designations of origin and Germany forwarded to the Commission an application for the registration of the names 'Nürnberger Bratwürste' or 'Nürnberger Rostbratwürste' as geographical indications.

(2) The applications have been found, in accordance with Article 6(1) of that Regulation, to meet all the requirements laid down therein and in particular to contain all the information required under Article 4 thereof.

(3) No statement of objection under Article 7 of Regulation (EEC) No 2081/92 has been received by the Commission in respect of the names given in the Annex hereto following their publication in the *Official Journal of the European Union* ([3]).

(4) The names should therefore be entered in the Register of protected designation of origin and protected geographical indications and hence be protected throughout the Community as protected designations of origin or protected geographical indications.

(5) The Annex to this Regulation supplements the Annex to Commission Regulation (EC) No 2400/96 ([4]), as last amended by Regulation (EC) No 865/2003 ([5]),

HAS ADOPTED THIS REGULATION:

*Article 1*

The names in the Annex hereto are added to the Annex to Regulation (EC) No 2400/96 and entered in the 'Register of protected designation of origin and protected geographical indications' as protected designations of origin (PDO) or protected geographical indications (PGI), as provided for in Article 6(3) of Regulation (EEC) No 2081/92.

*Article 2*

This Regulation shall enter into force on the 20th 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, 15 July 2003.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

([1]) OJ L 208, 24.7.1992, p. 1.
([2]) OJ L 122, 16.5.2003, p. 1.
([3]) OJ C 262, 29.10.2002, p. 6 (Alto Crotonese).
OJ C 262, 29.10.2002, p. 9 (Molise).
OJ C 255, 23.10.2002, p. 17 (Welsh Lamb).
OJ C 63, 12.3.2002, p. 25 (Nürnberger Bratwürste or Nürnberger Rostbratwürste).

([4]) OJ L 327, 18.12.1996, p. 11.
([5]) OJ L 124, 20.5.2003, p. 17.

*ANNEX*

**PRODUCTS LISTED IN ANNEX I TO THE EC TREATY, INTENDED FOR HUMAN CONSUMPTION**

**Fresh meat and offal**

UNITED KINGDOM

Welsh Lamb (PGI)

**Meat products**

GERMANY

Nürnberger Bratwürste or Nürnberger Rostbratwürste (PGI)

**Oils and fats**

ITALY

Molise (PDO)

Alto Crotonese (PDO)

# COMMISSION REGULATION (EC) No 1258/2003

## of 15 July 2003

## fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2771/75 of 29 October 1975 on the common organisation of the market in eggs ([1]), as last amended by Commission Regulation (EC) No 493/2002 ([2]), and in particular Article 5(4) thereof,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat ([3]), as last amended by Regulation (EC) No 493/2002, and in particular Article 5(4) thereof,

Having regard to Council Regulation (EEC) No 2783/75 of 29 October 1975 on the common system of trade for ovalbumin and lactalbumin ([4]), as last amended by Commission Regulation (EC) No 2916/95 ([5]), and in particular Article 3(4) thereof,

Whereas:

(1) Commission Regulation (EC) No 1484/95 ([6]), as last amended by Regulation (EC) No 1038/2003 ([7]), fixes detailed rules for implementing the system of additional import duties and fixes representative prices in the poultrymeat and egg sectors and for egg albumin.

(2) It results from regular monitoring of the information providing the basis for the verification of the import prices in the poultrymeat and egg sectors and for egg albumin that the representative prices for imports of certain products should be amended taking into account variations of prices according to origin. Therefore, representative prices should be published.

(3) It is necessary to apply this amendment as soon as possible, given the situation on the market.

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

HAS ADOPTED THIS REGULATION:

*Article 1*

Annex I to Regulation (EC) No 1484/95 is hereby replaced by the Annex hereto.

*Article 2*

This Regulation shall enter into force on 16 July 2003.

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

Done at Brussels, 15 July 2003.

*For the Commission*

J. M. SILVA RODRÍGUEZ

*Agriculture Director-General*

([1]) OJ L 282, 1.11.1975, p. 49.
([2]) OJ L 77, 20.3.2002, p. 7.
([3]) OJ L 282, 1.11.1975, p. 77.
([4]) OJ L 282, 1.11.1975, p. 104.
([5]) OJ L 305, 19.12.1995, p. 49.
([6]) OJ L 145, 29.6.1995, p. 47.
([7]) OJ L 150, 18.6.2003, p. 30.

*ANNEX*

**to the Commission Regulation of 15 July 2003 fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95**

*'ANNEX I*

| CN code | Description | Representative price (EUR/100 kg) | Security referred to in Article 3(3) (EUR/100 kg) | Origin (1) |
|---|---|---|---|---|
| 0207 12 90 | Chickens, plucked and drawn, without heads and feet and without necks, hearts, livers and gizzards, known as "65 % chickens", or otherwise presented, frozen | 73,9 | 14 | 01 |
| 0207 14 10 | Boneless cuts of fowl of the species *Gallus domesticus*, frozen | 200,2 | 30 | 01 |
| | | 204,0 | 29 | 02 |
| | | 225,1 | 23 | 03 |
| | | 207,5 | 28 | 04 |
| 0207 14 60 | Legs and cuts thereof, frozen | 104,7 | 11 | 03 |
| 0207 25 10 | "80 % turkey" carcases, frozen | 81,2 | 29 | 01 |
| 0207 27 10 | Boneless cuts of turkey, frozen | 225,7 | 21 | 01 |
| | | 215,6 | 24 | 04 |
| 0207 36 15 | Boneless cuts of duck or guinea fowl, frozen | 304,4 | 4 | 05 |
| 1602 32 11 | Preparations of uncooked fowl of the species *Gallus domesticus* | 230,0 | 17 | 01 |
| | | 233,8 | 16 | 02 |
| | | 189,7 | 29 | 03 |

(1) Origin of imports:
01 Brazil
02 Thailand
03 Argentina
04 Chile
05 China.'

# COMMISSION REGULATION (EC) No 1259/2003
## of 15 July 2003
## fixing the export refunds on poultrymeat

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organization of the market in poultrymeat [1], as last amended by Commission Regulation (EC) No 493/2002 [2], and in particular Article 8(3) thereof,

Whereas:

(1) Article 8 of Regulation (EEC) No 2777/75 provides that the difference between prices on the world market for the products listed in Article 1(1) of that Regulation and prices for those products within the Community may be covered by an export refund.

(2) It follows from applying these rules and criteria to the present situation on the market in poultrymeat that the refund should be fixed at an amount which would permit Community participation in world trade and would also take account of the nature of these exports and their importance at the present time.

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

HAS ADOPTED THIS REGULATION:

*Article 1*

The list of product codes for which, when they are exported, the export refund referred to in Article 8 of Regulation (EEC) No 2777/75 is granted, and the amount of that refund shall be as shown in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 16 July 2003.

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

Done at Brussels, 15 July 2003.

*For the Commission*
Franz FISCHLER
*Member of the Commission*

[1] OJ L 282, 1.11.1975, p. 77.
[2] OJ L 77, 20.3.2002, p. 7.

*ANNEX*

**to the Commission Regulation of 15 July 2003 fixing the export refunds on poultrymeat**

| Product code | Destination | Unit of measurement | Amount of refund |
|---|---|---|---|
| 0105 11 11 9000 | V04 | EUR/100 pcs | 0,80 |
| 0105 11 19 9000 | V04 | EUR/100 pcs | 0,80 |
| 0105 11 91 9000 | V04 | EUR/100 pcs | 0,80 |
| 0105 11 99 9000 | V04 | EUR/100 pcs | 0,80 |
| 0105 12 00 9000 | V04 | EUR/100 pcs | 1,70 |
| 0105 19 20 9000 | V04 | EUR/100 pcs | 1,70 |
| 0207 12 10 9900 | V01 | EUR/100 kg | 36,00 |
| 0207 12 10 9900 | A24 | EUR/100 kg | 36,00 |
| 0207 12 90 9190 | V01 | EUR/100 kg | 36,00 |
| 0207 12 90 9190 | A24 | EUR/100 kg | 36,00 |
| 0207 12 90 9990 | V01 | EUR/100 kg | 36,00 |
| 0207 12 90 9990 | A24 | EUR/100 kg | 36,00 |

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

The numeric destination codes are set out in Commission Regulation (EC) No 1779/2002 (OJ L 269, 5.10.2002, p. 6).

The other destinations are defined as follows:

V01 Angola, Saudi Arabia, Kuwait, Bahrain, Qatar, Oman, United Arab Emirates, Jordan, Yemen, Lebanon, Iraq and Iran.

V04 All destinations except the United States of America and Estonia.

# COMMISSION REGULATION (EC) No 1260/2003
## of 15 July 2003
## fixing the import duties in the cereals sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals [1], as last amended by Regulation (EC) No 1104/2003 [2],

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector [3], as last amended by Regulation (EC) No 1900/2002 [4], and in particular Article 2(1) thereof,

Whereas:

(1) Article 10 of Regulation (EEC) No 1766/92 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation. However, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by 55 %, minus the cif import price applicable to the consignment in question. However, that duty may not exceed the rate of duty in the Common Customs Tariff.

(2) Pursuant to Article 10(3) of Regulation (EEC) No 1766/92, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market.

(3) Regulation (EC) No 1249/96 lays down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector.

(4) The import duties are applicable until new duties are fixed and enter into force. They also remain in force in cases where no quotation is available for the reference exchange referred to in Annex II to Regulation (EC) No 1249/96 during the two weeks preceding the next periodical fixing.

(5) In order to allow the import duty system to function normally, the representative market rates recorded during a reference period should be used for calculating the duties.

(6) Application of Regulation (EC) No 1249/96 results in import duties being fixed as set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1*

The import duties in the cereals sector referred to in Article 10(2) of Regulation (EEC) No 1766/92 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

*Article 2*

This Regulation shall enter into force on 16 July 2003.

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

Done at Brussels, 15 July 2003.

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

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[1] OJ L 181, 1.7.1992, p. 21.
[2] OJ L 158, 27.6.2003, p. 1.
[3] OJ L 161, 29.6.1996, p. 125.
[4] OJ L 287, 25.10.2002, p. 15.

*ANNEX I*

**Import duties for the products covered by Article 10(2) of Regulation (EEC) No 1766/92**

| CN code | Description | Import duty [1] (EUR/tonne) |
|---|---|---|
| 1001 10 00 | Durum wheat high quality | 0,00 |
| | medium quality | 0,00 |
| | low quality | 0,00 |
| 1001 90 91 | Common wheat seed | 0,00 |
| ex 1001 90 99 | Common high quality wheat other than for sowing | 0,00 |
| 1002 00 00 | Rye | 28,28 |
| 1005 10 90 | Maize seed other than hybrid | 57,21 |
| 1005 90 00 | Maize other than seed [2] | 57,21 |
| 1007 00 90 | Grain sorghum other than hybrids for sowing | 38,37 |

[1] For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2(4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:
— EUR 3 per tonne, where the port of unloading is on the Mediterranean Sea, or
— EUR 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic coasts of the Iberian peninsula.

[2] The importer may benefit from a flat-rate reduction of EUR 24 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

*ANNEX II*

**Factors for calculating duties**

(period from 30 June 2003 to 14 July 2003)

1. Averages over the two-week period preceding the day of fixing:

| Exchange quotations | Minneapolis | Chicago | Minneapolis | Minneapolis | Minneapolis | Minneapolis |
|---|---|---|---|---|---|---|
| Product (% proteins at 12 % humidity) | HRS2. 14 % | YC3 | HAD2 | Medium quality (*) | Low quality (**) | US barley 2 |
| Quotation (EUR/t) | 125,81 (****) | 76,92 | 164,23 (***) | 154,23 (***) | 134,23 (***) | 101,59 (***) |
| Gulf premium (EUR/t) | — | 15,75 | — | — | — | — |
| Great Lakes premium (EUR/t) | 22,69 | — | — | — | — | — |

(*) A discount of 10 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).
(**) A discount of 30 EUR/t (Article 4(3) of Regulation (EC) No 2378/2002).
(***) Fob Duluth.
(****) Premium of 14 EUR/t incorporated (Article 4(3) of Regulation (EC) No 1249/96).

2. Averages over the two-week period preceding the day of fixing:

   Freight/cost: Gulf of Mexico–Rotterdam: 17,23 EUR/t; Great Lakes–Rotterdam: 27,16 EUR/t.

3. Subsidy within the meaning of the third paragraph of Article 4(2) of Regulation (EC) No 1249/96: 0,00 EUR/t (HRW2)
   0,00 EUR/t (SRW2).

# COMMISSION DIRECTIVE 2003/68/EC

## of 11 July 2003

## amending Council Directive 91/414/EEC to include trifloxystrobin, carfentrazone-ethyl, mesotrione, fenamidone and isoxaflutole as active substances

**(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market ([1]), as last amended by Commission Directive 2003/39/EC ([2]), and in particular Article 6(1) thereof,

Whereas:

(1) In accordance with Article 6(2) of Directive 91/414/EEC the United Kingdom received on 28 January 1998 an application from Novartis Crop Protection UK Ltd for the inclusion of the active substance trifloxystrobin in Annex I to Directive 91/414/EEC. The substance was subsequently transferred to Bayer CropScience, which is now acting as the applicant. Commission Decision 1999/43/EC ([3]) confirmed that the dossier was 'complete' in the sense that it could be considered as satisfying, in principle, the data and information requirements of Annexes II and III to Directive 91/414/EEC.

(2) France received an application under Article 6(2) of Directive 91/414/EEC on 14 February 1996 from FMC Europe NV (now FMC Chemical sprl) concerning carfentrazone-ethyl. This application was declared complete by Commission Decision 97/362/EC ([4]).

(3) The United Kingdom received an application under Article 6(2) of Directive 91/414/EEC on 23 April 1998 from Zeneca Agrochemicals UK (now Syngenta) concerning mesotrione. This application was declared complete by Commission Decision 1999/392/EC ([5]).

(4) France received an application under Article 6(2) of Directive 91/414/EEC on 15 September 1999 from Rhone Poulenc Agri SA (now Bayer CropScience) concerning fenamidone. This application was declared complete by Commission Decision 2000/251/EC ([6]).

(5) The Netherlands received an application under Article 6(2) of Directive 91/414/EEC on 6 March 1996 Rhône-Poulenc Agro (now Bayer CropScience) concerning isoxaflutole. This application was declared complete by Commission Decision 96/524/EC ([7]).

(6) For those active substances, the effects on human health and the environment have been assessed, in accordance with the provisions of Article 6(2) and (4) of Directive 91/414/EEC, for the uses proposed by the applicants. The nominated rapporteur Member States, submitted a draft assessment report concerning the substance to the Commission on 19 April 2000 (trifloxystrobin), 14 May 1998 (carfentrazone-ethyl), 17 December 1999 (mesotrione), 14 May 1998 (fenamidone) and 20 February 1997 (isoxaflutole).

(7) The draft assessment reports have been reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health. The review was finalised on 15 April 2003 in the format of the Commission review reports for mesotrione, trifloxystrobin, carfentrazone-ethyl, fenamidone and isoxaflutole.

(8) The review of trifloxystrobin and fenamidone did not reveal any open questions or concerns, which would have required a consultation of the Scientific Committee for Plants.

(9) For carfentrazone-ethyl the review and information were also submitted to the Scientific Committee for Plants for separate consultation. The Committee was asked to comment on the relevance for humans of the elevated levels of specific porphyrins detected in test animals. The Committee expressed the opinion ([8]) that the effects of the substance detected in test animals on porphyrin levels are relevant for humans but saw no evidence that humans are more sensitive to the effect than animals. In addition, the Scientific Committee noted that three unknown polar compounds were detected in a lysimeter. The notifier was therefore requested to comment on the relevance of these three compounds. Additional information was subsequently provided by the notifier and evaluated by the Committee. In its assessment of the new data the Committee concluded that those polar compounds will not cause an unacceptable ecotoxicological or toxicological risk.

([1]) OJ L 230, 19.8.1991, p. 1.
([2]) OJ L 124, 20.5.2003, p. 30.
([3]) OJ L 14, 19.1.1999, p. 30.
([4]) OJ L 152, 11.6.1999, p. 31.
([5]) OJ L 148, 15.6.1999, p. 44.
([6]) OJ L 78, 29.3.2000, p. 26.
([7]) OJ L 220, 30.8.1996, p. 27.

([8]) Opinion of the Scientific Committee for Plants regarding the evaluation of carfentrazone-ethyl in the context of Directive 91/414/EEC concerning the placing of plant protection products on the market. SCP/CARFEN/002-final adopted 26 January 2001.

(10) For mesotrione, the Scientific Committee was asked to comment on the suitability of the rat as an animal model for the extrapolation of the toxicological properties of mesotrione in humans and was invited to assess, whether the onset of adverse effects in target organs (in animal models as well as humans) can be linked to a certain threshold concentration of tyrosine in plasma. In its opinion ([1]), the Committee concluded that due to the similarities in tyrosine kinetics between mice and humans, the mouse can be considered a better animal model than the rat for human risk assessment purposes. The Committee further concluded that no signs or symptoms of adverse effects are to be expected in humans at plasma tyrosine levels below 800 to 1 000 nmol/ml.

(11) For isoxaflutole the Scientific Committee was asked to comment on the toxicological and ecotoxicological effects of a degradation product of the active substance (RPA 203328); on statistical analyses of tumour incidence in the two-year rat study; and on the observation of developmental effects in laboratory animals. In its opinion ([2]), the Committee noted that the degradation product RPA 203328 under worst-case conditions might leach into groundwater with expected concentrations exceeding 0,1 ppb. The Committee identified no toxicological or ecotoxiclogical concern with regard to this degradation product. The Committee also identified no concern for humans related to possible carcinogenic or developmental effects.

In a second consultation on the same substances the Scientific Committee was asked to comment on the appropriate degradation kinetics to be assumed in model calculations of the leaching behaviour. The Committee found certain parameters used in the modelling were insufficiently justified and the half life time of degradation for the RPA 203328 metabolite may have been under-estimated ([3]).

The model calculations of the leaching behaviour of isoxaflutole and its degradation products were subsequently revised along the lines suggested by the Scientific Committee.

(12) It has appeared from the various examinations made that plant protection products containing the active substances concerned may be expected to satisfy, in general, the requirements laid down in Article 5(1)(a) and (b) and Article 5(3) of Directive 91/414/EEC, in particular with regard to the uses which were examined and detailed in the Commission review report. It is therefore appropriate to include mesotrione, trifloxystrobin, carfentrazone-ethyl, fenamidone and isoxaflutole in Annex I, in order to ensure that in all Member States the authorisations of plant protection products containing these active substance can be granted in accordance with the provisions of that Directive.

(13) After inclusion, Member States should be allowed a reasonable period to implement the provisions of Directive 91/414/EEC as regards plant protection products containing trifloxystrobin, carfentrazone-ethyl, mesotrione, fenamidone and isoxaflutole and in particular to review existing provisional authorisations and, by the end of this period at the latest, to transform those authorisations into full authorisations, to amend them or to withdraw them in accordance with the provisions of Directive 91/414/EEC.

(14) It is therefore appropriate to amend Directive 91/414/EEC accordingly.

(15) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Annex I to Directive 91/414/EEC is amended as set out in the Annex to this Directive.

*Article 2*

Member States shall adopt and publish by 31 March 2004 at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

They shall apply those provisions from 1 April 2004.

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

*Article 3*

1. Member States shall review the authorisation for each plant protection product containing trifloxystrobin, carfentrazone-ethyl, mesotrione, fenamidone or isoxaflutole to ensure that the conditions relating to these active substances set out in Annex I to Directive 91/414/EEC are complied with. Where necessary, they shall amend or withdraw authorisations in accordance with Directive 91/414/EEC by 31 March 2004 at the latest.

([1]) Opinion of the Scientific Committee for Plants on the evaluation of mesotrione in the context of Directive 91/414/EEC concerning the placing of plant protection products on the market. SCP/MESOTRI/002-final of 18 July 2002.

([2]) Opinion of the Scientific Committee for Plants regarding the inclusion of isoxaflutole in Annex 1 of Directive 91/414/EEC concerning the placing of plant protection products on the market. SCP/ISOXA/012-final of 3 June 1999.

([3]) Opinion of the Scientific Committee for Plants on additional questions from the Commission concerning the evaluation of isoxaflutole in the context of Directive 91/414/EEC. SCP/ISOXAFLUTOLE-bis-002 final of 30 January 2003.

2. For each authorised plant protection product containing trifloxystrobin, carfentrazone-ethyl, mesotrione, fenamidone or isoxaflutole as either the only active substance or as one of several active substances all of which were listed in Annex I to Directive 91/414/EEC by 30 September 2004 at the latest. Member States shall re-evaluate the product in accordance with the uniform principles provided for in Annex VI to Directive 91/414/EEC, on the basis of a dossier satisfying the requirements of Annex III thereto. On the basis of that evaluation, they shall determine whether the product satisfies the conditions set out in Article 4(1)(b), (c), (d) and (e) of Directive 91/414/EEC. Where necessary and by 31 March 2005 at the latest, they shall amend or withdraw the authorisation for each such plant protection product.

*Article 4*

This Directive shall enter into force on 1 October 2003.

*Article 5*

This Directive is addressed to the Member States.

Done at Brussels, 11 July 2003.

*For the Commission*

David BYRNE

*Member of the Commission*

*ANNEX*

In Annex I the following rows are added at the end of the table:

| No | Common name, identification numbers | IUPAC Name | Purity (1) | Entry into force | Expiration of inclusion | Specific provisions |
|---|---|---|---|---|---|---|
| '59 | Trifloxystrobin<br>CAS No 141517-21-7<br>CIPAC No 617 | Methyl (E)-methoxyimino-{(E)-a-[1-a-(a,a,a-trifluoro-m-tolyl)ethylideneaminooxyl]-o-tolyl}acetate | 960 g/kg | 1 October 2003 | 30 September 2013 | Only use as fungicide may be authorised.<br>For the implementation of the uniform principles of Annex VI, the conclusions of the review report on trifloxystrobin, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 15 April 2003 shall be taken into account. In this overall assessment:<br>— Member States should pay particular attention to the protection of groundwater, when the active substance is applied in regions with vulnerable soil and/or climate conditions.<br>Risk mitigation measures should be applied and/or monitoring programs may be initiated where appropriate. |
| 60 | Carfentrazone ethyl<br>CAS No 128639-02.1<br>CIPAC No 587 | Ethyl (RS)-2-chloro-3-[2-chloro-5-(4-difluoromethyl-4,5-dihydro-3-methyl-5oxo-1H 1,2,4-triazol-1-yl)-4-fluorophenyl]propionate | 900 g/kg | 1 October 2003 | 30 September 2013 | Only use as herbicide may be authorised.<br>For the implementation of the uniform principles of Annex VI, the conclusions of the review report on carfentrazone-ethyl, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 15 April 2003 shall be taken into account. In this overall assessment:<br>— Member States should pay particular attention to the protection of groundwater, when the active substance is applied in regions with vulnerable soil and/or climate conditions.<br>Risk mitigation measures should be applied where appropriate. |
| 61 | Mesotrione<br>CAS No 104206-8<br>CIPAC No 625 | 2-(4-mesyl-2-nitrobenzoyl) cyclohexane -1,3-dione | 920 g/kg<br>The manufacturing impurity 1-cyano-6-(methylsulfonyl)-7-nitro-9H-xanthen-9-one is considered to be of toxicological concern and must remain below 0.0002 % (w/w) in the technical product. | 1 October 2003 | 30 September 2013 | Only use as herbicide may be authorised.<br>For the implementation of the uniform principles of Annex VI, the conclusions of the review report on mesotrione, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 15 April 2003 shall be taken into account. |

| No | Common name, identification numbers | IUPAC Name | Purity (1) | Entry into force | Expiration of inclusion | Specific provisions |
|---|---|---|---|---|---|---|
| 62 | Fenamidone<br>CAS No 161326-34-7<br>CIPAC No 650 | (S)-5-methyl-2-methylthio-5-phenyl-3-phenylamino-3,5-dihydroimidazol-4-one | 975 g/kg | 1 October 2003 | 30 September 2013 | Only use as fungicide may be authorised.<br>For the implementation of the uniform principles of Annex VI, the conclusions of the review report on fenamidone, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 15 April 2003 shall be taken into account. In this overall assessment Member States:<br>— should pay particular attention to the protection of groundwater, when the active substance is applied in regions with vulnerable soil and/or climate conditions,<br>— should pay particular attention to the protection of non-target arthropods,<br>— should pay particular attention to the protection of aquatic organisms.<br>Risk mitigation measures should be applied where appropriate. |
| 63 | Isoxaflutole<br>CAS No 141112-29-0<br>CIPAC No 575 | 5-cyclopropyl-4-(2-methylsulfonyl-4-trifluoromethylbenzoyl) isoxazole | 950 g/kg | 1 October 2003 | 30 September 2013 | Only use as herbicide may be authorised.<br>For the implementation of the uniform principles of Annex VI, the conclusions of the review report on isoxaflutole, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 15 April 2003 shall be taken into account. In this overall assessment Member States:<br>— must pay particular attention to the protection of groundwater, when the active substance is applied in regions with vulnerable soil and/or climate conditions. Risk mitigation measures or monitoring programs should be applied where appropriate. |

(1) Further details on identity and specification of active substances are provided in the review report.'

II

*(Acts whose publication is not obligatory)*

# COMMISSION

## COMMISSION DECISION
## of 5 September 2002
## on the aid scheme implemented by Germany for control and coordination centres

*(notified under document number C(2002) 3298)*

**(Only the German text is authentic)**

**(Text with EEA relevance)**

(2003/512/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],

Whereas:

### I. PROCEDURE

(1) By letter dated 12 February 1999 (D/50716), the Commission asked Germany to submit more detailed information on the scheme of direct company taxation for control and coordination centres of foreign companies. The scheme had not been notified to the Commission. By letter EC3-714725/12 dated 26 May 1999, Germany submitted a description of the scheme and answered the points the Commission had made.

(2) By letter dated 11 July 2001 (SG 2001 D/289745), 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 scheme. Germany submitted its comments on 11 September 2001 by letter EC3-F2516-101/01.

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

(4) The Commission received no comments from interested parties.

### II. DETAILED DESCRIPTION OF THE MEASURE

(5) The treatment of control and coordination centres of foreign companies in Germany used to be governed by a Federal Finance Ministry Order, the Administrative Order for the treatment of control and coordination centres of foreign companies in accordance with German double taxation Treaties (hereinafter 'the Order'; see letter of the Federal Finance Minister dated 24 August 1984) (Verwaltungsanweisung für die Behandlung von Kontroll- und Koordinierungsstellen ausländischer Konzerne nach den deutschen Doppelbesteuerungsabkommen) [3]. According to information available, the Order was repealed with effect from 31 December 2000.

(6) The Order applies to control and coordination centres that control and/or coordinate the activities of subsidiaries and permanent establishments of foreign companies in Germany and other countries.

(7) The Order describes what kind of activities control and coordination centres may carry on in order to be eligible for special tax treatment. It is clear from the description that the tasks allowed are exclusively activities to service the needs of the group (e.g. accounting, consolidation reports, marketing, production plans and research coordination). The control and coordination centre cannot act as headquarters of the group, such activity having to be carried out by another entity within the group.

[1] OJ C 304, 30.10.2001, p. 2.
[2] See footnote 1.
[3] *Bundessteuerblatt* 1984, Part I, p. 458.

(8) The taxable profit of control and coordination centres is not established according to the normal method, i.e. as the difference between income and expenditure, but according to the cost-plus method [1]. This consists in control and coordination centres applying to the costs they bear a profit margin (mark-up). The resulting amount is then subject to the standard corporate tax rate. The Order sets the range of acceptable mark-ups between 5 % and 10 %. This is, according to Germany, in keeping with general practice in Germany.

(9) In practice, it is the control and coordination centre itself that first determines its mark-up within the 5 to 10 % range. There is no advance agreement between the taxpayer and the tax authorities on what rate to choose within that range. A mark-up rate lower than 5 % is not accepted. The tax authorities will in no case impose a mark-up rate higher than 10 %, although the taxpayer is free to choose such a rate. As a rule, all mark-up rates in the 5 to 10 % range are checked retrospectively by the tax authorities.

## III. GROUNDS FOR INITIATING THE PROCEDURE

(10) On the basis of the information submitted to it by Germany in the course of the preliminary examination provided for in Article 10 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 [2], the Commission came to the conclusion that the existence of a maximum mark-up of 10 % might constitute State aid since this upper limit could artificially reduce the tax liability of control and coordination centres.

(11) On the basis of the information submitted in the course of the preliminary examination, the Commission doubted in particular whether the exceptions laid down in Article 87(2) and (3) of the EC Treaty were applicable to the scheme. It therefore had doubts about the compatibility of the scheme with the common market.

(12) Accordingly, the Commission initiated the procedure laid down in Article 88(2) of the EC Treaty.

## IV. COMMENTS FROM GERMANY

(13) Firstly, Germany considers that the scheme is not intended to confer any tax benefit. The setting of a ceiling below which no objections will be raised serves only to ease administration and create legal certainty by avoiding disputes.

(14) On the basis of the reports by the *Länder* tax administrations covering the period from 1 January 1996 to 31 December 2000, Germany argues that the Order did not actually result in taxable persons deriving any benefit from the fact that profit was not determined on the basis of an arm's-length price. It claims in particular that there is no evidence of cases where a mark-up over 10 % would have been necessary.

(15) According to Germany, from 1996 onwards there were only seven identified cases involving group control and coordination centres within the meaning of the Order. In three cases, the transfer price [3] had been determined without applying the Order, either by using a different attribution method or by basing the price on arm's-length transactions with foreign companies.

(16) Germany considers that, of the four cases in which the Order was applied, a mark-up within the range was accepted without an individual check being carried out in only one case. In the three remaining cases, the mark-up was checked during a company audit. In one of these three cases, an objection was made and the transfer price was recalculated on the basis of experience with other transfer price cases, producing a result within the 5 to 10 % range. In another case, the company auditors accepted the result without correction, while in the remaining one (where activities ceased in the first quarter of 1996) the company auditors fixed a mark-up rate of 5 %.

(17) In Germany's view, these figures reflect the limited material scope of the Order, covering only group establishments which perform a support function in relation to the group headquarters and for which, in accordance with the arm's-length principle, only small profit margins are justified. According to Germany, the small number of cases found shows that taxable persons have not viewed the scheme as a tax concession comparable to State aid. This is demonstrated by the case of the coordination centre which ceased its activities in the first quarter of 1996 despite the fact that the mark-up was set at the low threshold rate of 5 %.

(18) As regards the information requested by the Commission on its selective character, Germany argues that the scheme does not contain any criteria for geographical or material demarcation such as would make the scheme selective.

[1] On the use of alternative methods of taxation, see point 27 of Commission notice 98/C 384/03 on the application of the State aid rules to measures relating to direct business taxation (OJ C 384, 10.12.1998, p. 3).
[2] OJ L 83, 27.3.1999, p. 1.
[3] Transfer prices are the prices at which an enterprise transfers physical goods and intangible property or provides services to associated enterprises (see preface to the 1995 OECD transfer pricing guidelines).

(19) Germany considers it impossible to recover any amounts. The arguments put forward are as follows. The tax assessment becomes definitive one month after it has been issued; re-assessment of the tax retrospectively in such cases is impossible. Tax offices would accordingly be unable to recover taxes in the one (and only) established case where the rules contained in the Order were applied without examining the individual case and where, therefore, it is theoretically possible that the mark-up had been set too low. Moreover, Germany would have to prove that the arm's-length principle provided for in section 1 of the German Foreign Tax Relations Act had not been observed. In conclusion, it considers that there is no practical or legal possibility of, or necessity for, reversing the application of the Order.

## V. ASSESSMENT OF THE AID

### 1. Applicability of Article 87(1) of the EC Treaty

(20) Under Article 87(1) of the EC Treaty, State aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

(21) To be caught by the prohibition under Article 87(1), a measure must fulfil the following four criteria:

(a) the measure must confer on recipients an advantage that relieves them of charges that are normally borne from their budgets;

(b) the advantage must be granted through State resources;

(c) the measure must affect competition and trade between Member States;

(d) the measure must be specific or selective in that it favours certain undertakings or the production of certain goods.

(22) Firstly, as regards the requirement that the measure must afford beneficiaries an advantage, the Commission takes the view that the existence of an upper limit of 10 % for the determination of the mark-up in the cost-plus method can confer an advantage on control and coordination centres and the multinational groups to which they belong. This limitation to 10 % may artificially reduce the tax burden of control and coordination centres in cases where actual margins exceed 10 %.

(23) Germany's argument that the existence of a ceiling is not intended to create a tax benefit but serves only to ease administration and create legal certainty by avoiding disputes cannot be accepted. While the Commission does not deny that tax administrations are entitled, and must be in a position, to guarantee legal certainty for taxpayers, this should not result in a reduction in the tax base. By setting an upper limit for the mark-up, the Order assured the taxpayer that, in cases where a retrospective check showed the need for a mark-up higher than 10 % to reflect the economic reality of the transfer price, the tax authorities would agree to a 10 % mark-up. This automatic acceptance of an undervalued mark-up corresponds to an artificial reduction in the tax base for the control and coordination centre which cannot be justified by the need for legal certainty.

(24) If legal certainty is to be ensured, it must be in relation to the elements that will be taken into consideration for taxation and not in relation to the maximum mark-up rate that will be applied. The existence of an upper limit cannot be justified in terms of administrative simplification, since control and coordination centres are, in any event, subject to retrospective checks by the tax administration.

(25) In addition, as Germany pointed out in its comments of 11 September 2001 ([1]), in at least one case the margin for the control and coordination centre was determined without any retrospective check being carried out and was therefore left to the discretion of the tax authorities. This clearly shows that the application of the scheme, even if it was not intended to, gave rise at least once to use by the tax administration of its discretionary power possibly to grant an advantage to a control and coordination centre.

(26) In the area of transfer pricing, the internationally agreed standard is the arm's length principle as set out in Article 9 of the OECD Model Tax Convention on income and on capital and further elaborated on in the 1995 OECD transfer pricing guidelines. This principle provides that taxable profits on cross-border activities between associated enterprises should be calculated as if the transaction had been carried out between unrelated parties under market conditions. The OECD guidelines do not recommend the use of minimum or maximum mark-ups as in the present case (also known as 'safe harbours') since these may not reflect the nature of the transactions at issue.

(27) Moreover, according to the information available, the tax administration has used its discretionary power to grant an advantage in at least one case, which is in contradiction with the arm's length principle. The Commission cannot rule out the possibility that there may have been other, comparable cases before 1996, i.e. at a time for which Germany has provided no information but which, pursuant to Article 15 of Regulation (EC) No 659/1999, is covered by this examination.

([1]) See paragraph 16.

(28) The Commission therefore considers that both the existence of an upper limit for the mark-up and the use by the tax administration of its discretionary power confer an advantage on the relevant undertakings and to the groups to which they belong within the meaning of Article 87(1) of the EC Treaty.

(29) Secondly, the advantage must be granted through State resources in any form whatsoever. According to point 10 of Commission notice 98/C 384/03, the loss of tax revenue deriving from the reduction in the tax base is equivalent to consumption of State resources in the form of fiscal expenditure. As confirmed by the Court of Justice of the European Communities [1], this principle also applies to aid granted by regional or local bodies in Member States.

(30) Thirdly, the aid must distort or threaten to distort competition. The Court of Justice has consistently ruled [2] that intra-Community trade is to be deemed to be affected from the moment the beneficiary firm carries out an economic activity which is the subject of trade between Member States.

(31) The Commission takes the view that the scheme in question is capable of affecting competition and trade between Member States since it is open to all sectors of the economy. In addition, control and coordination centres belong to multinational groups which may be active in other Member States. This criterion is therefore fulfilled.

(32) Fourthly, the aid must favour certain undertakings or the production of certain goods. Germany considers that there is no selectivity since all sectors of the economy qualify for the aid. The Commission cannot share this view because the benefit of the scheme is, in fact, limited to companies belonging to groups with foreign headquarters. German resident companies were explicitly excluded from the benefit of the scheme. Furthermore, in the present case, the benefit of the scheme was limited to intra-group activities and could not, as Commission notice 98/C 384/03 requires, be justified by the logic of the tax system. Germany has not provided the Commission with any such justification as required by point 23 of the notice.

(33) Finally, Germany claims that the small number of cases found shows that taxable persons have not viewed the scheme as a tax concession comparable to State aid, especially in the case of the control and coordination centre which ceased its activities in the first quarter of 1996, despite the fact that the mark-up was at the low threshold rate of 5 %. On this point, the Commission considers that neither the small number of beneficiaries nor the level of the advantage is relevant in the context of the assessment of the aid character of a scheme.

(34) The Order therefore satisfies the criteria equating it to an aid scheme in two respects. Firstly, it confers on the tax authorities a discretionary power to accept a mark-up without carrying out any retrospective check and, secondly, it prevents them from demanding the application of the real mark-up where this is higher than 10 %. The Commission has therefore to examine whether the aid can be considered compatible with the common market under the exceptions laid down in Article 87(2) and (3) of the EC Treaty.

## 2. **Compatibility of the aid measure with the EC Treaty**

(35) Measures caught by Article 87(1) of the EC Treaty are incompatible with the common market unless they qualify for one of the exceptions in Article 87(2) or (3).

(36) As far as Article 87(2) is concerned, the Commission considers that, inasmuch as it is not aimed at the objectives listed there, the aid measure contained in the tax scheme does not fall under that provision.

(37) Nor can the measure be considered compatible with the common market pursuant to Article 87(3).

(38) There are no indications that the conditions of Article 87(3)(a), (b), (d) and (e) are fulfilled. According to Article 87(3)(c), aid may be authorised if it serves to facilitate the development of certain economic activities or of certain economic areas. The Commission has acknowledged in several Community frameworks that the conditions for such an exemption may be fulfilled if the aid serves to pursue a certain objective.

(39) However, the tax provision in question serves to promote neither investment nor employment nor any other recognised Community objective. The aid cannot therefore be authorised under the Treaty provisions.

(40) The Commission finds that the measure thus constitutes incompatible aid.

## 3. **Legitimate expectations**

(41) In its letter of 11 July 2001, the Commission invited Germany and interested parties to submit comments on possible legitimate expectations of the sort that would present an obstacle to the recovery of the aid in the event of its being classified as illegal and incompatible with the common market.

[1] Case 248/84 *Germany* v *Commission* [1987] ECR 4013, paragraph 17.

[2] Case 730/79 *Philip Morris* v *Commission* [1980] ECR 2671 and Case 142/87 *Belgium* v *Commission* [1990] ECR I-959.

(42) In its answer, Germany argued that recovery cannot take place because a tax assessment becomes definitive one month after it has been issued. In such cases it is impossible to reassess the tax retrospectively. Therefore, the German tax authorities would be unable to recover taxes in the one (and only) case established where the rules contained in the Order were applied without examining the individual case and where, therefore, it is theoretically possible that the tax had been set too low. The Commission does not share this view. According to the case law of the Court of Justice [1], the existence of a time limit laid down under national law in the interests of legal certainty does not constitute an insuperable obstacle to the recovery of aid.

(43) In the present case the Commission notes, however, that the German Order has some features in common with the scheme introduced in Belgium by Royal Decree No 187 of 30 December 1982 concerning the tax treatment of coordination centres. Both measures concern intra-group activities and both use cost-plus methods that lead to a reduced tax base. In its decision of 2 May 1984, the Commission came to the conclusion that the Belgian scheme did not constitute aid within the meaning of Article 87(1) of the EC Treaty. Although this decision was not published, it was stated in the 14th Competition Report and in an answer to a parliamentary question [2] that the Commission had no objections. In this context, it can be argued that this 1984 Commission Decision on the Belgian scheme, which was adopted before the entry into force of the German Order, conferred a legitimate expectation on Germany and on the aid beneficiaries, who could consider, on the basis of the Commission Decision, that the Order did not constitute State aid. Moreover, in the answer to the abovementioned parliamentary question, the scheme under examination was referred to and classified as not falling under Articles 92 and 93 (now 87 and 88) of the EC Treaty. Accordingly, Germany and the beneficiaries can be considered to have legitimate expectations, with the result that, in accordance with Article 14(1) of Regulation (EC) No 659/1999, recovery of the aid would be contrary to a general principle of Community law.

## VI. **CONCLUSION**

(44) In the light of the information provided by Germany, the Commission concludes that Germany has implemented the Order in breach of Article 88(3) of the EC Treaty. It also finds that the measure favours control and coordination centres and does not satisfy any of the conditions in Article 87(2) and (3). The measure is therefore incompatible with the common market. However, since it has been established that both Germany and the beneficiaries under the scheme have had legitimate expectations, recovery of the aid will not be effected,

HAS ADOPTED THIS DECISION:

*Article 1*

The aid which Germany has granted under the Administrative Order for the treatment of control and coordination centres of foreign companies in accordance with German Double Taxation Treaties (Verwaltungsanweisung für die Behandlung von Kontroll- und Koordinierungsstellen ausländischer Konzerne nach den deutschen Doppelbesteuerungsabkommen) (see letter of the Federal Finance Minister dated 24 August 1984) is incompatible with the common market.

*Article 2*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 5 September 2002.

*For the Commission*

Mario MONTI

*Member of the Commission*

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[1] See, *inter alia*, Case C-24/95 *Land Rheinland Pfalz* v *Alcan Deutschland GmbH* [1997] ECR I-1591.

[2] Written Question No 1735/90 (OJ C 63, 11.3.1991).

# COMMISSION DECISION

## of 11 July 2003

## on certain protective measures with regard to *Gyrodactylus salaris* in salmonids

*(notified under document number C(2003) 2312)*

**(Text with EEA relevance)**

(2003/513/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market [1], as last amended by Directive 2002/33/EC of the European Parliament and of the Council [2], and in particular Article 10 thereof,

Whereas:

(1) Commission Decision 96/490/EC of 18 July 1996 on certain protective measures with regard to *Gyrodactylus salaris* in salmonids [3] has been substantially amended [4]. In the interests of clarity and rationality the said Decision should be codified.

(2) *Gyrodactylus salaris* is an external parasite of salmonids which is able to cause serious mortalities in *Salmo salar*.

(3) Experience has shown that the disease can spread from infected regions to previously uninfected regions through commercial transfers of salmon and other salmonids. The disease can also spread between rivers through natural migration of salmonids.

(4) It is necessary to prevent the spread of the disease from regions in the Community possibly infected with *Gyrodactylus salaris*.

(5) The introduction of the parasite into regions with salmon stocks which are highly susceptible to *Gyrodactylus salaris* could lead to important losses of such salmon. It is therefore necessary to lay down the measures necessary to prevent such introduction.

(6) Procedures should be established in order to protect regions with highly susceptible salmon stocks or which are presumably free of *Gyrodactylus salaris*.

(7) The Member States to which protective measures with regard to *Gyrodactylus salaris* apply, have a testing and surveillance programme for *Gyrodactylus salaris* in place. The results thereof should be regularly communicated to the Commission.

(8) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

*Article 1*

The introduction into the regions referred to in Annex I of live salmonids originating from outside these regions shall not be allowed.

*Article 2*

The introduction of salmonid ova for breeding purposes into the regions referred to in Annex I originating from outside these regions, shall be subject to the application to the ova of disinfection procedures ensuring the elimination of parasites belonging to the species *Gyrodactylus salaris*.

*Article 3*

1. In the case of the movement of live salmonids between the regions referred to in Annex I, the health attestation in point VI of the movement document referred to in Annex E, Chapter 1 of Council Directive 91/67/EEC [5] shall be completed with the following sentence:

> 'The fish belonging to the present consignment originate in one of the regions referred to in Annex I to Commission Decision 2003/513/EC on certain protective measures with regard to *Gyrodactylus salaris* in salmonids.'

The movement of live salmonids from the buffer zone mentioned in point 3 of Annex I to the other regions referred to in that Annex shall not be allowed.

[1] OJ L 224, 18.8.1990, p. 29.
[2] OJ L 315, 19.11.2002, p. 14.
[3] OJ L 202, 10.8.1996, p. 21.
[4] See Annex II.
[5] OJ L 46, 19.2.1991, p. 1.

2. In the case of consignments of ova of salmonids originating from outside the regions referred to in Annex I and introduced for breeding purposes into one of these regions, the health attestation in point VI of the movement document referred to in Annex E, Chapter 1 of Directive 91/67/EEC shall be completed with the following sentence:

'The eggs belonging to the present consignment have been disinfected as required by Commission Decision 2003/513/EC on certain protective measures with regard to *Gyrodactylus salaris* in salmonids.'

*Article 4*

The competent authorities of the Member States responsible for the regions referred to in Annex I shall submit their salmonid livestock to continuous surveillance testing and laboratory examination in order to verify the absence of *Gyrodactylus salaris* and present each year, not later than 1 July, all the results thereof to the Commission.

*Article 5*

Decision 96/490/EC is repealed.

References to said repealed Decision shall be construed as references to this Decision and shall be read in accordance with the correlation table in Annex III.

*Article 6*

This Decision is addressed to the Member States.

Done at Brussels, 11 July 2003.

*For the Commission*

David BYRNE

*Member of the Commission*

*ANNEX I*

**REGIONS**

1. The following regions in the United Kingdom: Great Britain, Northern Ireland, The Isle of Man, Guernsey.
2. Ireland.
3. The following water catchment areas in Finland: Tenojoki, Näätämönjoki, (buffer zone: Paatsjoki, Luttojoki, Uutuanjoki).

*ANNEX II*

**REPEALED DECISION WITH ITS AMENDMENT**

| | |
|---|---|
| Commission Decision 96/490/EC | (OJ L 202, 10.8.1996, p. 21) |
| Commission Decision 98/24/EC | (OJ L 8, 14.1.1998, p. 26) |

*ANNEX III*

**CORRELATION TABLE**

| Decision 96/490/EC | This Decision |
|---|---|
| Articles 1 to 4 | Articles 1 to 4 |
| Article 5 | — |
| Article 6 | — |
| — | Article 5 |
| Article 7 | Article 6 |
| Annex | Annex I |
| — | Annex II |
| — | Annex III |