

English edition

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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1741/2003
of 1 October 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 2 October 2003.

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

Done at Brussels, 1 October 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 1 October 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	99,2
	060	90,4
	096	68,9
	999	86,2
0707 00 05	052	106,4
	999	106,4
0709 90 70	052	107,4
	999	107,4
0805 50 10	052	81,8
	388	85,2
	524	61,0
	528	50,9
	999	69,7
0806 10 10	052	102,8
	064	97,9
	999	100,3
0808 10 20, 0808 10 50, 0808 10 90	388	86,0
	400	65,7
	508	35,3
	512	106,8
	720	72,4
	800	172,7
	804	103,8
	999	91,8
0808 20 50	052	110,2
	064	67,0
	388	72,7
	720	65,2
	999	78,8

⁽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 1742/2003
of 1 October 2003
concerning the 46th special invitation to tender issued under the standing invitation to tender
referred to in Regulation (EC) No 2799/1999

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 806/2003 ⁽²⁾, and in particular Article 10 thereof,

Whereas:

- (1) Pursuant to Article 26 of Commission Regulation (EC) No 2799/1999 of 17 December 1999 laying down detailed rules for applying Council Regulation (EC) No 1255/1999 as regards the grant of aid for skimmed milk and skimmed-milk powder intended for animal feed and the sale of such skimmed-milk powder ⁽³⁾, as last amended by Regulation (EC) No 2238/2002 ⁽⁴⁾, intervention agencies have put up for sale by standing invitation to tender certain quantities of skimmed-milk powder held by them.

- (2) According to Article 30 of Regulation (EC) No 2799/1999, in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed or a decision shall be taken to make no award.
- (3) On the basis of the examination of the offers received, the tendering procedure should not be proceeded with.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 46th individual invitation to tender pursuant to Regulation (EC) No 2799/1999, in respect of which the time limit for the submission of tenders expired on 23 September 2003, no award shall be made.

Article 2

This Regulation shall enter into force on 2 October 2003.

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

Done at Brussels, 1 October 2003.

For the Commission
Franz FISCHLER
Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 122, 16.5.2003, p. 1.

⁽³⁾ OJ L 340, 31.12.1999, p. 3.

⁽⁴⁾ OJ L 341, 17.12.2002, p. 11.

COMMISSION REGULATION (EC) No 1743/2003
of 1 October 2003
fixing the import duties in the rice sector

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⁾,

Having regard to Commission Regulation (EC) No 1503/96 of 29 July 1996 laying down detailed rules for the application of Council Regulation (EC) No 3072/95 as regards import duties in the rice sector ⁽³⁾, as last amended by Regulation (EC) No 1298/2002 ⁽⁴⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Article 11 of Regulation (EC) No 3072/95 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 a certain percentage according to whether it is husked or milled rice, minus the cif import price provided that duty does not exceed the rate of the Common Customs Tariff duties.
- (2) Pursuant to Article 12(3) of Regulation (EC) No 3072/95, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market or on the Community import market for the product.
- (3) Regulation (EC) No 1503/96 lays down detailed rules for the application of Regulation (EC) No 3072/95 as regards import duties in the rice 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 from the source referred to in Article 5 of Regulation (EC) No 1503/96 during the two weeks preceding the next periodical fixing.
- (5) In order to allow the import duty system to function normally, the market rates recorded during a reference period should be used for calculating the duties.
- (6) Application of the second subparagraph of Article 4(1) of Regulation (EC) No 1503/96 results in an adjustment of the import duties that have been fixed as from 15 May 2003 by Commission Regulation (EC) No 832/2003 ⁽⁵⁾ as set out in the Annexes to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the rice sector referred to in Article 11(1) and (2) of Regulation (EC) No 3072/95 shall be adjusted in compliance with Article 4 of Regulation (EC) No 1503/96 and 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 2 October 2003.

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

Done at Brussels, 1 October 2003.

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

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 62, 5.3.2002, p. 27.

⁽³⁾ OJ L 189, 30.7.1996, p. 71.

⁽⁴⁾ OJ L 189, 18.7.2002, p. 8.

⁽⁵⁾ OJ L 120, 15.5.2003, p. 15.

ANNEX I

Import duties on rice and broken rice

(EUR/t)

CN code	Duties ⁽⁵⁾				
	Third countries (except ACP and Bangla- desh) ⁽⁷⁾	ACP ⁽¹⁾ ⁽²⁾ ⁽³⁾	Bangladesh ⁽⁴⁾	Basmati India and Pakistan ⁽⁶⁾	Egypt ⁽⁸⁾
1006 10 21	(7)	69,51	101,16		158,25
1006 10 23	(7)	69,51	101,16		158,25
1006 10 25	(7)	69,51	101,16		158,25
1006 10 27	(7)	69,51	101,16		158,25
1006 10 92	(7)	69,51	101,16		158,25
1006 10 94	(7)	69,51	101,16		158,25
1006 10 96	(7)	69,51	101,16		158,25
1006 10 98	(7)	69,51	101,16		158,25
1006 20 11	264,00	88,06	127,66		198,00
1006 20 13	264,00	88,06	127,66		198,00
1006 20 15	264,00	88,06	127,66		198,00
1006 20 17	264,00	88,06	127,66	14,00	198,00
1006 20 92	264,00	88,06	127,66		198,00
1006 20 94	264,00	88,06	127,66		198,00
1006 20 96	264,00	88,06	127,66		198,00
1006 20 98	264,00	86,06	127,66	14,00	198,00
1006 30 21	(7)	133,21	193,09		312,00
1006 30 23	(7)	133,21	193,09		312,00
1006 30 25	(7)	133,21	193,09		312,00
1006 30 27	(7)	133,21	193,09		312,00
1006 30 42	(7)	133,21	193,09		312,00
1006 30 44	(7)	133,21	193,09		312,00
1006 30 46	(7)	133,21	193,09		312,00
1006 30 48	(7)	133,21	193,09		312,00
1006 30 61	(7)	133,21	193,09		312,00
1006 30 63	(7)	133,21	193,09		312,00
1006 30 65	(7)	133,21	193,09		312,00
1006 30 67	(7)	133,21	193,09		312,00
1006 30 92	(7)	133,21	193,09		312,00
1006 30 94	(7)	133,21	193,09		312,00
1006 30 96	(7)	133,21	193,09		312,00
1006 30 98	(7)	133,21	193,09		312,00
1006 40 00	(7)	41,18	(7)		96,00

(1) The duty on imports of rice originating in the ACP States is applicable, under the arrangements laid down in Council Regulation (EC) No 2286/2002 (OJ L 345, 10.12.2002, p. 5) and amended Commission Regulation (EC) No 638/2003 (OJ L 93, 9.4.2003, p. 3).

(2) In accordance with Regulation (EC) No 1706/98, the duties are not applied to products originating in the African, Caribbean and Pacific States and imported directly into the overseas department of Réunion.

(3) The import levy on rice entering the overseas department of Réunion is specified in Article 11(3) of Regulation (EC) No 3072/95.

(4) The duty on imports of rice not including broken rice (CN code 1006 40 00), originating in Bangladesh is applicable under the arrangements laid down in Council Regulation (EEC) No 3491/90 (OJ L 337, 4.12.1990, p. 1) and amended Commission Regulation (EEC) No 862/91 (OJ L 88, 9.4.1991, p. 7).

(5) No import duty applies to products originating in the OCT pursuant to Article 101(1) of amended Council Decision 91/482/EEC (OJ L 263, 19.9.1991, p. 1).

(6) For husked rice of the Basmati variety originating in India and Pakistan, a reduction of EUR/t 250 applies (Article 4a of amended Regulation (EC) No 1503/96).

(7) Duties fixed in the Common Customs Tariff.

(8) The duty on imports of rice originating in and coming from Egypt is applicable under the arrangements laid down in Council Regulation (EC) No 2184/96 (OJ L 292, 15.11.1996, p. 1) and Commission Regulation (EC) No 196/97 (OJ L 31, 1.2.1997, p. 53).

ANNEX II

Calculation of import duties for rice

	Paddy	Indica rice		Japonica rice		Broken rice
		Husked	Milled	Husked	Milled	
1. Import duty (EUR/tonne)	(¹)	264,00	416,00	264,00	416,00	(¹)
2. Elements of calculation:						
(a) Arag cif price (EUR/tonne)	—	272,79	200,60	271,71	285,90	—
(b) fob price (EUR/tonne)	—	—	—	245,96	260,15	—
(c) Sea freight (EUR/tonne)	—	—	—	25,75	25,75	—
(d) Source	—	USDA and operators	USDA and operators	Operators	Operators	—

(¹) Duties fixed in the Common Customs Tariff.

COMMISSION REGULATION (EC) No 1744/2003
of 1 October 2003
amending 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 1110/2003 ⁽⁴⁾, and in particular Article 2(1) thereof,

Whereas:

- (1) The import duties in the cereals sector are fixed by Commission Regulation (EC) No 1736/2003 ⁽⁵⁾.

- (2) Article 2(1) of Regulation (EC) No 1249/96 provides that if during the period of application, the average import duty calculated differs by EUR 5 per tonne from the duty fixed, a corresponding adjustment is to be made. Such a difference has arisen. It is therefore necessary to adjust the import duties fixed in Regulation (EC) No 1736/2003,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to the amended Regulation (EC) No 1736/2003 are hereby replaced by Annexes I and II to this Regulation.

Article 2

This Regulation shall enter into force on 2 October 2003.

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

Done at Brussels, 1 October 2003.

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

⁽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 158, 27.6.2003, p. 12.

⁽⁵⁾ OJ L 249, 1.10.2003, p. 32.

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	21,86
1005 10 90	Maize seed other than hybrid	50,46
1005 90 00	Maize other than seed ⁽²⁾	50,46
1007 00 90	Grain sorghum other than hybrids for sowing	21,86

⁽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

(for 30 September 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)	129,05 (****)	77,89	165,49 (***)	155,49 (***)	135,49 (***)	108,78 (***)
Gulf premium (EUR/t)	—	11,07	—	—	—	—
Great Lakes premium (EUR/t)	12,85	—	—	—	—	—

(*) 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 1249/96).

(***) 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: 17,62 EUR/t; Great Lakes — Rotterdam: 26,39 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).

REGULATION (EC) No 1745/2003 OF THE EUROPEAN CENTRAL BANK
of 12 September 2003
on the application of minimum reserves
(ECB/2003/9)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular to Article 19(1) thereof,

Having regard to Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application of minimum reserves by the European Central Bank ⁽¹⁾, as amended by Regulation (EC) No 134/2002 ⁽²⁾,

Having regard to Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions ⁽³⁾,

Whereas:

- (1) Regulation (EC) No 2818/98 of the European Central Bank of 1 December 1998 on the application of minimum reserves (ECB/1998/15) ⁽⁴⁾ has been significantly amended on two occasions. First, specific procedures for mergers and divisions involving credit institutions were introduced by Regulation (EC) No 1921/2000 of the European Central Bank of 31 August 2000 (ECB/2000/8) ⁽⁵⁾ in order to clarify the obligations of these institutions in respect of minimum reserves. Second, for reasons of efficiency, other provisions were amended by Regulation (EC) No 690/2002 of the European Central Bank of 18 April 2002 (ECB/2002/3) ⁽⁶⁾ to clarify that electronic money institutions will be subject to reserve requirements; to establish a general rule according to which credit institutions will be automatically exempted from reserve requirements for the whole maintenance period within which they cease to exist; and to clarify the obligation to include in the reserve base the liabilities of an institution in relation to a branch of the same entity, or in relation to the head office or registered office of the same entity, which are located outside participating Member States. As new amendments are being made to Regulation (EC) No 2818/98 (ECB/1998/15), it is desirable, for reasons of clarity and rationalisation, that the provisions in question should be recast by bringing them all together in a single text.
- (2) Article 19(1) of the Statute states that, if the European Central Bank (ECB) requires credit institutions established in participating Member States to hold minimum reserves, they are to be held on accounts with the ECB

and participating national central banks (participating NCBs). It is considered appropriate that such reserves should be held solely on accounts with participating NCBs.

- (3) In order to be effective, the instrument of minimum reserves also requires specification regarding the calculation and maintenance of minimum reserves and the reporting and verification rules.
- (4) For the exclusion of interbank liabilities from the reserve base, any standard deduction to be applied to liabilities with a maturity of up to two years within the debt securities category should be based on the euro area-wide macro ratio between (i) the stock of relevant instruments issued by credit institutions and held by other credit institutions and by the ECB and participating NCBs and (ii) the total amount outstanding of such instruments issued by credit institutions.
- (5) As a rule, the calendar of maintenance periods will be aligned with the calendar of meetings of the Governing Council of the ECB at which the monthly assessment of the monetary policy stance is pre-scheduled.
- (6) Specific procedures for the notification and acknowledgement of minimum reserves are necessary so that institutions are aware of their obligations in respect of minimum reserves in time,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation:

- 'participating Member State' shall mean an EU Member State which has adopted the euro in accordance with the Treaty,
- 'participating national central bank' (participating NCB) shall mean the national central bank of a participating Member State,
- 'Eurosystem' shall designate the ECB and the participating NCBs,

⁽¹⁾ OJ L 318, 27.11.1998, p. 1.

⁽²⁾ OJ L 24, 26.1.2002, p. 1.

⁽³⁾ OJ L 318, 27.11.1998, p. 4.

⁽⁴⁾ OJ L 356, 30.12.1998, p. 1.

⁽⁵⁾ Regulation ECB/2000/8 of 31 August 2000 amending Regulation (EC) No 2818/98 on the application of minimum reserves (ECB/1998/15) and amending Regulation (EC) No 2819/98 of the European Central Bank concerning the consolidated balance sheet of the monetary financial institution sector (ECB/1998/16) (OJ L 229, 9.9.2000, p. 34).

⁽⁶⁾ Regulation ECB/2002/3 of 18 April 2002 amending Regulation ECB/1998/15 on the application of minimum reserves (OJ L 106, 23.4.2002, p. 9).

- 'institution' shall mean any entity in a participating Member State which the ECB, under the terms of Article 19(1) of the Statute, may require to hold minimum reserves,
- 'reserve account' shall mean an institution's account with a participating NCB, the end-of-day balance of which counts towards compliance with the institution's reserve requirement,
- 'reserve requirement' shall mean the requirement for institutions to hold minimum reserves on reserve accounts with participating NCBs,
- 'reserve ratio' shall mean the percentage specified in Article 4 for any particular item in the reserve base,
- 'maintenance period' shall mean the period over which compliance with reserve requirements is calculated and for which such minimum reserves must be held on reserve accounts,
- 'end-of-day balance' shall mean the balance at the point in time when the finalisation of payment activities and entries relating to possible access to the standing facilities of the Eurosystem has taken place,
- 'NCB business day' shall mean any day on which a particular participating NCB is open for the purpose of conducting Eurosystem monetary policy operations,
- 'resident' shall mean any natural or legal person residing in any of the participating Member States within the meaning of Article 1(4) of Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank ⁽¹⁾,
- 'reorganisation measures' shall mean measures intended to preserve or restore the financial situation of an institution which could affect third parties' pre-existing rights, including measures involving the possible suspension of payments, suspension of enforcement measures or reduction in claims,
- 'winding-up proceedings' shall mean collective proceedings concerning an institution which necessarily involve intervention by the judicial authorities or any other competent authority of a participating Member State with the aim of realising assets under the supervision of those authorities, including where the proceedings are terminated by a composition or by another analogous measure,
- 'merger' shall mean an operation whereby one or more credit institutions (the merging institutions), on being dissolved without going into liquidation, transfer all their

assets and liabilities to another credit institution (the acquiring institution), which may be a newly established credit institution,

- 'division' shall mean an operation whereby one credit institution (the institution being divided), on being dissolved without going into liquidation, transfers all its assets and liabilities to more than one institution (the recipient institutions), which may be newly established credit institutions.

Article 2

Institutions subject to reserve requirements

1. The following categories of institutions shall be subject to reserve requirements:

- (a) credit institutions as defined in the first subparagraph of Article 1(1) of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking-up and pursuit of the business of credit institutions ⁽²⁾, other than participating NCBs;
- (b) branches as defined in Article 1(3) of Directive 2000/12/EC, of credit institutions as defined in the first subparagraph of Article 1(1) of the same Directive, other than participating NCBs; these include branches of credit institutions which have neither their registered nor their head office in a participating Member State.

Branches of credit institutions established in participating Member States which are located outside participating Member States are not subject to reserve requirements.

2. Without being obliged to submit any request, an institution shall be exempted from reserve requirements from the start of the maintenance period in which its authorisation is withdrawn or renounced, or in which a decision to submit the institution to winding-up proceedings is taken by a judicial authority or any other competent authority of a participating Member State.

The ECB may exempt the following institutions from reserve requirements on a non-discriminatory basis:

- (a) institutions subject to reorganisation measures;
- (b) institutions for which the purpose of the ECB's minimum reserve system would not be met by imposing reserve requirements upon them. In reaching a decision on any such exemption, the ECB shall take into account one or more of the following criteria:
 - (i) the institution is pursuing special-purpose functions;

⁽¹⁾ OJ L 318, 27.11.1998, p. 8.

⁽²⁾ OJ L 126, 26.5.2000, p. 1. Directive as amended by Directive 2000/28/EC (OJ L 275, 27.10.2000, p. 37).

- (ii) the institution is not exercising active banking functions in competition with other credit institutions;
- (iii) the institution has all its deposits earmarked for purposes relating to regional and/or international development assistance.

3. The ECB shall publish a list of institutions subject to reserve requirements. The ECB shall also publish a list of institutions exempt from its reserve requirements for reasons other than being subject to reorganisation measures. Institutions may rely on these lists when deciding whether their liabilities are owed to another institution that is itself subject to reserve requirements. These lists shall not be determinative of whether institutions are subject to reserve requirements in accordance with this Article 2.

Article 3

Reserve base

1. An institution's reserve base shall comprise the following liabilities (as defined within the ECB's reporting framework for money and banking statistics in Regulation (EC) No 2423/2001 of the European Central Bank of 22 November 2001 concerning the consolidated balance sheet of the monetary financial institutions sector (ECB/2001/13) ⁽¹⁾) resulting from the acceptance of funds:

- (a) deposits;
- (b) debt securities issued.

If an institution has liabilities in relation to a branch of the same entity, or in relation to the head office or registered office of the same entity, which are located outside participating Member States, it shall include such liabilities in the reserve base.

2. The following liabilities shall be excluded from the reserve base:

- (a) liabilities which are owed to any other institution not listed as being exempt from the ECB's minimum reserve system according to Article 2(3), and
- (b) liabilities which are owed to the ECB or to a participating NCB.

In applying this provision, the institution shall provide evidence to the relevant participating NCB of the actual amount of its liabilities owed to any other institution not listed as being exempt from the ECB's minimum reserve system and of its liabilities which are owed to the ECB or to a participating NCB in order to exclude them from the reserve base. If such evidence cannot be presented for debt securities issued with an agreed maturity of up to two years, the institution may apply a standard deduction to the outstanding amount of its debt securities issued with an agreed maturity of up to two years from

the reserve base. The amount of such standard deduction shall be published by the ECB in the same manner as the publication of the list referred to in Article 2(3).

3. The institution shall calculate the reserve base in respect of a particular maintenance period on the basis of the data relating to the month two months prior to the month within which the maintenance period starts. The institution shall report the reserve base to the relevant participating NCB as required within the ECB's reporting framework for money and banking statistics laid down in Regulation (EC) No 2423/2001 (ECB/2001/13).

4. For institutions which have been granted the derogation set out in Article 2(2) of Regulation (EC) No 2423/2001 (ECB/2001/13), the reserve base shall be calculated, for three consecutive maintenance periods beginning with the maintenance period starting in the third month after the end of a quarter, on the basis of end-of-quarter data reported in accordance with Annex II to Regulation (EC) No 2423/2001 (ECB/2001/13). These institutions shall notify their minimum reserves in accordance with Article 5.

Article 4

Reserve ratios

1. A reserve ratio of 0 % shall apply to the following liability categories (as defined within the ECB's reporting framework for money and banking statistics in Regulation (EC) No 2423/2001 (ECB/2001/13)):

- (a) deposits with agreed maturity over two years;
- (b) deposits redeemable at notice over two years;
- (c) repos;
- (d) debt securities issued with an agreed maturity over two years.

2. A reserve ratio of 2,0 % shall apply to all other liabilities included in the reserve base.

Article 5

Calculation and notification of minimum reserves

1. The amount of minimum reserves to be held by each institution in respect of a particular maintenance period shall be calculated by applying the reserve ratios to each relevant item of the reserve base for that period, as defined in Article 4. The minimum reserves identified by the relevant participating NCB and by the institution in accordance with the procedures mentioned in this Article shall constitute the basis for (i) remuneration of holdings of required reserves, and (ii) assessment of an institution's compliance with the obligation to hold the required amount of minimum reserves.

⁽¹⁾ OJ L 333, 17.12.2001, p. 1.

2. An allowance of EUR 100 000, to be deducted from the amount of the minimum reserves, shall be granted to each institution, subject to the provisions contained in Articles 11 and 13.

3. Each participating NCB shall determine procedures for the notification of institutions' individual minimum reserves, in accordance with the following principles. Either the relevant participating NCB or the institution shall take the initiative to calculate that institution's minimum reserves for the relevant maintenance period, on the basis of the statistical information and of the reserve base reported in accordance with Article 5 of Regulation (EC) No 2423/2001 (ECB/2001/13). The calculating party shall notify the other party of the calculated minimum reserves at the latest three NCB business days before the start of the maintenance period. The relevant participating NCB may specify an earlier date as a time limit for the notification of minimum reserves. It may also specify additional time limits for the institution to notify any revisions to the reserve base, and any revisions to the notified minimum reserves. If an institution abuses the opportunity that is offered by its participating NCB to revise the reserve base and the minimum reserves, the NCB may suspend permission for that institution to submit revisions. The notified party shall acknowledge the calculated minimum reserves at the latest on the NCB business day preceding the start of the maintenance period. If the notified party has not replied to the notification by the end of the NCB business day preceding the start of the maintenance period, it shall be deemed to have acknowledged the amount of minimum reserves of the institution for the relevant maintenance period. Once acknowledged, the institution's minimum reserves for the relevant maintenance period cannot be revised.

4. The participating NCBs shall publish calendars indicating the forthcoming time limits for notification and acknowledgement of data relevant to minimum reserves for the implementation of the procedures mentioned in this Article.

5. Where an institution fails to report the relevant statistical information as specified in Article 5 of Regulation (EC) No 2423/2001 (ECB/2001/13), the relevant participating NCB shall inform the institution concerned of the amount of the institution's minimum reserves that is to be notified or acknowledged, in accordance with the procedures mentioned in this Article, for the relevant maintenance period(s), estimated on the basis of historical information reported by the institution and any other relevant information. Article 6 of Regulation (EC) No 2531/98 and the ECB's power to impose sanctions for infringement of the ECB's statistical reporting requirements shall remain unaffected.

Article 6

Reserve holdings

1. An institution shall hold its minimum reserves on one or more reserve accounts with the national central bank in each participating Member State in which it has an establishment, in relation to its reserve base in the corresponding Member State. Reserve accounts shall be denominated in euro. Institutions' settlement accounts with the participating NCBs may be used as reserve accounts.

2. An institution shall have complied with its reserve requirement if the average end-of-day balance on its reserve accounts over the maintenance period is not less than the amount defined for that period in accordance with the procedures set out in Article 5.

3. If an institution has more than one establishment in a participating Member State, its registered office or head office, if located in that Member State, shall be responsible for ensuring compliance with the institution's reserve requirement. If the institution has neither a registered office nor a head office in that Member State, it shall designate which of its branches in that Member State shall be responsible for ensuring compliance with the institution's reserve requirement. All these establishments' reserve holdings count together towards compliance with the institution's total reserve requirement in that Member State.

Article 7

Maintenance period

1. Unless the Governing Council of the ECB decides to modify the calendar according to paragraph 2, the maintenance period shall start on the settlement day of the main refinancing operation following the meeting of the Governing Council, at which the monthly assessment of the monetary policy stance is pre-scheduled. The Executive Board of the ECB shall publish a calendar of maintenance periods at least three months before the start of each calendar year. Publication of such calendar shall take place in the *Official Journal of the European Union* and on the websites of the ECB and of the participating NCBs.

2. The Governing Council shall decide on any modification of this calendar that is necessary due to extraordinary circumstances and the Executive Board shall publish it in the same manner well in advance of the start of the maintenance period to which the modification is applied.

Article 8

Remuneration

1. Holdings of required reserves are remunerated at the average, taken over the maintenance period, of the ECB rate (weighted according to the number of calendar days) for the main refinancing operations of the Eurosystem according to the following formula (whereby the result is rounded to the nearest cent):

$$R_t = \frac{H_t \cdot n_t \cdot r_t}{100 \cdot 360}$$

$$r_t = \sum_{i=1}^{n_t} \frac{MR_i}{n_t}$$

Where:

R_t = remuneration to be paid on holdings of required reserves for the maintenance period t ;

H_t = average daily holdings of required reserves for the maintenance period t ;

- n_t = number of calendar days in the maintenance period t ;
- r_t = rate of remuneration on holdings of required reserves for the maintenance period t . Standard rounding of the rate of remuneration to two decimals shall be applied;
- i = i th calendar day of the maintenance period t ;
- MR_i = marginal interest rate for the most recent main refinancing operation settled on or before calendar day i .

2. The remuneration shall be paid on the second NCB business day following the end of the maintenance period over which the remuneration was earned.

Article 9

Responsibility for verification

The participating NCBs shall exercise the right to verify the accuracy and quality of the information which institutions provide to demonstrate compliance with the reserve requirement as specified in Article 6 of Regulation (EC) No 2531/98 without prejudice to the right of the ECB to exercise this right itself.

Article 10

Indirect holding of minimum reserves through an intermediary

1. An institution may apply for permission to hold all its minimum reserves indirectly through an intermediary resident in the same Member State. The intermediary shall be an institution subject to reserve requirements which normally effects part of the administration (e.g. treasury management) of the institution for which it is acting as intermediary, beyond the holding of minimum reserves.

2. Any application for permission to hold minimum reserves through an intermediary as described in paragraph 1 above shall be addressed to the national central bank of the participating Member State in which the applicant is established. The application shall include a copy of an agreement between the intermediary and the applicant in which both parties express their consent to the arrangement. The agreement shall also specify whether the applicant wishes to access Eurosystem standing facilities and open market operations. The agreement shall specify a notice period of at least 12 months. Upon compliance with the above conditions, the relevant participating NCB may grant the applicant permission to hold minimum reserves through an intermediary, subject to the provisions of paragraph 4 of this Article. Such permission shall be effective from the start of the first maintenance period following the date permission is granted, and shall continue for the duration of the aforementioned agreement between the parties.

3. The intermediary shall maintain these minimum reserve holdings in accordance with the general conditions of the ECB's minimum reserve system. Not only the institutions for which the intermediary is acting, but also the intermediary itself shall be responsible for complying with those institutions' reserve requirements. In the event of non-compliance, the ECB may impose any applicable sanctions on the intermediary, on the institution for which it is acting as intermediary, or on both, in accordance with the liability for non-compliance.

4. The ECB or the relevant participating NCB may, at any time, withdraw permission to hold minimum reserves indirectly:

- (i) if an institution which holds its reserves indirectly through an intermediary, or the intermediary itself, fails to comply with its obligations under the ECB minimum reserve system;
- (ii) if the conditions for the holding of reserves indirectly specified in paragraphs 1 and 2 of this Article are no longer fulfilled; or
- (iii) for prudential reasons relating to the intermediary.

If such permission is withdrawn for prudential reasons relating to the intermediary, the withdrawal may have immediate effect. Subject to the requirements of paragraph 5, any withdrawal for other reasons shall take effect at the end of the then current maintenance period. An institution which holds its reserves through an intermediary, or the intermediary itself, may, at any time, ask for the permission to be withdrawn. Withdrawal requires prior notification by the relevant participating NCB to become effective.

5. The institution which holds its minimum reserves through an intermediary and the intermediary itself shall be informed of any withdrawal of permission for reasons other than prudential ones at least five working days before the end of the maintenance period in which permission is withdrawn.

6. Without prejudice to the individual statistical reporting obligations of the institution which holds its minimum reserves through an intermediary, the intermediary shall report the reserve base data in a sufficiently detailed manner to enable the ECB to verify its accuracy and quality, having regard to the provisions contained in Article 9, and determine the respective minimum reserves and the reserve holdings data for itself, as well as in respect of each institution for which it acts as intermediary. That data shall be provided to the participating NCB with which the minimum reserves are held. The intermediary shall provide the aforementioned reserve base data according to the same frequency and timetable as were established within the ECB's reporting framework for money and banking statistics laid down in Regulation (EC) No 2423/2001 (ECB/2001/13).

*Article 11***Reserve holding on a consolidated basis**

Institutions allowed to report statistical data as a group on a consolidated basis (as defined within the ECB's reporting framework for money and banking statistics in Regulation (EC) No 2423/2001 (ECB/2001/13)) must hold minimum reserves through one of the institutions in the group which is acting as intermediary exclusively for these institutions and in accordance with the provisions in Article 10. The institution acting as the intermediary for the group may apply to the ECB for exemption from the provisions in Article 10(6). If the ECB accepts its application, only the group as a whole shall be entitled to receive the allowance referred to in Article 5(2).

*Article 12***NCB business days**

If one or more branches of a participating NCB are closed on an NCB business day owing to local or regional bank holidays, the relevant participating NCB shall inform the institutions in advance of the arrangements to be made for transactions involving those branches.

*Article 13***Mergers and divisions**

1. For the maintenance period in which a merger takes effect, the merging institutions' reserve requirements shall be assumed by the acquiring institution and the acquiring institution shall benefit from any allowance described in Article 5(2) granted to the merging institutions. All the merging institutions' reserve holdings for the maintenance period in which the merger takes effect shall count together towards compliance with reserve requirements by the acquiring institution.

2. From the maintenance period immediately following the maintenance period in which the merger takes effect onwards, the acquiring institution shall be granted only one allowance as described in Article 5(2). For the maintenance period immediately following the one in which the merger takes effect, the acquiring institution's minimum reserves shall be calculated using a reserve base which aggregates the reserve bases of the merging institutions and, where appropriate, of the acquiring institution. The reserve bases to be aggregated are those which would have been relevant for this maintenance period had the merger not occurred. To the extent required to have adequate statistical information for each of the merging institutions, the acquiring institution shall assume the merging institutions' statistical reporting obligations. Specific provisions, depending on the features of the institutions involved in the merger, are set out in Annex II to Regulation (EC) No 2423/2001 (ECB/2001/13).

3. For the maintenance period in which a division takes effect, those recipient institutions which are credit institutions shall assume the reserve requirement of the institution being divided. Each of the recipient credit institutions shall be liable in proportion to the part of the reserve base of the institution being divided that is allocated to it. Reserves held by the institution being divided during the maintenance period in which the division takes effect shall be allocated between the recipient institutions which are credit institutions in the same proportions. For the maintenance period in which the division takes effect, the allowance described in Article 5(2) shall be granted to each of the recipient institutions which is a credit institution.

4. From the maintenance period immediately following the maintenance period in which the division takes effect and until the recipient institutions which are credit institutions have reported their respective reserve bases in accordance with Article 5 of Regulation (EC) No 2423/2001 (ECB/2001/13), each recipient institution which is a credit institution shall assume, possibly in addition to its own minimum reserves, the minimum reserves calculated on the basis of the part of the reserve base of the institution being divided that is allocated to it. From the maintenance period immediately following the maintenance period in which the division takes effect onwards, each recipient institution which is a credit institution shall be granted one allowance as described in Article 5(2).

*Article 14***Transitional provisions**

1. The maintenance period starting on 24 January 2004 shall end on 9 March 2004.

2. The minimum reserves for this transitional maintenance period shall be calculated using the reserve base at 31 December 2003. The reserve base at 30 September 2003 shall be used for institutions reporting on a quarterly basis.

3. The procedures for calculation, notification, confirmation, revision and acknowledgment set out in Article 5(3), (4) and (6) of Regulation (EC) No 2818/98 (ECB/1998/15) shall apply to this transitional maintenance period.

*Article 15***Final provisions**

1. This Regulation shall enter into force on 24 January 2004, with the exception of Article 5(3) and (5) which shall enter into force on 10 March 2004.

2. Regulation (EC) No 2818/98 (ECB/1998/15) of 1 December 1998 on the application of minimum reserves shall be repealed on 23 January 2004, with the exception of Article 5(3), (4) and (6) which shall be repealed on 9 March 2004.

3. References made to the repealed Regulation shall be construed as being made to this Regulation.

Done at Frankfurt am Main, 12 September 2003.

*On behalf of the Governing Council of the
ECB*

Willem F. DUISENBERG

REGULATION (EC) No 1746/2003 OF THE EUROPEAN CENTRAL BANK
of 18 September 2003
amending Regulation (EC) No 2423/2001 (ECB/2001/13) concerning the consolidated balance sheet
of the monetary financial institutions sector
(ECB/2003/10)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank ⁽¹⁾, and in particular to Article 5(1) and Article 6(4) thereof,

Whereas:

(1) Regulation (EC) No 2423/2001 of the European Central Bank of 22 November 2001 (ECB/2001/13) concerning the consolidated balance sheet of the monetary financial institutions sector ⁽²⁾ requires monetary financial institutions (MFIs) to report quarterly statistical data broken down by country and currency. However, it currently only requires such data in respect of the Member States of the European Union (EU) at the time of its adoption. It therefore has to be amended so as to extend the reporting requirements to data in respect of the countries acceding to the EU on 1 May 2004.

(2) Currently, most data in respect of the said countries are unlikely to be significant. The benefit of separately identifying insignificant data is likely to be less than the costs associated with its collection. In line with the already existing flexibility permitted by Regulation (EC) No 2423/2001 (ECB/2001/13) in the calculation of quarterly figures where it can be shown from figures collected at a higher level of aggregation that the data involved are unlikely to be significant, the principle of flexibility should also be applied in respect of reporting of the new data. For this purpose, the national central banks regularly assess if data are significant or not.

(3) Further amendments to Regulation (EC) No 2423/2001 (ECB/2001/13) are required due to the codification of Regulation of the European Central Bank (EC) No 2818/98 (ECB/1998/15) of 1 December 1998 on the application of minimum reserves ⁽³⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation ECB/2001/13 is amended as follows:

1. In Article 4, the following sentence is added to paragraph 2:
'With reference to paragraphs 6a and 7a of Part 1, Section IV of Annex I, each NCB shall assess if data in respect of cells marked with the “#” symbol, in Tables 3 and 4 of Part 2 of Annex I, are insignificant, and shall inform the reporting agents when it does not require their reporting.'
2. Article 5(2) is deleted.
3. Annexes I and V are amended in accordance with the Annex to this Regulation.
4. Annex II is amended in accordance with the Annex to this Regulation.

Article 2

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

Article 1(1) and (3) shall apply from 1 May 2004. Article 1(2) and (4) shall apply from 10 March 2004.

Done at Frankfurt am Main, 18 September 2003.

On behalf of the Governing Council of the ECB
Willem F. DUISENBERG

⁽¹⁾ OJ L 318, 27.11.1998, p. 8.

⁽²⁾ OJ L 333, 17.12.2001, p. 1. Regulation as amended by Regulation (EC) No 2174/2002 (ECB/2002/8) (OJ L 330, 6.12.2002, p. 29).

⁽³⁾ OJ L 356, 30.12.1998, p. 1. Regulation as last amended by Regulation of the European Central Bank (EC) No 690/2002 (ECB/2002/3) (OJ L 106, 23.4.2002, p. 9).

ANNEX

Annexes I, II and V to Regulation ECB/2001/13 are amended as follows:

1. Annex I is amended as follows:

(a) Part 1, Section IV is amended as follows:

(i) The following paragraph 6a is inserted:

'6a. Reporting agents report data in respect of the cells not marked with the “#” symbol in Table 3 of Part 2.

Reporting agents also report data in respect of the cells marked with the “#” symbol. However, if figures collected at a higher level of aggregation show that these data are insignificant, NCBs may decide not to require their reporting. Each NCB informs the reporting agents of such a decision.;

(ii) The following paragraph 7a is inserted:

'7a. Reporting agents report data in respect of the cells not marked with the “#” symbol in Table 4 of Part 2.

Reporting agents also report data in respect of the cells marked with the “#” symbol. However, if figures collected at a higher level of aggregation show that these data are insignificant, NCBs may decide not to require their reporting. Each NCB informs the reporting agents of such a decision.;

(iii) The following paragraph 9a is added:

'9a. Where data in respect of cells marked with the “#” symbol are insignificant but NCBs nevertheless collect them, these may be transmitted by the NCBs to the ECB with a delay of a further one month from the close of business on the 28th working day following the end of the quarter to which they relate. NCBs decide when they need to receive data from reporting agents in order to meet this deadline.;

(b) Part 2 is amended as follows:

(i) in Table 3 (Country breakdown):

- under the heading 'B. Other participating Member States (i.e. excluding domestic sector) + part of C. Rest of the world (Member States)', columns are inserted to represent each country acceding to the EU on 1 May 2004. Each cell in each of the said columns is marked with the '#' symbol,
- in the heading of the final column, the words '(excluding Member States)' are replaced by '(excluding DK, SE, GB)',
- the following 'General note' is added to the table: 'If figures collected at a higher level of aggregation show that data in respect of the cells marked with the “#” symbol are insignificant, NCBs may decide not to require their reporting.;

(ii) in Table 4 (Currency breakdown):

- Under the heading 'Other Member State currencies', columns are inserted to represent each country acceding to the EU on 1 May 2004. Each cell in each of the said columns is marked with the '#' symbol.
- The first row is replaced by the following:

'BALANCE SHEET ITEMS	All currencies combined	Euro	Other Member State currencies	Other currencies				
			(Cells representing the currency of each Member State)	Total	USD	JPY	CHF	Remaining currencies combined (!)
(...)								

(!) Other Member States currencies (excluding DKK, SEK and GBP) are included under this column.'

- The following 'General note' is added to the table: 'If figures collected at a higher level of aggregation show that data in respect of the cells marked with the “#” symbol are insignificant, NCBs may decide not to require their reporting.'

2. In Annex II, Part 1, paragraph 2, the words '(one-month)' are deleted.

3. In Annex V the following paragraphs 1a, 1b and 2a are inserted:
- '1a. Notwithstanding paragraph 1, first reporting according to this Regulation in respect of cells marked with the “#” symbol begins with quarterly data for the period ending June 2004.
 - 1b. If the relevant NCB decides not to require first reporting of insignificant data beginning with quarterly data for the period ending June 2004, reporting starts 12 months after it informs the reporting agents that data are required.
 - 2a. For the first 12 months that they are reported, significant data in respect of the cells marked with the “#” symbol may be reported to the ECB with a delay of a further one month from the close of business on the 28th working day following the end of the quarter to which the data relate. NCBs decide when they need to receive data from reporting agents in order to meet this deadline.'
-

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 22 September 2003

appointing a Finnish member of the European Economic and Social Committee

(2003/683/EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 258 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 166 thereof,

Having regard to the Council Decision of 17 September 2002 appointing the members of the Economic and Social Committee for the period from 21 September 2002 to 20 September 2006 ⁽¹⁾,

Whereas a member's seat on that Committee has fallen vacant following the resignation of Mr Pertti RAUHIO, of which the Council was informed on 27 January 2003;

Having regard to the nominations submitted by the Finnish Government,

Having obtained the opinion of the Commission of the European Communities,

HAS DECIDED AS FOLLOWS:

Sole Article

Mr Eero LEHTI is hereby appointed a member of the Economic and Social Committee in place of Mr Pertti RAUHIO for the remainder of the latter's term of office, which runs until 20 September 2006.

Done at Brussels, 22 September 2003.

For the Council
The President
F. FRATTINI

⁽¹⁾ OJ L 253, 21.9.2002, p. 9.

COUNCIL DECISION
of 22 September 2003
appointing an alternate member of the Committee of the Regions

(2003/684/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 263 thereof,

Having regard to the proposal from the German Government,

Whereas:

- (1) On 22 January 2002 the Council adopted a Decision appointing the members and alternate members of the Committee of the Regions ⁽¹⁾.
- (2) The seat of an alternate member of the Committee of the Regions has become vacant following the resignation of Mr Hans KAISER, of which the Council was notified on 8 July 2003,

HAS DECIDED AS FOLLOWS:

Sole Article

Mr Dieter ALTHAUS, First Minister of the Free State of Thuringia, is hereby appointed an alternate member of the Committee of the Regions in place of Mr Hans KAISER for the remainder of his term of office, which ends on 25 January 2006.

Done at Brussels, 22 September 2003.

For the Council

The President

F. FRATTINI

⁽¹⁾ OJ L 24, 26.1.2002, p. 38.

COUNCIL DECISION
of 22 September 2003
appointing a member of the Committee of the Regions

(2003/685/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 263 thereof,

Having regard to the proposal from the Belgian Government,

Whereas:

- (1) On 22 January 2002 the Council adopted a Decision appointing the members and alternate members of the Committee of the Regions ⁽¹⁾.
- (2) The seat of a member of the Committee of the Regions has become vacant following the resignation of Mr François-Xavier DE DONNÉA, of which the Council was notified on 17 June 2003,

HAS DECIDED AS FOLLOWS:

Sole Article

Mr Daniel DUCARME, Minister-President of the Brussels Capital Regional Government, with responsibility for Local Authorities, Regional Planning, Monuments and Sites, Urban Regeneration and Scientific Research, is hereby appointed a member of the Committee of the Regions in place of Mr François-Xavier DE DONNÉA for the remainder of his term of office, which ends on 25 January 2006.

Done at Brussels, 22 September 2003.

For the Council
The President
F. FRATTINI

⁽¹⁾ OJ L 24, 26.1.2002, p. 38.

COUNCIL DECISION
of 22 September 2003
appointing a member of the Committee of the Regions

(2003/686/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 263 thereof,

Having regard to the proposal from the German Government,

Whereas:

- (1) On 22 January 2002 the Council adopted Decision 2002/60/EC appointing the members and alternate members of the Committee of the Regions ⁽¹⁾.
- (2) The seat of a member of the Committee of the Regions has become vacant following the resignation of Mr Jürgen GNAUCK, of which the Council was notified on 8 July 2003,

HAS DECIDED AS FOLLOWS:

Sole Article

Mr Hans KAISER, Minister for Federal and European Affairs in the Prime Minister's Office and Commissioner for the Prime Minister's Office of Thuringia to the Federation, is hereby appointed a member of the Committee of the Regions in place of Mr Jürgen GNAUCK for the remainder of his term of office, which ends on 25 January 2006.

Done at Brussels, 22 September 2003.

For the Council
The President
F. FRATTINI

⁽¹⁾ OJ L 24, 26.1.2002, p. 38.

COMMISSION

COMMISSION DECISION of 19 March 2003

on State aid granted by Germany to Linde AG (Saxony-Anhalt)

(notified under document number C(2003) 647)

(Only the German text is authentic)

(Text with EEA relevance)

(2003/687/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,

Whereas:

I. PROCEDURE

(1) On 17 October 2002, the Court of First Instance (CFI) annulled Commission Decision 2000/524/EC⁽¹⁾ in which the Commission declared aid granted to Linde AG (Linde) incompatible with the common market. The Court thus agreed with the application brought by Linde insofar as the Commission had refused a substantial part of an investment subsidy (the subsidy) as aid to Linde.

(2) In May 1998, in the course of its contacts with the German authorities, the Commission became aware of the existence of several transactions involving the Treuhandanstalt (THA), its successor, the Bundesanstalt für vereinigungsbedingte Sonderaufgaben (BvS), and the companies UCB Chemie GmbH (UCB) and Linde. These transactions basically concerned the conditions under which carbon monoxide was to be supplied to an amine production site acquired by UCB from Leuna Werke GmbH (LWG) after a privatisation procedure.

(3) Subsequently, by letter dated 7 August 1998, Germany informed the Commission of the background to these transactions and the aid measures involved. By letter dated 18 September 1998, the Commission requested further information, which was provided by letter dated 3 December 1998. The case was registered as NN 16/99 on 3 February 1999.

(4) By letter dated 30 March 1999, 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 a DEM 9 million grant to Linde for the construction of a new carbon monoxide production plant and the conditions under which carbon monoxide was currently being supplied to UCB (SG(99)D/2353)⁽²⁾.

(5) By letter dated 25 May 1999, Germany submitted its comments. The Commission received no comments from other interested parties.

(6) On 18 January 2000, the Commission adopted its partially negative Decision 2000/524/EC.

(7) By application lodged at the Registry of the Court of First Instance on 21 April 2000, Linde (supported by Germany) brought an action for annulment of Articles 2 and 3 of Decision 2000/524/EC. The Commission contended that the Court should dismiss the action as unfounded. In its judgment of 17 October 2002 in Case T-98/00⁽³⁾, after an oral procedure, the Court upheld Linde's application.

(8) Pursuant to Article 233 of the EC Treaty, the Commission must take the necessary measures to comply with the judgment of the Court, i.e. it must adopt a new Decision that meets the requirements of the judgment.

⁽¹⁾ OJ L 211, 22.8.2000, p. 7.

⁽²⁾ OJ C 194, 10.7.1999, p. 14.

⁽³⁾ Not yet reported.

II. DESCRIPTION OF THE MEASURES

1. The recipient

(9) Linde is a subsidiary of the international technology-oriented Linde Group. In 2001, the Linde Group had a turnover of EUR 9,076 billion, with a workforce of 46 400 employees, of which 18 176 were employed in Germany and 28 387 abroad. Net profit amounted to EUR 289 million in 2001. Linde's three business segments, gas and engineering, material handling and refrigeration have established leading positions in their markets, according to Linde Group⁽¹⁾.

2. The privatisation of amine production and the taking-over of carbon monoxide production

(10) In 1993 the THA sold the Leuna-based amine production operation (the privatisation contract) to UCB, a subsidiary of Union Chimique Belge, which is a worldwide industrial group, active in three industrial sectors: pharmaceuticals, chemicals and film. The parent company, UCB SA, comprises about 130 subsidiaries and affiliates worldwide, mainly in Western Europe, but also in the Americas and Asia. In 2001, the group employed about 10 000 people, of whom around half are in the pharmaceutical sector and the rest in the chemical and film sectors. Nearly one third of those employed work in Belgium, where several of the most important production units are located, as well as the general management of each of the three sectors and the research and development centres in the pharmaceutical and chemical fields. The group turnover in 2001 totalled EUR 2,475 billion⁽²⁾.

(11) According to the information provided by Germany, the amine production was sold after an open, unconditional and transparent tender procedure in which UCB was the only bidder.

(12) Since carbon monoxide is required for amine production, UCB made the purchase conditional upon the THA's undertaking to guarantee the supply of carbon monoxide for its amine production at the acquired site in Leuna. The THA undertook to provide carbon monoxide for a fixed price agreed for a 10-year period provided that UCB did not conclude a contract for the supply of carbon monoxide with another producer or did not decide to build a carbon monoxide production facility for its own use. However, the THA would make a grant of DEM 5 million available for this eventuality under the privatisation contract.

(13) No information was provided on how this fixed price was determined. However, it should be noted that at the time the THA was concluding such long-term supply contracts on a regular basis with new investors because the supply situation for the chemical sector was rather uncertain. According to the German authorities, without such supply guarantees most producers would not have

been prepared to establish themselves at the location concerned and consequently the THA would not have been able to fulfil its privatisation task.

(14) When it concluded the privatisation contract with UCB on the amine production plant, the THA was also hoping to find an investor to take over the carbon monoxide production plant. This hope was disappointed. Since the carbon monoxide production plant had been neither restructured nor modernised, production costs were far above the expected level. The supply obligation caused the THA losses of approximately DEM 3,5 to 5 million per year, since the fixed price was calculated on the basis of erroneous assumptions and did not even cover the production costs at the outdated facility. Accordingly, if the privatisation contract had been performed until its date of expiry, namely 30 April 2003, the THA would have suffered aggregate losses of more than DEM 15 million in the period after October 1998 alone.

(15) In 1996, the BvS decided to cancel the loss-making contract for the supply of carbon monoxide and proposed that UCB should itself produce the carbon monoxide it required for its amine production. In accordance with the privatisation contract, UCB would receive a grant of DEM 5 million for this.

(16) However, since UCB rejected the proposal, the BvS was forced to look for another investor.

(17) The only investor interested in and objectively capable of taking over the carbon monoxide delivery obligation was Linde, since it had been producing gas at the Leuna site since 1994. In June 1997, an agreement (the 1997 agreement) was concluded between the BvS, LWG, UCB and Linde for the supply of carbon monoxide. Accordingly, Linde would build a new carbon monoxide production plant within 18 months. The new plant would be incorporated into Linde's existing facilities in Leuna. The building cost would be DEM 12,5 million, to which Linde would contribute DEM 3,5 million from its own funds and the BvS the remaining DEM 9 million (the subsidy).

(18) Since the Commission had serious misgivings that elements of State aid might be included in: (i) the DEM 9 million grant awarded to Linde AG for carbon monoxide production and (ii) the fixed price agreed between UCB and Linde, it decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of these measures.

(19) By letter dated 25 May 1999, Germany pointed out that, due to the specific chemical nature of carbon monoxide, it must be produced at the place where it is used. Therefore, such a product could not affect trade in the Community. Since there was no carbon monoxide market in the customary sense, the purchase price could only be based on current costs at the existing facilities.

⁽¹⁾ <http://www.linde.com/en/en.jsp>, 3 December 2002.

⁽²⁾ <http://www.ucb-group.com/corp/default.htm>, 3 December 2002.

- (20) An entirely new carbon monoxide plant would have been much more costly than the modifications by Linde to its existing gas production site — DEM 20 million instead of DEM 12,5 million. There was no obligation to call for tenders since the likely providers of carbon monoxide had been contacted and there was no other interested company. Only Linde responded positively. Linde's prices were based on investment costs plus an adequate return.
- (21) LWG examined the possibility of producing carbon monoxide itself, but the investment costs were too high. Carbon monoxide is produced on the basis of a synthesis gas that has to be purified in a steam reformer. The only alternative to LWG's own production was to utilise a steam reformer available in the vicinity. Since Linde had previously acquired a steam reformer from LWG, Linde proposed to the BvS and to UCB that it should become UCB's carbon monoxide supplier. Carbon monoxide would then be supplied to UCB at a newly negotiated higher price.
- (22) By letter dated 25 May 1999, Germany stated that UCB had decided to accept Linde's offer, even though the carbon monoxide price was higher, because Linde offered some favourable conditions over the existing THA obligation. Through the new production site, Linde was able to supply more carbon monoxide than LWG over an extended period of time. This possibility of increasing its amine production in the future was an important consideration for UCB in accepting the 1997 agreement.

3. Decision 2000/524/EC

- (23) The Commission initiated formal investigation proceedings in July 1999 as it believed that the DEM 9 million subsidy awarded to Linde could constitute aid. No interested party except Germany responded to the publication of the Commission's initiation of proceedings. In January 2000 the Commission terminated proceedings with the partially negative Decision 2000/524/EC.
- (24) In the Decision, the Commission found that the subsidy of DEM 9 million constituted aid. In accordance with the guidelines on national regional aid⁽¹⁾, the portion exceeding 35 % of the eligible investment costs of the facility, i.e. DEM 4,4 million, was incompatible with the Treaty and had to be reimbursed.
- (25) The main argument for considering the measure aid was that the subsidy allowed Linde to add a new production installation without having to bear all the costs.

According to the Commission, the fact that for certain reasons it was preferable to produce carbon monoxide in the place of consumption did not alter this assessment. Linde had a pre-existing advantage over its potential competitors because it was already on the site and had thus better investment conditions for setting up the new facility.

- (26) The Commission assumed that the subsidy could have an effect on other producers end products for which carbon monoxide is an intermediary. These end products are traded in the Community.
- (27) Moreover, although UCB was the only buyer of carbon monoxide at the site, it could not be excluded that in future Linde would also supply to other companies based in the same area.
- (28) Finally, Germany did not submit sufficient evidence showing that no other company than Linde would have been prepared to take over supplying UCB. They merely claimed that Linde was the only interested investor without having conducted a tender procedure.
- (29) In April 2000, Linde, supported by Germany, appealed against Decision 2000/524/EC to the Court of First Instance.

4. The judgment of the Court of First Instance

- (30) The Court based its decision largely on the following facts:

'42. It is apparent from the documents before the Court that in 1996 the BvS, which is the successor to the THA and which owned the carbon monoxide production plant operated by LWG at Leuna, was faced with a financial problem owing to the combination of the following circumstances:

- in the supply agreement of 22 April 1993, the THA and LWG undertook to supply specific quantities of carbon monoxide to UCB, at a price equivalent to the market price, for a period of 10 years, renewable for an indefinite period;
- it later became apparent, however, that the supply price would not cover the cost of production of carbon monoxide by LWG;
- the particularly high costs were occasioned by the obsolescence of the plant and technology used by LWG;

⁽¹⁾ OJ C 74, 10.3.1998, p. 9.

- in addition, the supply price had been fixed in the ultimately unrealised expectation that a second purchaser of carbon monoxide would set up business at the Leuna site, which would have enabled the LWG production unit to be operated more profitably;
 - as a result of performance of that supply agreement, the BvS and LWG incurred losses of approximately DEM 3,5 million per year which, from 1998, would have increased to DEM 5 million per year;
 - accordingly, if that agreement had been performed until its date of expiry, namely 30 April 2003, rather than being terminated in October 1998, the BvS and LWG would have suffered aggregate losses of more than DEM 15 million in the period after October 1998;
 - LWG was not entitled to terminate the supply agreement of 22 April 1993 under Article 6(4) (see paragraph 3 above) since neither of the two conditions set out in that provision were met in the present case;
 - that was because, first, UCB had ruled out the possibility of building and operating its own carbon monoxide production facility;
 - second, there was no other carbon monoxide producer on the Leuna site which UCB could have used as a supplier;
 - UCB could not have used a supplier who was not based on the site, since carbon monoxide must be produced near the user (see recital 22 of the contested Decision).'
- (31) Another important factor was the planned capacity restriction of the new Linde plant to the needs of UCB⁽¹⁾. Delivery of carbon monoxide to third parties was excluded because of the small production reserve. There are no other potential buyers of carbon monoxide at the Leuna site and transport to the nearest chemical production sites at Bitterfeld or Buna was impossible due to the technical characteristics of carbon monoxide.

III. ASSESSMENT OF THE MEASURE

1. The relevant market

- (32) The relevant product market is the market for carbon monoxide, which is a toxic gas used in the chemical industry. Since its transport is expensive and dangerous, production must be located near the purchaser.
- (33) The relevant geographic market is always a local market, since due to the transport costs and risks, production and consumption have to be in the same location.

2. Existence of aid

- (34) The subsidy of DEM 9 million did not constitute aid within the meaning of Article 87(1) of the EC Treaty since it appears that the measure did not distort competition and had no effect on trade.
- (35) Owing to the specifics of the relevant product market and the context of privatisation efforts in the new *Länder* in the early 1990s, the subsidy affected neither the competitive situation in the production of carbon monoxide nor the further use of it in the production of amine.
- (36) The specific economic and legal facts of this case must be seen against the background of the industrial 'Kombinat' system of the former German Democratic Republic (GDR). The idea of bundling a whole industry at one or two sites culminated in the two major GDR chemical production sites of Leuna and Bitterfeld. After German reunification, these complexes proved unmanageable under market economy conditions. The procedures developed for the privatisation of these industrial sites took account of the specifics of the former system of economy.
- (37) In the course of the privatisation of the chemical industry at the Leuna site in 1993, Germany entered into a commitment to supply carbon monoxide to UCB for a fixed price over a fairly long period of time. Without this supply commitment, UCB would not have taken over the amine production at Leuna⁽²⁾.
- (38) In the course of fulfilling its loss-making carbon monoxide delivery obligation, Germany tried to minimise its financial burden by finding a more economical solution, while honouring its contractual commitment to UCB. The decision by the THA/BvS to choose Linde for that purpose was, in that specific situation, objectively the most economical solution for the State, since Linde already had a chemical production plant at the Leuna site. In 1994, Linde had inaugurated the world's largest industrial gases centre in Leuna, and in 1998 it took over the entire supply of industrial gases for the Mitteldeutsche Erdoelraffinerie (MIDER) in Leuna. It was possible to incorporate the new carbon monoxide production facility into the existing structure instead of building a completely new complex, thereby reducing the investment costs significantly.
- (39) Since no other company located at the Leuna site presented such an objective structural advantage or even showed any interest in building a production facility for taking over the supply of carbon monoxide, Linde had an important cost advantage in building the new facility.

⁽¹⁾ Cited by Linde in its application to the Court of First Instance, dated 19 April 2000, paragraph 21. Not contested by the Commission.

⁽²⁾ The fact that the purchase price UCB paid to the THA/BvS for the carbon monoxide did not even cover the production costs may indicate that an aid element was involved. However, since it was most probably covered by the approved derogation scheme (Treuhandsregime), the Commission did not investigate this point any further.

- (40) Linde received the subsidy for the construction of the carbon monoxide production plant. Without the subsidy, Linde would not have made the investment. The amount of the subsidy was negotiated as being the minimum necessary for building the facility. Since Linde, as the only company in Leuna, already had an operating chemical gas plant, no other company could have built the facility with this amount. The DEM 9 million subsidy constituted the best, most economical, deal for the State because a completely new plant would have cost up to DEM 20 million, instead of DEM 12,5 million in the case of Linde. In order to compensate for the higher building costs, any other company would either have asked for a substantially higher subsidy or would have been forced to increase the prices charged to UCB considerably. This would have been refused by UCB, which could rely on its delivery right under the original privatisation contract and the whole deal would have fallen apart.
- (41) This exceptional position of Linde as the best-suited potential supplier of carbon monoxide to UCB was further reinforced by the fact that there was no reaction from any competitor or third party other than Germany during the Commission's entire investigation procedure. Taken together, all this provides sufficient evidence that another selection procedure would not have led to a lower level of subsidy than the one laid down in the 1997 agreement.
- (42) The subsidy did not have an effect on the carbon monoxide market since the technological characteristics of the plant and the production capacities were tailored specifically to the needs of UCB. Linde's new plant was meant to work exclusively for UCB. There has never been a second purchaser of carbon monoxide who could have benefited from any 'subsidised' carbon monoxide. In the circumstances, therefore, there is no possibility that 'subsidised' carbon monoxide left the Leuna site or found another purchaser at the site. Consequently, any spill-over effect of the subsidy to other products or markets can be ruled out.
- (43) It follows from these considerations that support given by Germany to Linde's new plant was only a vehicle allowing it to fulfil its commitments vis-à-vis UCB in a financially less costly way. The subsidy granted to Linde corresponded to the minimum amount necessary to attain this objective. Taking into account the specific

circumstances of the case, such a support did not entail distortions of competition on the markets where Linde or UCB are present.

- (44) Furthermore, a distortion of competition seems to be excluded on the amine market too since Linde's price for the carbon monoxide was even higher than the original price UCB paid under the privatisation contract and therefore certainly did not improve its competitive situation. The price was negotiated between Linde and UCB on purely commercial grounds. UCB agreed to the higher price in exchange for the delivery guarantee being extended beyond the original deadline of 2003 set in the privatisation contract. Consequently, the subsidy did not have any influence on a downstream market.

IV. CONCLUSION

- (45) Given the unique factual characteristics of this case and its historic background, a distortion of competition on the relevant market (or even the threat of such distortion) can be excluded. Linde was the only company objectively suited to provide the carbon monoxide to UCB and delivered all its production exclusively to UCB. For Germany, Linde was just the means of assuring the continuation of its delivery obligation for carbon monoxide to UCB. The subsidy was limited to the necessary minimum for this purpose,

HAS ADOPTED THIS DECISION:

Article 1

The subsidy of DEM 9 million which Germany granted to Linde AG for the construction of a carbon monoxide plant at Leuna does not constitute aid within the meaning of Article 87(1) of the EC Treaty.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 19 March 2003.

For the Commission

Mario MONTI

Member of the Commission

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 1734/2003 of 30 October 2003 fixing the rates of refunds applicable to certain products from the sugar sector exported in the form of goods not covered by Annex I to the Treaty

(Official Journal of the European Union L 249 of 1 October 2003)

On page 27 in the title and on page 28 in the closing formula, the date:

for: '30 October 2003',

read: '30 September 2003'.
