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## Legislation

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<sup>(1)</sup> Text with EEA relevance

Price: EUR 18

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<sup>(1)</sup> Text with EEA relevance

## I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 139/2004**  
**of 20 January 2004**  
**on the control of concentrations between undertakings**  
**(the EC Merger Regulation)**  
**(Text with EEA relevance)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 83 and 308 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(3)</sup>,

Whereas:

- (1) Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings <sup>(4)</sup> has been substantially amended. Since further amendments are to be made, it should be recast in the interest of clarity.
- (2) For the achievement of the aims of the Treaty, Article 3(1)(g) gives the Community the objective of instituting a system ensuring that competition in the internal market is not distorted. Article 4(1) of the Treaty provides that the activities of the Member States and the Community are to be conducted in accordance with the principle of an open market economy with free competition. These principles are essential for the further development of the internal market.
- (3) The completion of the internal market and of economic and monetary union, the enlargement of the European Union and the lowering of international barriers to trade and investment will continue to result in major corporate reorganisations, particularly in the form of concentrations.

(4) Such reorganisations are to be welcomed to the extent that they are in line with the requirements of dynamic competition and capable of increasing the competitiveness of European industry, improving the conditions of growth and raising the standard of living in the Community.

(5) However, it should be ensured that the process of reorganisation does not result in lasting damage to competition; Community law must therefore include provisions governing those concentrations which may significantly impede effective competition in the common market or in a substantial part of it.

(6) A specific legal instrument is therefore necessary to permit effective control of all concentrations in terms of their effect on the structure of competition in the Community and to be the only instrument applicable to such concentrations. Regulation (EEC) No 4064/89 has allowed a Community policy to develop in this field. In the light of experience, however, that Regulation should now be recast into legislation designed to meet the challenges of a more integrated market and the future enlargement of the European Union. In accordance with the principles of subsidiarity and of proportionality as set out in Article 5 of the Treaty, this Regulation does not go beyond what is necessary in order to achieve the objective of ensuring that competition in the common market is not distorted, in accordance with the principle of an open market economy with free competition.

(7) Articles 81 and 82, while applicable, according to the case-law of the Court of Justice, to certain concentrations, are not sufficient to control all operations which may prove to be incompatible with the system of undistorted competition envisaged in the Treaty. This Regulation should therefore be based not only on Article 83 but, principally, on Article 308 of the Treaty, under which the Community may give itself the additional powers of action necessary for the attainment of its objectives, and also powers of action with regard to concentrations on the markets for agricultural products listed in Annex I to the Treaty.

<sup>(1)</sup> OJ C 20, 28.1.2003, p. 4.

<sup>(2)</sup> Opinion delivered on 9.10.2003 (not yet published in the Official Journal).

<sup>(3)</sup> Opinion delivered on 24.10.2003 (not yet published in the Official Journal).

<sup>(4)</sup> OJ L 395, 30.12.1989, p. 1. Corrected version in OJ L 257, 21.9.1990, p. 13. Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9.7.1997, p. 1). Corrigendum in OJ L 40, 13.2.1998, p. 17.

- (8) The provisions to be adopted in this Regulation should apply to significant structural changes, the impact of which on the market goes beyond the national borders of any one Member State. Such concentrations should, as a general rule, be reviewed exclusively at Community level, in application of a 'one-stop shop' system and in compliance with the principle of subsidiarity. Concentrations not covered by this Regulation come, in principle, within the jurisdiction of the Member States.
- (9) The scope of application of this Regulation should be defined according to the geographical area of activity of the undertakings concerned and be limited by quantitative thresholds in order to cover those concentrations which have a Community dimension. The Commission should report to the Council on the implementation of the applicable thresholds and criteria so that the Council, acting in accordance with Article 202 of the Treaty, is in a position to review them regularly, as well as the rules regarding pre-notification referral, in the light of the experience gained; this requires statistical data to be provided by the Member States to the Commission to enable it to prepare such reports and possible proposals for amendments. The Commission's reports and proposals should be based on relevant information regularly provided by the Member States.
- (10) A concentration with a Community dimension should be deemed to exist where the aggregate turnover of the undertakings concerned exceeds given thresholds; that is the case irrespective of whether or not the undertakings effecting the concentration have their seat or their principal fields of activity in the Community, provided they have substantial operations there.
- (11) The rules governing the referral of concentrations from the Commission to Member States and from Member States to the Commission should operate as an effective corrective mechanism in the light of the principle of subsidiarity; these rules protect the competition interests of the Member States in an adequate manner and take due account of legal certainty and the 'one-stop shop' principle.
- (12) Concentrations may qualify for examination under a number of national merger control systems if they fall below the turnover thresholds referred to in this Regulation. Multiple notification of the same transaction increases legal uncertainty, effort and cost for undertakings and may lead to conflicting assessments. The system whereby concentrations may be referred to the Commission by the Member States concerned should therefore be further developed.
- (13) The Commission should act in close and constant liaison with the competent authorities of the Member States from which it obtains comments and information.
- (14) The Commission and the competent authorities of the Member States should together form a network of public authorities, applying their respective competences in close cooperation, using efficient arrangements for information-sharing and consultation, with a view to ensuring that a case is dealt with by the most appropriate authority, in the light of the principle of subsidiarity and with a view to ensuring that multiple notifications of a given concentration are avoided to the greatest extent possible. Referrals of concentrations from the Commission to Member States and from Member States to the Commission should be made in an efficient manner avoiding, to the greatest extent possible, situations where a concentration is subject to a referral both before and after its notification.
- (15) The Commission should be able to refer to a Member State notified concentrations with a Community dimension which threaten significantly to affect competition in a market within that Member State presenting all the characteristics of a distinct market. Where the concentration affects competition on such a market, which does not constitute a substantial part of the common market, the Commission should be obliged, upon request, to refer the whole or part of the case to the Member State concerned. A Member State should be able to refer to the Commission a concentration which does not have a Community dimension but which affects trade between Member States and threatens to significantly affect competition within its territory. Other Member States which are also competent to review the concentration should be able to join the request. In such a situation, in order to ensure the efficiency and predictability of the system, national time limits should be suspended until a decision has been reached as to the referral of the case. The Commission should have the power to examine and deal with a concentration on behalf of a requesting Member State or requesting Member States.
- (16) The undertakings concerned should be granted the possibility of requesting referrals to or from the Commission before a concentration is notified so as to further improve the efficiency of the system for the control of concentrations within the Community. In such situations, the Commission and national competition authorities should decide within short, clearly defined time limits whether a referral to or from the Commission ought to be made, thereby ensuring the efficiency of the system. Upon request by the undertakings concerned, the Commission should be able to refer to a Member State a concentration with a Community dimension which may significantly affect competition in a market within that Member State presenting all the characteristics of a distinct market; the undertakings concerned should not, however, be required to demonstrate that the effects of the concentration would be detrimental to competition. A concentration should not be referred from the Commission to a Member State which has expressed its disagreement to such a referral. Before notification to national authorities, the undertakings concerned should also be able to request that a concentration without a Community dimension which is capable of being reviewed under the national competition laws of at least three Member States be referred to

the Commission. Such requests for pre-notification referrals to the Commission would be particularly pertinent in situations where the concentration would affect competition beyond the territory of one Member State. Where a concentration capable of being reviewed under the competition laws of three or more Member States is referred to the Commission prior to any national notification, and no Member State competent to review the case expresses its disagreement, the Commission should acquire exclusive competence to review the concentration and such a concentration should be deemed to have a Community dimension. Such pre-notification referrals from Member States to the Commission should not, however, be made where at least one Member State competent to review the case has expressed its disagreement with such a referral.

- (17) The Commission should be given exclusive competence to apply this Regulation, subject to review by the Court of Justice.
- (18) The Member States should not be permitted to apply their national legislation on competition to concentrations with a Community dimension, unless this Regulation makes provision therefor. The relevant powers of national authorities should be limited to cases where, failing intervention by the Commission, effective competition is likely to be significantly impeded within the territory of a Member State and where the competition interests of that Member State cannot be sufficiently protected otherwise by this Regulation. The Member States concerned must act promptly in such cases; this Regulation cannot, because of the diversity of national law, fix a single time limit for the adoption of final decisions under national law.
- (19) Furthermore, the exclusive application of this Regulation to concentrations with a Community dimension is without prejudice to Article 296 of the Treaty, and does not prevent the Member States from taking appropriate measures to protect legitimate interests other than those pursued by this Regulation, provided that such measures are compatible with the general principles and other provisions of Community law.
- (20) It is expedient to define the concept of concentration in such a manner as to cover operations bringing about a lasting change in the control of the undertakings concerned and therefore in the structure of the market. It is therefore appropriate to include, within the scope of this Regulation, all joint ventures performing on a lasting basis all the functions of an autonomous economic entity. It is moreover appropriate to treat as a single concentration transactions that are closely connected in that they are linked by condition or take the form of a series of transactions in securities taking place within a reasonably short period of time.
- (21) This Regulation should also apply where the undertakings concerned accept restrictions directly related to, and necessary for, the implementation of the concentration. Commission decisions declaring concentrations compatible with the common market in application of this Regulation should automatically cover such restrictions, without the Commission having to assess such restrictions in individual cases. At the request of the undertakings concerned, however, the Commission should, in cases presenting novel or unresolved questions giving rise to genuine uncertainty, expressly assess whether or not any restriction is directly related to, and necessary for, the implementation of the concentration. A case presents a novel or unresolved question giving rise to genuine uncertainty if the question is not covered by the relevant Commission notice in force or a published Commission decision.
- (22) The arrangements to be introduced for the control of concentrations should, without prejudice to Article 86(2) of the Treaty, respect the principle of non-discrimination between the public and the private sectors. In the public sector, calculation of the turnover of an undertaking concerned in a concentration needs, therefore, to take account of undertakings making up an economic unit with an independent power of decision, irrespective of the way in which their capital is held or of the rules of administrative supervision applicable to them.
- (23) It is necessary to establish whether or not concentrations with a Community dimension are compatible with the common market in terms of the need to maintain and develop effective competition in the common market. In so doing, the Commission must place its appraisal within the general framework of the achievement of the fundamental objectives referred to in Article 2 of the Treaty establishing the European Community and Article 2 of the Treaty on European Union.
- (24) In order to ensure a system of undistorted competition in the common market, in furtherance of a policy conducted in accordance with the principle of an open market economy with free competition, this Regulation must permit effective control of all concentrations from the point of view of their effect on competition in the Community. Accordingly, Regulation (EEC) No 4064/89 established the principle that a concentration with a Community dimension which creates or strengthens a dominant position as a result of which effective competition in the common market or in a substantial part of it would be significantly impeded should be declared incompatible with the common market.

- (25) In view of the consequences that concentrations in oligopolistic market structures may have, it is all the more necessary to maintain effective competition in such markets. Many oligopolistic markets exhibit a healthy degree of competition. However, under certain circumstances, concentrations involving the elimination of important competitive constraints that the merging parties had exerted upon each other, as well as a reduction of competitive pressure on the remaining competitors, may, even in the absence of a likelihood of coordination between the members of the oligopoly, result in a significant impediment to effective competition. The Community courts have, however, not to date expressly interpreted Regulation (EEC) No 4064/89 as requiring concentrations giving rise to such non-coordinated effects to be declared incompatible with the common market. Therefore, in the interests of legal certainty, it should be made clear that this Regulation permits effective control of all such concentrations by providing that any concentration which would significantly impede effective competition, in the common market or in a substantial part of it, should be declared incompatible with the common market. The notion of 'significant impediment to effective competition' in Article 2(2) and (3) should be interpreted as extending, beyond the concept of dominance, only to the anti-competitive effects of a concentration resulting from the non-coordinated behaviour of undertakings which would not have a dominant position on the market concerned.
- (26) A significant impediment to effective competition generally results from the creation or strengthening of a dominant position. With a view to preserving the guidance that may be drawn from past judgments of the European courts and Commission decisions pursuant to Regulation (EEC) No 4064/89, while at the same time maintaining consistency with the standards of competitive harm which have been applied by the Commission and the Community courts regarding the compatibility of a concentration with the common market, this Regulation should accordingly establish the principle that a concentration with a Community dimension which would significantly impede effective competition, in the common market or in a substantial part thereof, in particular as a result of the creation or strengthening of a dominant position, is to be declared incompatible with the common market.
- (27) In addition, the criteria of Article 81(1) and (3) of the Treaty should be applied to joint ventures performing, on a lasting basis, all the functions of autonomous economic entities, to the extent that their creation has as its consequence an appreciable restriction of competition between undertakings that remain independent.
- (28) In order to clarify and explain the Commission's appraisal of concentrations under this Regulation, it is appropriate for the Commission to publish guidance which should provide a sound economic framework for the assessment of concentrations with a view to determining whether or not they may be declared compatible with the common market.
- (29) In order to determine the impact of a concentration on competition in the common market, it is appropriate to take account of any substantiated and likely efficiencies put forward by the undertakings concerned. It is possible that the efficiencies brought about by the concentration counteract the effects on competition, and in particular the potential harm to consumers, that it might otherwise have and that, as a consequence, the concentration would not significantly impede effective competition, in the common market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position. The Commission should publish guidance on the conditions under which it may take efficiencies into account in the assessment of a concentration.
- (30) Where the undertakings concerned modify a notified concentration, in particular by offering commitments with a view to rendering the concentration compatible with the common market, the Commission should be able to declare the concentration, as modified, compatible with the common market. Such commitments should be proportionate to the competition problem and entirely eliminate it. It is also appropriate to accept commitments before the initiation of proceedings where the competition problem is readily identifiable and can easily be remedied. It should be expressly provided that the Commission may attach to its decision conditions and obligations in order to ensure that the undertakings concerned comply with their commitments in a timely and effective manner so as to render the concentration compatible with the common market. Transparency and effective consultation of Member States as well as of interested third parties should be ensured throughout the procedure.
- (31) The Commission should have at its disposal appropriate instruments to ensure the enforcement of commitments and to deal with situations where they are not fulfilled. In cases of failure to fulfil a condition attached to the decision declaring a concentration compatible with the common market, the situation rendering the concentration compatible with the common market does not materialise and the concentration, as implemented, is therefore not authorised by the Commission. As a consequence, if the concentration is implemented, it should be treated in the same way as a non-notified concentration implemented without authorisation. Furthermore, where the Commission has already found that, in the absence of the condition, the concentration would be incompatible with the common market, it should have the power to directly order the dissolution of the concentration, so as to restore the situation prevailing prior to the implementation of the concentration. Where an obligation attached to a decision declaring the concentration compatible with the common market is not fulfilled, the Commission should be able to revoke its decision. Moreover, the Commission should be able to impose appropriate financial sanctions where conditions or obligations are not fulfilled.

- (32) Concentrations which, by reason of the limited market share of the undertakings concerned, are not liable to impede effective competition may be presumed to be compatible with the common market. Without prejudice to Articles 81 and 82 of the Treaty, an indication to this effect exists, in particular, where the market share of the undertakings concerned does not exceed 25 % either in the common market or in a substantial part of it.
- (33) The Commission should have the task of taking all the decisions necessary to establish whether or not concentrations with a Community dimension are compatible with the common market, as well as decisions designed to restore the situation prevailing prior to the implementation of a concentration which has been declared incompatible with the common market.
- (34) To ensure effective control, undertakings should be obliged to give prior notification of concentrations with a Community dimension following the conclusion of the agreement, the announcement of the public bid or the acquisition of a controlling interest. Notification should also be possible where the undertakings concerned satisfy the Commission of their intention to enter into an agreement for a proposed concentration and demonstrate to the Commission that their plan for that proposed concentration is sufficiently concrete, for example on the basis of an agreement in principle, a memorandum of understanding, or a letter of intent signed by all undertakings concerned, or, in the case of a public bid, where they have publicly announced an intention to make such a bid, provided that the intended agreement or bid would result in a concentration with a Community dimension. The implementation of concentrations should be suspended until a final decision of the Commission has been taken. However, it should be possible to derogate from this suspension at the request of the undertakings concerned, where appropriate. In deciding whether or not to grant a derogation, the Commission should take account of all pertinent factors, such as the nature and gravity of damage to the undertakings concerned or to third parties, and the threat to competition posed by the concentration. In the interest of legal certainty, the validity of transactions must nevertheless be protected as much as necessary.
- (35) A period within which the Commission must initiate proceedings in respect of a notified concentration and a period within which it must take a final decision on the compatibility or incompatibility with the common market of that concentration should be laid down. These periods should be extended whenever the undertakings concerned offer commitments with a view to rendering the concentration compatible with the common market, in order to allow for sufficient time for the analysis and market testing of such commitment offers and for the consultation of Member States as well as interested third parties. A limited extension of the period within which the Commission must take a final decision should also be possible in order to allow sufficient time for the investigation of the case and the verification of the facts and arguments submitted to the Commission.
- (36) The Community respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union<sup>(1)</sup>. Accordingly, this Regulation should be interpreted and applied with respect to those rights and principles.
- (37) The undertakings concerned must be afforded the right to be heard by the Commission when proceedings have been initiated; the members of the management and supervisory bodies and the recognised representatives of the employees of the undertakings concerned, and interested third parties, must also be given the opportunity to be heard.
- (38) In order properly to appraise concentrations, the Commission should have the right to request all necessary information and to conduct all necessary inspections throughout the Community. To that end, and with a view to protecting competition effectively, the Commission's powers of investigation need to be expanded. The Commission should, in particular, have the right to interview any persons who may be in possession of useful information and to record the statements made.
- (39) In the course of an inspection, officials authorised by the Commission should have the right to ask for any information relevant to the subject matter and purpose of the inspection; they should also have the right to affix seals during inspections, particularly in circumstances where there are reasonable grounds to suspect that a concentration has been implemented without being notified; that incorrect, incomplete or misleading information has been supplied to the Commission; or that the undertakings or persons concerned have failed to comply with a condition or obligation imposed by decision of the Commission. In any event, seals should only be used in exceptional circumstances, for the period of time strictly necessary for the inspection, normally not for more than 48 hours.
- (40) Without prejudice to the case-law of the Court of Justice, it is also useful to set out the scope of the control that the national judicial authority may exercise when it authorises, as provided by national law and as a precautionary measure, assistance from law enforcement authorities in order to overcome possible opposition on the part of the undertaking against an inspection, including the affixing of seals, ordered by Commission decision. It results from the case-law that the national judicial authority may in particular ask of the Commission further information which it needs to carry out its control and in the absence of which it could refuse the authorisation. The case-law also confirms the competence of the national courts to control the application of national rules governing the implementation of coercive measures. The competent authorities of the Member States should cooperate actively in the exercise of the Commission's investigative powers.

<sup>(1)</sup> OJ C 364, 18.12.2000, p. 1.

- (41) When complying with decisions of the Commission, the undertakings and persons concerned cannot be forced to admit that they have committed infringements, but they are in any event obliged to answer factual questions and to provide documents, even if this information may be used to establish against themselves or against others the existence of such infringements.
- (42) For the sake of transparency, all decisions of the Commission which are not of a merely procedural nature should be widely publicised. While ensuring preservation of the rights of defence of the undertakings concerned, in particular the right of access to the file, it is essential that business secrets be protected. The confidentiality of information exchanged in the network and with the competent authorities of third countries should likewise be safeguarded.
- (43) Compliance with this Regulation should be enforceable, as appropriate, by means of fines and periodic penalty payments. The Court of Justice should be given unlimited jurisdiction in that regard pursuant to Article 229 of the Treaty.
- (44) The conditions in which concentrations, involving undertakings having their seat or their principal fields of activity in the Community, are carried out in third countries should be observed, and provision should be made for the possibility of the Council giving the Commission an appropriate mandate for negotiation with a view to obtaining non-discriminatory treatment for such undertakings.
- (45) This Regulation in no way detracts from the collective rights of employees, as recognised in the undertakings concerned, notably with regard to any obligation to inform or consult their recognised representatives under Community and national law.
- (46) The Commission should be able to lay down detailed rules concerning the implementation of this Regulation in accordance with the procedures for the exercise of implementing powers conferred on the Commission. For the adoption of such implementing provisions, the Commission should be assisted by an Advisory Committee composed of the representatives of the Member States as specified in Article 23,

HAS ADOPTED THIS REGULATION:

#### Article 1

##### Scope

1. Without prejudice to Article 4(5) and Article 22, this Regulation shall apply to all concentrations with a Community dimension as defined in this Article.

2. A concentration has a Community dimension where:
- the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5 000 million; and
  - the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million,
- unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.
3. A concentration that does not meet the thresholds laid down in paragraph 2 has a Community dimension where:
- the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 2 500 million;
  - in each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million;
  - in each of at least three Member States included for the purpose of point (b), the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million; and
  - the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 100 million,
- unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.
4. On the basis of statistical data that may be regularly provided by the Member States, the Commission shall report to the Council on the operation of the thresholds and criteria set out in paragraphs 2 and 3 by 1 July 2009 and may present proposals pursuant to paragraph 5.
5. Following the report referred to in paragraph 4 and on a proposal from the Commission, the Council, acting by a qualified majority, may revise the thresholds and criteria mentioned in paragraph 3.

#### Article 2

##### Appraisal of concentrations

1. Concentrations within the scope of this Regulation shall be appraised in accordance with the objectives of this Regulation and the following provisions with a view to establishing whether or not they are compatible with the common market.

In making this appraisal, the Commission shall take into account:

- the need to maintain and develop effective competition within the common market in view of, among other things, the structure of all the markets concerned and the actual or potential competition from undertakings located either within or outwith the Community;



(b) the market position of the undertakings concerned and their economic and financial power, the alternatives available to suppliers and users, their access to supplies or markets, any legal or other barriers to entry, supply and demand trends for the relevant goods and services, the interests of the intermediate and ultimate consumers, and the development of technical and economic progress provided that it is to consumers' advantage and does not form an obstacle to competition.

2. A concentration which would not significantly impede effective competition in the common market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, shall be declared compatible with the common market.

3. A concentration which would significantly impede effective competition, in the common market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, shall be declared incompatible with the common market.

4. To the extent that the creation of a joint venture constituting a concentration pursuant to Article 3 has as its object or effect the coordination of the competitive behaviour of undertakings that remain independent, such coordination shall be appraised in accordance with the criteria of Article 81(1) and (3) of the Treaty, with a view to establishing whether or not the operation is compatible with the common market.

5. In making this appraisal, the Commission shall take into account in particular:

— whether two or more parent companies retain, to a significant extent, activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market,

— whether the coordination which is the direct consequence of the creation of the joint venture affords the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products or services in question.

### Article 3

#### Definition of concentration

1. A concentration shall be deemed to arise where a change of control on a lasting basis results from:

(a) the merger of two or more previously independent undertakings or parts of undertakings, or

(b) the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings.

2. Control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:

(a) ownership or the right to use all or part of the assets of an undertaking;

(b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

3. Control is acquired by persons or undertakings which:

(a) are holders of the rights or entitled to rights under the contracts concerned; or

(b) while not being holders of such rights or entitled to rights under such contracts, have the power to exercise the rights deriving therefrom.

4. The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration within the meaning of paragraph 1(b).

5. A concentration shall not be deemed to arise where:

(a) credit institutions or other financial institutions or insurance companies, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, hold on a temporary basis securities which they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking or provided that they exercise such voting rights only with a view to preparing the disposal of all or part of that undertaking or of its assets or the disposal of those securities and that any such disposal takes place within one year of the date of acquisition; that period may be extended by the Commission on request where such institutions or companies can show that the disposal was not reasonably possible within the period set;

(b) control is acquired by an office-holder according to the law of a Member State relating to liquidation, winding up, insolvency, cessation of payments, compositions or analogous proceedings;

(c) the operations referred to in paragraph 1(b) are carried out by the financial holding companies referred to in Article 5(3) of Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies<sup>(1)</sup> provided however that the voting rights in respect of the holding are exercised, in particular in relation to the appointment of members of the management and supervisory bodies of the undertakings in which they have holdings, only to maintain the full value of those investments and not to determine directly or indirectly the competitive conduct of those undertakings.

#### Article 4

### Prior notification of concentrations and pre-notification referral at the request of the notifying parties

1. Concentrations with a Community dimension defined in this Regulation shall be notified to the Commission prior to their implementation and following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest.

Notification may also be made where the undertakings concerned demonstrate to the Commission a good faith intention to conclude an agreement or, in the case of a public bid, where they have publicly announced an intention to make such a bid, provided that the intended agreement or bid would result in a concentration with a Community dimension.

For the purposes of this Regulation, the term 'notified concentration' shall also cover intended concentrations notified pursuant to the second subparagraph. For the purposes of paragraphs 4 and 5 of this Article, the term 'concentration' includes intended concentrations within the meaning of the second subparagraph.

2. A concentration which consists of a merger within the meaning of Article 3(1)(a) or in the acquisition of joint control within the meaning of Article 3(1)(b) shall be notified jointly by the parties to the merger or by those acquiring joint control as the case may be. In all other cases, the notification shall be effected by the person or undertaking acquiring control of the whole or parts of one or more undertakings.

3. Where the Commission finds that a notified concentration falls within the scope of this Regulation, it shall publish the fact of the notification, at the same time indicating the names of the undertakings concerned, their country of origin, the nature of the concentration and the economic sectors involved. The Commission shall take account of the legitimate interest of undertakings in the protection of their business secrets.

4. Prior to the notification of a concentration within the meaning of paragraph 1, the persons or undertakings referred to in paragraph 2 may inform the Commission, by means of a reasoned submission, that the concentration may significantly

affect competition in a market within a Member State which presents all the characteristics of a distinct market and should therefore be examined, in whole or in part, by that Member State.

The Commission shall transmit this submission to all Member States without delay. The Member State referred to in the reasoned submission shall, within 15 working days of receiving the submission, express its agreement or disagreement as regards the request to refer the case. Where that Member State takes no such decision within this period, it shall be deemed to have agreed.

Unless that Member State disagrees, the Commission, where it considers that such a distinct market exists, and that competition in that market may be significantly affected by the concentration, may decide to refer the whole or part of the case to the competent authorities of that Member State with a view to the application of that State's national competition law.

The decision whether or not to refer the case in accordance with the third subparagraph shall be taken within 25 working days starting from the receipt of the reasoned submission by the Commission. The Commission shall inform the other Member States and the persons or undertakings concerned of its decision. If the Commission does not take a decision within this period, it shall be deemed to have adopted a decision to refer the case in accordance with the submission made by the persons or undertakings concerned.

If the Commission decides, or is deemed to have decided, pursuant to the third and fourth subparagraphs, to refer the whole of the case, no notification shall be made pursuant to paragraph 1 and national competition law shall apply. Article 9(6) to (9) shall apply *mutatis mutandis*.

5. With regard to a concentration as defined in Article 3 which does not have a Community dimension within the meaning of Article 1 and which is capable of being reviewed under the national competition laws of at least three Member States, the persons or undertakings referred to in paragraph 2 may, before any notification to the competent authorities, inform the Commission by means of a reasoned submission that the concentration should be examined by the Commission.

The Commission shall transmit this submission to all Member States without delay.

Any Member State competent to examine the concentration under its national competition law may, within 15 working days of receiving the reasoned submission, express its disagreement as regards the request to refer the case.

Where at least one such Member State has expressed its disagreement in accordance with the third subparagraph within the period of 15 working days, the case shall not be referred. The Commission shall, without delay, inform all Member States and the persons or undertakings concerned of any such expression of disagreement.

<sup>(1)</sup> OJ L 222, 14. 8. 1978, p. 11. Directive as last amended by Directive 2003/51/EC of the European Parliament and of the Council (OJ L 178, 17.7.2003, p. 16).

Where no Member State has expressed its disagreement in accordance with the third subparagraph within the period of 15 working days, the concentration shall be deemed to have a Community dimension and shall be notified to the Commission in accordance with paragraphs 1 and 2. In such situations, no Member State shall apply its national competition law to the concentration.

6. The Commission shall report to the Council on the operation of paragraphs 4 and 5 by 1 July 2009. Following this report and on a proposal from the Commission, the Council, acting by a qualified majority, may revise paragraphs 4 and 5.

### Article 5

#### Calculation of turnover

1. Aggregate turnover within the meaning of this Regulation shall comprise the amounts derived by the undertakings concerned in the preceding financial year from the sale of products and the provision of services falling within the undertakings' ordinary activities after deduction of sales rebates and of value added tax and other taxes directly related to turnover. The aggregate turnover of an undertaking concerned shall not include the sale of products or the provision of services between any of the undertakings referred to in paragraph 4.

Turnover, in the Community or in a Member State, shall comprise products sold and services provided to undertakings or consumers, in the Community or in that Member State as the case may be.

2. By way of derogation from paragraph 1, where the concentration consists of the acquisition of parts, whether or not constituted as legal entities, of one or more undertakings, only the turnover relating to the parts which are the subject of the concentration shall be taken into account with regard to the seller or sellers.

However, two or more transactions within the meaning of the first subparagraph which take place within a two-year period between the same persons or undertakings shall be treated as one and the same concentration arising on the date of the last transaction.

3. In place of turnover the following shall be used:

(a) for credit institutions and other financial institutions, the sum of the following income items as defined in Council Directive 86/635/EEC<sup>(1)</sup>, after deduction of value added tax and other taxes directly related to those items, where appropriate:

(i) interest income and similar income;

(ii) income from securities:

- income from shares and other variable yield securities,
- income from participating interests,
- income from shares in affiliated undertakings;

(iii) commissions receivable;

(iv) net profit on financial operations;

(v) other operating income.

The turnover of a credit or financial institution in the Community or in a Member State shall comprise the income items, as defined above, which are received by the branch or division of that institution established in the Community or in the Member State in question, as the case may be;

(b) for insurance undertakings, the value of gross premiums written which shall comprise all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance undertakings, including also outgoing reinsurance premiums, and after deduction of taxes and parafiscal contributions or levies charged by reference to the amounts of individual premiums or the total volume of premiums; as regards Article 1(2)(b) and (3)(b), (c) and (d) and the final part of Article 1(2) and (3), gross premiums received from Community residents and from residents of one Member State respectively shall be taken into account.

4. Without prejudice to paragraph 2, the aggregate turnover of an undertaking concerned within the meaning of this Regulation shall be calculated by adding together the respective turnovers of the following:

(a) the undertaking concerned;

(b) those undertakings in which the undertaking concerned, directly or indirectly:

- (i) owns more than half the capital or business assets, or
- (ii) has the power to exercise more than half the voting rights, or
- (iii) has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the undertakings, or
- (iv) has the right to manage the undertakings' affairs;

(c) those undertakings which have in the undertaking concerned the rights or powers listed in (b);

(d) those undertakings in which an undertaking as referred to in (c) has the rights or powers listed in (b);

(e) those undertakings in which two or more undertakings as referred to in (a) to (d) jointly have the rights or powers listed in (b).

<sup>(1)</sup> OJ L 372, 31. 12. 1986, p. 1. Directive as last amended by Directive 2003/51/EC of the European Parliament and of the Council.

5. Where undertakings concerned by the concentration jointly have the rights or powers listed in paragraph 4(b), in calculating the aggregate turnover of the undertakings concerned for the purposes of this Regulation:

- (a) no account shall be taken of the turnover resulting from the sale of products or the provision of services between the joint undertaking and each of the undertakings concerned or any other undertaking connected with any one of them, as set out in paragraph 4(b) to (e);
- (b) account shall be taken of the turnover resulting from the sale of products and the provision of services between the joint undertaking and any third undertakings. This turnover shall be apportioned equally amongst the undertakings concerned.

#### Article 6

### Examination of the notification and initiation of proceedings

1. The Commission shall examine the notification as soon as it is received.

- (a) Where it concludes that the concentration notified does not fall within the scope of this Regulation, it shall record that finding by means of a decision.
- (b) Where it finds that the concentration notified, although falling within the scope of this Regulation, does not raise serious doubts as to its compatibility with the common market, it shall decide not to oppose it and shall declare that it is compatible with the common market.

A decision declaring a concentration compatible shall be deemed to cover restrictions directly related and necessary to the implementation of the concentration.

- (c) Without prejudice to paragraph 2, where the Commission finds that the concentration notified falls within the scope of this Regulation and raises serious doubts as to its compatibility with the common market, it shall decide to initiate proceedings. Without prejudice to Article 9, such proceedings shall be closed by means of a decision as provided for in Article 8(1) to (4), unless the undertakings concerned have demonstrated to the satisfaction of the Commission that they have abandoned the concentration.

2. Where the Commission finds that, following modification by the undertakings concerned, a notified concentration no longer raises serious doubts within the meaning of paragraph 1(c), it shall declare the concentration compatible with the common market pursuant to paragraph 1(b).

The Commission may attach to its decision under paragraph 1(b) conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market.

3. The Commission may revoke the decision it took pursuant to paragraph 1(a) or (b) where:

- (a) the decision is based on incorrect information for which one of the undertakings is responsible or where it has been obtained by deceit,
- or
- (b) the undertakings concerned commit a breach of an obligation attached to the decision.

4. In the cases referred to in paragraph 3, the Commission may take a decision under paragraph 1, without being bound by the time limits referred to in Article 10(1).

5. The Commission shall notify its decision to the undertakings concerned and the competent authorities of the Member States without delay.

#### Article 7

### Suspension of concentrations

1. A concentration with a Community dimension as defined in Article 1, or which is to be examined by the Commission pursuant to Article 4(5), shall not be implemented either before its notification or until it has been declared compatible with the common market pursuant to a decision under Articles 6(1)(b), 8(1) or 8(2), or on the basis of a presumption according to Article 10(6).

2. Paragraph 1 shall not prevent the implementation of a public bid or of a series of transactions in securities including those convertible into other securities admitted to trading on a market such as a stock exchange, by which control within the meaning of Article 3 is acquired from various sellers, provided that:

- (a) the concentration is notified to the Commission pursuant to Article 4 without delay; and
- (b) the acquirer does not exercise the voting rights attached to the securities in question or does so only to maintain the full value of its investments based on a derogation granted by the Commission under paragraph 3.

3. The Commission may, on request, grant a derogation from the obligations imposed in paragraphs 1 or 2. The request to grant a derogation must be reasoned. In deciding on the request, the Commission shall take into account *inter alia* the effects of the suspension on one or more undertakings concerned by the concentration or on a third party and the threat to competition posed by the concentration. Such a derogation may be made subject to conditions and obligations in order to ensure conditions of effective competition. A derogation may be applied for and granted at any time, be it before notification or after the transaction.

4. The validity of any transaction carried out in contravention of paragraph 1 shall be dependent on a decision pursuant to Article 6(1)(b) or Article 8(1), (2) or (3) or on a presumption pursuant to Article 10(6).

This Article shall, however, have no effect on the validity of transactions in securities including those convertible into other securities admitted to trading on a market such as a stock exchange, unless the buyer and seller knew or ought to have known that the transaction was carried out in contravention of paragraph 1.

#### Article 8

### Powers of decision of the Commission

1. Where the Commission finds that a notified concentration fulfils the criterion laid down in Article 2(2) and, in the cases referred to in Article 2(4), the criteria laid down in Article 81(3) of the Treaty, it shall issue a decision declaring the concentration compatible with the common market.

A decision declaring a concentration compatible shall be deemed to cover restrictions directly related and necessary to the implementation of the concentration.

2. Where the Commission finds that, following modification by the undertakings concerned, a notified concentration fulfils the criterion laid down in Article 2(2) and, in the cases referred to in Article 2(4), the criteria laid down in Article 81(3) of the Treaty, it shall issue a decision declaring the concentration compatible with the common market.

The Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market.

A decision declaring a concentration compatible shall be deemed to cover restrictions directly related and necessary to the implementation of the concentration.

3. Where the Commission finds that a concentration fulfils the criterion defined in Article 2(3) or, in the cases referred to in Article 2(4), does not fulfil the criteria laid down in Article 81(3) of the Treaty, it shall issue a decision declaring that the concentration is incompatible with the common market.

4. Where the Commission finds that a concentration:

- (a) has already been implemented and that concentration has been declared incompatible with the common market, or
- (b) has been implemented in contravention of a condition attached to a decision taken under paragraph 2, which has found that, in the absence of the condition, the concentration would fulfil the criterion laid down in Article 2(3) or, in the cases referred to in Article 2(4), would not fulfil the criteria laid down in Article 81(3) of the Treaty,

the Commission may:

- require the undertakings concerned to dissolve the concentration, in particular through the dissolution of the merger or the disposal of all the shares or assets acquired, so as to restore the situation prevailing prior to the implementation of the concentration; in circumstances where restoration of the situation prevailing before the implementation of the concentration is not possible through dissolution of the concentration, the Commission may take any other measure appropriate to achieve such restoration as far as possible,
- order any other appropriate measure to ensure that the undertakings concerned dissolve the concentration or take other restorative measures as required in its decision.

In cases falling within point (a) of the first subparagraph, the measures referred to in that subparagraph may be imposed either in a decision pursuant to paragraph 3 or by separate decision.

5. The Commission may take interim measures appropriate to restore or maintain conditions of effective competition where a concentration:

- (a) has been implemented in contravention of Article 7, and a decision as to the compatibility of the concentration with the common market has not yet been taken;
- (b) has been implemented in contravention of a condition attached to a decision under Article 6(1)(b) or paragraph 2 of this Article;
- (c) has already been implemented and is declared incompatible with the common market.

6. The Commission may revoke the decision it has taken pursuant to paragraphs 1 or 2 where:

- (a) the declaration of compatibility is based on incorrect information for which one of the undertakings is responsible or where it has been obtained by deceit; or
- (b) the undertakings concerned commit a breach of an obligation attached to the decision.

7. The Commission may take a decision pursuant to paragraphs 1 to 3 without being bound by the time limits referred to in Article 10(3), in cases where:

- (a) it finds that a concentration has been implemented
  - (i) in contravention of a condition attached to a decision under Article 6(1)(b), or
  - (ii) in contravention of a condition attached to a decision taken under paragraph 2 and in accordance with Article 10(2), which has found that, in the absence of the condition, the concentration would raise serious doubts as to its compatibility with the common market; or
- (b) a decision has been revoked pursuant to paragraph 6.

8. The Commission shall notify its decision to the undertakings concerned and the competent authorities of the Member States without delay.

#### Article 9

#### Referral to the competent authorities of the Member States

1. The Commission may, by means of a decision notified without delay to the undertakings concerned and the competent authorities of the other Member States, refer a notified concentration to the competent authorities of the Member State concerned in the following circumstances.

2. Within 15 working days of the date of receipt of the copy of the notification, a Member State, on its own initiative or upon the invitation of the Commission, may inform the Commission, which shall inform the undertakings concerned, that:

- (a) a concentration threatens to affect significantly competition in a market within that Member State, which presents all the characteristics of a distinct market, or
- (b) a concentration affects competition in a market within that Member State, which presents all the characteristics of a distinct market and which does not constitute a substantial part of the common market.

3. If the Commission considers that, having regard to the market for the products or services in question and the geographical reference market within the meaning of paragraph 7, there is such a distinct market and that such a threat exists, either:

- (a) it shall itself deal with the case in accordance with this Regulation; or
- (b) it shall refer the whole or part of the case to the competent authorities of the Member State concerned with a view to the application of that State's national competition law.

If, however, the Commission considers that such a distinct market or threat does not exist, it shall adopt a decision to that effect which it shall address to the Member State concerned, and shall itself deal with the case in accordance with this Regulation.

In cases where a Member State informs the Commission pursuant to paragraph 2(b) that a concentration affects competition in a distinct market within its territory that does not form a substantial part of the common market, the Commission shall refer the whole or part of the case relating to the distinct market concerned, if it considers that such a distinct market is affected.

4. A decision to refer or not to refer pursuant to paragraph 3 shall be taken:

- (a) as a general rule within the period provided for in Article 10(1), second subparagraph, where the Commission, pursuant to Article 6(1)(b), has not initiated proceedings; or

- (b) within 65 working days at most of the notification of the concentration concerned where the Commission has initiated proceedings under Article 6(1)(c), without taking the preparatory steps in order to adopt the necessary measures under Article 8(2), (3) or (4) to maintain or restore effective competition on the market concerned.

5. If within the 65 working days referred to in paragraph 4(b) the Commission, despite a reminder from the Member State concerned, has not taken a decision on referral in accordance with paragraph 3 nor has taken the preparatory steps referred to in paragraph 4(b), it shall be deemed to have taken a decision to refer the case to the Member State concerned in accordance with paragraph 3(b).

6. The competent authority of the Member State concerned shall decide upon the case without undue delay.

Within 45 working days after the Commission's referral, the competent authority of the Member State concerned shall inform the undertakings concerned of the result of the preliminary competition assessment and what further action, if any, it proposes to take. The Member State concerned may exceptionally suspend this time limit where necessary information has not been provided to it by the undertakings concerned as provided for by its national competition law.

Where a notification is requested under national law, the period of 45 working days shall begin on the working day following that of the receipt of a complete notification by the competent authority of that Member State.

7. The geographical reference market shall consist of the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because, in particular, conditions of competition are appreciably different in those areas. This assessment should take account in particular of the nature and characteristics of the products or services concerned, of the existence of entry barriers or of consumer preferences, of appreciable differences of the undertakings' market shares between the area concerned and neighbouring areas or of substantial price differences.

8. In applying the provisions of this Article, the Member State concerned may take only the measures strictly necessary to safeguard or restore effective competition on the market concerned.

9. In accordance with the relevant provisions of the Treaty, any Member State may appeal to the Court of Justice, and in particular request the application of Article 243 of the Treaty, for the purpose of applying its national competition law.

*Article 10***Time limits for initiating proceedings and for decisions**

1. Without prejudice to Article 6(4), the decisions referred to in Article 6(1) shall be taken within 25 working days at most. That period shall begin on the working day following that of the receipt of a notification or, if the information to be supplied with the notification is incomplete, on the working day following that of the receipt of the complete information.

That period shall be increased to 35 working days where the Commission receives a request from a Member State in accordance with Article 9(2) or where, the undertakings concerned offer commitments pursuant to Article 6(2) with a view to rendering the concentration compatible with the common market.

2. Decisions pursuant to Article 8(1) or (2) concerning notified concentrations shall be taken as soon as it appears that the serious doubts referred to in Article 6(1)(c) have been removed, particularly as a result of modifications made by the undertakings concerned, and at the latest by the time limit laid down in paragraph 3.

3. Without prejudice to Article 8(7), decisions pursuant to Article 8(1) to (3) concerning notified concentrations shall be taken within not more than 90 working days of the date on which the proceedings are initiated. That period shall be increased to 105 working days where the undertakings concerned offer commitments pursuant to Article 8(2), second subparagraph, with a view to rendering the concentration compatible with the common market, unless these commitments have been offered less than 55 working days after the initiation of proceedings.

The periods set by the first subparagraph shall likewise be extended if the notifying parties make a request to that effect not later than 15 working days after the initiation of proceedings pursuant to Article 6(1)(c). The notifying parties may make only one such request. Likewise, at any time following the initiation of proceedings, the periods set by the first subparagraph may be extended by the Commission with the agreement of the notifying parties. The total duration of any extension or extensions effected pursuant to this subparagraph shall not exceed 20 working days.

4. The periods set by paragraphs 1 and 3 shall exceptionally be suspended where, owing to circumstances for which one of the undertakings involved in the concentration is responsible, the Commission has had to request information by decision pursuant to Article 11 or to order an inspection by decision pursuant to Article 13.

The first subparagraph shall also apply to the period referred to in Article 9(4)(b).

5. Where the Court of Justice gives a judgment which annuls the whole or part of a Commission decision which is subject to a time limit set by this Article, the concentration shall be re-examined by the Commission with a view to adopting a decision pursuant to Article 6(1).

The concentration shall be re-examined in the light of current market conditions.

The notifying parties shall submit a new notification or supplement the original notification, without delay, where the original notification becomes incomplete by reason of intervening changes in market conditions or in the information provided. Where there are no such changes, the parties shall certify this fact without delay.

The periods laid down in paragraph 1 shall start on the working day following that of the receipt of complete information in a new notification, a supplemented notification, or a certification within the meaning of the third subparagraph.

The second and third subparagraphs shall also apply in the cases referred to in Article 6(4) and Article 8(7).

6. Where the Commission has not taken a decision in accordance with Article 6(1)(b), (c), 8(1), (2) or (3) within the time limits set in paragraphs 1 and 3 respectively, the concentration shall be deemed to have been declared compatible with the common market, without prejudice to Article 9.

*Article 11***Requests for information**

1. In order to carry out the duties assigned to it by this Regulation, the Commission may, by simple request or by decision, require the persons referred to in Article 3(1)(b), as well as undertakings and associations of undertakings, to provide all necessary information.

2. When sending a simple request for information to a person, an undertaking or an association of undertakings, the Commission shall state the legal basis and the purpose of the request, specify what information is required and fix the time limit within which the information is to be provided, as well as the penalties provided for in Article 14 for supplying incorrect or misleading information.

3. Where the Commission requires a person, an undertaking or an association of undertakings to supply information by decision, it shall state the legal basis and the purpose of the request, specify what information is required and fix the time limit within which it is to be provided. It shall also indicate the penalties provided for in Article 14 and indicate or impose the penalties provided for in Article 15. It shall further indicate the right to have the decision reviewed by the Court of Justice.

4. The owners of the undertakings or their representatives and, in the case of legal persons, companies or firms, or associations having no legal personality, the persons authorised to represent them by law or by their constitution, shall supply the information requested on behalf of the undertaking concerned. Persons duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5. The Commission shall without delay forward a copy of any decision taken pursuant to paragraph 3 to the competent authorities of the Member State in whose territory the residence of the person or the seat of the undertaking or association of undertakings is situated, and to the competent authority of the Member State whose territory is affected. At the specific request of the competent authority of a Member State, the Commission shall also forward to that authority copies of simple requests for information relating to a notified concentration.

6. At the request of the Commission, the governments and competent authorities of the Member States shall provide the Commission with all necessary information to carry out the duties assigned to it by this Regulation.

7. In order to carry out the duties assigned to it by this Regulation, the Commission may interview any natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation. At the beginning of the interview, which may be conducted by telephone or other electronic means, the Commission shall state the legal basis and the purpose of the interview.

Where an interview is not conducted on the premises of the Commission or by telephone or other electronic means, the Commission shall inform in advance the competent authority of the Member State in whose territory the interview takes place. If the competent authority of that Member State so requests, officials of that authority may assist the officials and other persons authorised by the Commission to conduct the interview.

#### Article 12

##### Inspections by the authorities of the Member States

1. At the request of the Commission, the competent authorities of the Member States shall undertake the inspections which the Commission considers to be necessary under Article 13(1), or which it has ordered by decision pursuant to Article 13(4). The officials of the competent authorities of the Member States who are responsible for conducting these inspections as well as those authorised or appointed by them shall exercise their powers in accordance with their national law.

2. If so requested by the Commission or by the competent authority of the Member State within whose territory the inspection is to be conducted, officials and other accompanying persons authorised by the Commission may assist the officials of the authority concerned.

#### Article 13

##### The Commission's powers of inspection

1. In order to carry out the duties assigned to it by this Regulation, the Commission may conduct all necessary inspections of undertakings and associations of undertakings.

2. The officials and other accompanying persons authorised by the Commission to conduct an inspection shall have the power:

- (a) to enter any premises, land and means of transport of undertakings and associations of undertakings;
- (b) to examine the books and other records related to the business, irrespective of the medium on which they are stored;
- (c) to take or obtain in any form copies of or extracts from such books or records;
- (d) to seal any business premises and books or records for the period and to the extent necessary for the inspection;
- (e) to ask any representative or member of staff of the undertaking or association of undertakings for explanations on facts or documents relating to the subject matter and purpose of the inspection and to record the answers.

3. Officials and other accompanying persons authorised by the Commission to conduct an inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the penalties provided for in Article 14, in the production of the required books or other records related to the business which is incomplete or where answers to questions asked under paragraph 2 of this Article are incorrect or misleading. In good time before the inspection, the Commission shall give notice of the inspection to the competent authority of the Member State in whose territory the inspection is to be conducted.

4. Undertakings and associations of undertakings are required to submit to inspections ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the penalties provided for in Articles 14 and 15 and the right to have the decision reviewed by the Court of Justice. The Commission shall take such decisions after consulting the competent authority of the Member State in whose territory the inspection is to be conducted.

5. Officials of, and those authorised or appointed by, the competent authority of the Member State in whose territory the inspection is to be conducted shall, at the request of that authority or of the Commission, actively assist the officials and other accompanying persons authorised by the Commission. To this end, they shall enjoy the powers specified in paragraph 2.



6. Where the officials and other accompanying persons authorised by the Commission find that an undertaking opposes an inspection, including the sealing of business premises, books or records, ordered pursuant to this Article, the Member State concerned shall afford them the necessary assistance, requesting where appropriate the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their inspection.

7. If the assistance provided for in paragraph 6 requires authorisation from a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

8. Where authorisation as referred to in paragraph 7 is applied for, the national judicial authority shall ensure that the Commission decision is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of proportionality of the coercive measures, the national judicial authority may ask the Commission, directly or through the competent authority of that Member State, for detailed explanations relating to the subject matter of the inspection. However, the national judicial authority may not call into question the necessity for the inspection nor demand that it be provided with the information in the Commission's file. The lawfulness of the Commission's decision shall be subject to review only by the Court of Justice.

#### Article 14

##### Fines

1. The Commission may by decision impose on the persons referred to in Article 3(1)b, undertakings or associations of undertakings, fines not exceeding 1 % of the aggregate turnover of the undertaking or association of undertakings concerned within the meaning of Article 5 where, intentionally or negligently:

- (a) they supply incorrect or misleading information in a submission, certification, notification or supplement thereto, pursuant to Article 4, Article 10(5) or Article 22(3);
- (b) they supply incorrect or misleading information in response to a request made pursuant to Article 11(2);
- (c) in response to a request made by decision adopted pursuant to Article 11(3), they supply incorrect, incomplete or misleading information or do not supply information within the required time limit;
- (d) they produce the required books or other records related to the business in incomplete form during inspections under Article 13, or refuse to submit to an inspection ordered by decision taken pursuant to Article 13(4);

- (e) in response to a question asked in accordance with Article 13(2)(e),
  - they give an incorrect or misleading answer,
  - they fail to rectify within a time limit set by the Commission an incorrect, incomplete or misleading answer given by a member of staff, or
  - they fail or refuse to provide a complete answer on facts relating to the subject matter and purpose of an inspection ordered by a decision adopted pursuant to Article 13(4);
- (f) seals affixed by officials or other accompanying persons authorised by the Commission in accordance with Article 13(2)(d) have been broken.

2. The Commission may by decision impose fines not exceeding 10 % of the aggregate turnover of the undertaking concerned within the meaning of Article 5 on the persons referred to in Article 3(1)b or the undertakings concerned where, either intentionally or negligently, they:

- (a) fail to notify a concentration in accordance with Articles 4 or 22(3) prior to its implementation, unless they are expressly authorised to do so by Article 7(2) or by a decision taken pursuant to Article 7(3);
- (b) implement a concentration in breach of Article 7;
- (c) implement a concentration declared incompatible with the common market by decision pursuant to Article 8(3) or do not comply with any measure ordered by decision pursuant to Article 8(4) or (5);
- (d) fail to comply with a condition or an obligation imposed by decision pursuant to Articles 6(1)(b), Article 7(3) or Article 8(2), second subparagraph.

3. In fixing the amount of the fine, regard shall be had to the nature, gravity and duration of the infringement.

4. Decisions taken pursuant to paragraphs 1, 2 and 3 shall not be of a criminal law nature.

#### Article 15

##### Periodic penalty payments

1. The Commission may by decision impose on the persons referred to in Article 3(1)b, undertakings or associations of undertakings, periodic penalty payments not exceeding 5 % of the average daily aggregate turnover of the undertaking or association of undertakings concerned within the meaning of Article 5 for each working day of delay, calculated from the date set in the decision, in order to compel them:

- (a) to supply complete and correct information which it has requested by decision taken pursuant to Article 11(3);
- (b) to submit to an inspection which it has ordered by decision taken pursuant to Article 13(4);

- (c) to comply with an obligation imposed by decision pursuant to Article 6(1)(b), Article 7(3) or Article 8(2), second subparagraph; or;
- (d) to comply with any measures ordered by decision pursuant to Article 8(4) or (5).

2. Where the persons referred to in Article 3(1)(b), undertakings or associations of undertakings have satisfied the obligation which the periodic penalty payment was intended to enforce, the Commission may fix the definitive amount of the periodic penalty payments at a figure lower than that which would arise under the original decision.

#### Article 16

### Review by the Court of Justice

The Court of Justice shall have unlimited jurisdiction within the meaning of Article 229 of the Treaty to review decisions whereby the Commission has fixed a fine or periodic penalty payments; it may cancel, reduce or increase the fine or periodic penalty payment imposed.

#### Article 17

### Professional secrecy

1. Information acquired as a result of the application of this Regulation shall be used only for the purposes of the relevant request, investigation or hearing.

2. Without prejudice to Article 4(3), Articles 18 and 20, the Commission and the competent authorities of the Member States, their officials and other servants and other persons working under the supervision of these authorities as well as officials and civil servants of other authorities of the Member States shall not disclose information they have acquired through the application of this Regulation of the kind covered by the obligation of professional secrecy.

3. Paragraphs 1 and 2 shall not prevent publication of general information or of surveys which do not contain information relating to particular undertakings or associations of undertakings.

#### Article 18

### Hearing of the parties and of third persons

1. Before taking any decision provided for in Article 6(3), Article 7(3), Article 8(2) to (6), and Articles 14 and 15, the Commission shall give the persons, undertakings and associations of undertakings concerned the opportunity, at every stage

of the procedure up to the consultation of the Advisory Committee, of making known their views on the objections against them.

2. By way of derogation from paragraph 1, a decision pursuant to Articles 7(3) and 8(5) may be taken provisionally, without the persons, undertakings or associations of undertakings concerned being given the opportunity to make known their views beforehand, provided that the Commission gives them that opportunity as soon as possible after having taken its decision.

3. The Commission shall base its decision only on objections on which the parties have been able to submit their observations. The rights of the defence shall be fully respected in the proceedings. Access to the file shall be open at least to the parties directly involved, subject to the legitimate interest of undertakings in the protection of their business secrets.

4. In so far as the Commission or the competent authorities of the Member States deem it necessary, they may also hear other natural or legal persons. Natural or legal persons showing a sufficient interest and especially members of the administrative or management bodies of the undertakings concerned or the recognised representatives of their employees shall be entitled, upon application, to be heard.

#### Article 19

### Liaison with the authorities of the Member States

1. The Commission shall transmit to the competent authorities of the Member States copies of notifications within three working days and, as soon as possible, copies of the most important documents lodged with or issued by the Commission pursuant to this Regulation. Such documents shall include commitments offered by the undertakings concerned vis-à-vis the Commission with a view to rendering the concentration compatible with the common market pursuant to Article 6(2) or Article 8(2), second subparagraph.

2. The Commission shall carry out the procedures set out in this Regulation in close and constant liaison with the competent authorities of the Member States, which may express their views upon those procedures. For the purposes of Article 9 it shall obtain information from the competent authority of the Member State as referred to in paragraph 2 of that Article and give it the opportunity to make known its views at every stage of the procedure up to the adoption of a decision pursuant to paragraph 3 of that Article; to that end it shall give it access to the file.

3. An Advisory Committee on concentrations shall be consulted before any decision is taken pursuant to Article 8(1) to (6), Articles 14 or 15 with the exception of provisional decisions taken in accordance with Article 18(2).

4. The Advisory Committee shall consist of representatives of the competent authorities of the Member States. Each Member State shall appoint one or two representatives; if unable to attend, they may be replaced by other representatives. At least one of the representatives of a Member State shall be competent in matters of restrictive practices and dominant positions.

5. Consultation shall take place at a joint meeting convened at the invitation of and chaired by the Commission. A summary of the case, together with an indication of the most important documents and a preliminary draft of the decision to be taken for each case considered, shall be sent with the invitation. The meeting shall take place not less than 10 working days after the invitation has been sent. The Commission may in exceptional cases shorten that period as appropriate in order to avoid serious harm to one or more of the undertakings concerned by a concentration.

6. The Advisory Committee shall deliver an opinion on the Commission's draft decision, if necessary by taking a vote. The Advisory Committee may deliver an opinion even if some members are absent and unrepresented. The opinion shall be delivered in writing and appended to the draft decision. The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

7. The Commission shall communicate the opinion of the Advisory Committee, together with the decision, to the addressees of the decision. It shall make the opinion public together with the decision, having regard to the legitimate interest of undertakings in the protection of their business secrets.

#### Article 20

#### Publication of decisions

1. The Commission shall publish the decisions which it takes pursuant to Article 8(1) to (6), Articles 14 and 15 with the exception of provisional decisions taken in accordance with Article 18(2) together with the opinion of the Advisory Committee in the *Official Journal of the European Union*.

2. The publication shall state the names of the parties and the main content of the decision; it shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

#### Article 21

#### Application of the Regulation and jurisdiction

1. This Regulation alone shall apply to concentrations as defined in Article 3, and Council Regulations (EC) No 1/2003<sup>(1)</sup>, (EEC) No 1017/68<sup>(2)</sup>, (EEC) No 4056/86<sup>(3)</sup> and (EEC) No 3975/87<sup>(4)</sup> shall not apply, except in relation to joint ventures that do not have a Community dimension and which have as their object or effect the coordination of the competitive behaviour of undertakings that remain independent.

2. Subject to review by the Court of Justice, the Commission shall have sole jurisdiction to take the decisions provided for in this Regulation.

3. No Member State shall apply its national legislation on competition to any concentration that has a Community dimension.

The first subparagraph shall be without prejudice to any Member State's power to carry out any enquiries necessary for the application of Articles 4(4), 9(2) or after referral, pursuant to Article 9(3), first subparagraph, indent (b), or Article 9(5), to take the measures strictly necessary for the application of Article 9(8).

4. Notwithstanding paragraphs 2 and 3, Member States may take appropriate measures to protect legitimate interests other than those taken into consideration by this Regulation and compatible with the general principles and other provisions of Community law.

Public security, plurality of the media and prudential rules shall be regarded as legitimate interests within the meaning of the first subparagraph.

Any other public interest must be communicated to the Commission by the Member State concerned and shall be recognised by the Commission after an assessment of its compatibility with the general principles and other provisions of Community law before the measures referred to above may be taken. The Commission shall inform the Member State concerned of its decision within 25 working days of that communication.

<sup>(1)</sup> OJ L 1, 4.1.2003, p. 1.

<sup>(2)</sup> OJ L 175, 23. 7. 1968, p. 1. Regulation as last amended by Regulation (EC) No 1/2003 (OJ L 1, 4.1.2003, p. 1).

<sup>(3)</sup> OJ L 378, 31. 12. 1986, p. 4. Regulation as last amended by Regulation (EC) No 1/2003.

<sup>(4)</sup> OJ L 374, 31. 12. 1987, p. 1. Regulation as last amended by Regulation (EC) No 1/2003.

*Article 22***Referral to the Commission**

1. One or more Member States may request the Commission to examine any concentration as defined in Article 3 that does not have a Community dimension within the meaning of Article 1 but affects trade between Member States and threatens to significantly affect competition within the territory of the Member State or States making the request.

Such a request shall be made at most within 15 working days of the date on which the concentration was notified, or if no notification is required, otherwise made known to the Member State concerned.

2. The Commission shall inform the competent authorities of the Member States and the undertakings concerned of any request received pursuant to paragraph 1 without delay.

Any other Member State shall have the right to join the initial request within a period of 15 working days of being informed by the Commission of the initial request.

All national time limits relating to the concentration shall be suspended until, in accordance with the procedure set out in this Article, it has been decided where the concentration shall be examined. As soon as a Member State has informed the Commission and the undertakings concerned that it does not wish to join the request, the suspension of its national time limits shall end.

3. The Commission may, at the latest 10 working days after the expiry of the period set in paragraph 2, decide to examine, the concentration where it considers that it affects trade between Member States and threatens to significantly affect competition within the territory of the Member State or States making the request. If the Commission does not take a decision within this period, it shall be deemed to have adopted a decision to examine the concentration in accordance with the request.

The Commission shall inform all Member States and the undertakings concerned of its decision. It may request the submission of a notification pursuant to Article 4.

The Member State or States having made the request shall no longer apply their national legislation on competition to the concentration.

4. Article 2, Article 4(2) to (3), Articles 5, 6, and 8 to 11 shall apply where the Commission examines a concentration pursuant to paragraph 3. Article 7 shall apply to the extent that the concentration has not been implemented on the date on which the Commission informs the undertakings concerned that a request has been made.

Where a notification pursuant to Article 4 is not required, the period set in Article 10(1) within which proceedings may be initiated shall begin on the working day following that on which the Commission informs the undertakings concerned that it has decided to examine the concentration pursuant to paragraph 3.

5. The Commission may inform one or several Member States that it considers a concentration fulfils the criteria in paragraph 1. In such cases, the Commission may invite that Member State or those Member States to make a request pursuant to paragraph 1.

*Article 23***Implementing provisions**

1. The Commission shall have the power to lay down in accordance with the procedure referred to in paragraph 2:

- (a) implementing provisions concerning the form, content and other details of notifications and submissions pursuant to Article 4;
- (b) implementing provisions concerning time limits pursuant to Article 4(4), (5) Articles 7, 9, 10 and 22;
- (c) the procedure and time limits for the submission and implementation of commitments pursuant to Article 6(2) and Article 8(2);
- (d) implementing provisions concerning hearings pursuant to Article 18.

2. The Commission shall be assisted by an Advisory Committee, composed of representatives of the Member States.

- (a) Before publishing draft implementing provisions and before adopting such provisions, the Commission shall consult the Advisory Committee.
- (b) Consultation shall take place at a meeting convened at the invitation of and chaired by the Commission. A draft of the implementing provisions to be taken shall be sent with the invitation. The meeting shall take place not less than 10 working days after the invitation has been sent.
- (c) The Advisory Committee shall deliver an opinion on the draft implementing provisions, if necessary by taking a vote. The Commission shall take the utmost account of the opinion delivered by the Committee.

*Article 24***Relations with third countries**

1. The Member States shall inform the Commission of any general difficulties encountered by their undertakings with concentrations as defined in Article 3 in a third country.

2. Initially not more than one year after the entry into force of this Regulation and, thereafter periodically, the Commission shall draw up a report examining the treatment accorded to undertakings having their seat or their principal fields of activity in the Community, in the terms referred to in paragraphs 3 and 4, as regards concentrations in third countries. The Commission shall submit those reports to the Council, together with any recommendations.

3. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 2 or on the basis of other information, that a third country does not grant undertakings having their seat or their principal fields of activity in the Community, treatment comparable to that granted by the Community to undertakings from that country, the Commission may submit proposals to the Council for an appropriate mandate for negotiation with a view to obtaining comparable treatment for undertakings having their seat or their principal fields of activity in the Community.

4. Measures taken under this Article shall comply with the obligations of the Community or of the Member States, without prejudice to Article 307 of the Treaty, under international agreements, whether bilateral or multilateral.

#### Article 25

##### Repeal

1. Without prejudice to Article 26(2), Regulations (EEC) No 4064/89 and (EC) No 1310/97 shall be repealed with effect from 1 May 2004.

2. References to the repealed Regulations shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex.

#### Article 26

##### Entry into force and transitional provisions

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

It shall apply from 1 May 2004.

2. Regulation (EEC) No 4064/89 shall continue to apply to any concentration which was the subject of an agreement or announcement or where control was acquired within the meaning of Article 4(1) of that Regulation before the date of application of this Regulation, subject, in particular, to the provisions governing applicability set out in Article 25(2) and (3) of Regulation (EEC) No 4064/89 and Article 2 of Regulation (EEC) No 1310/97.

3. As regards concentrations to which this Regulation applies by virtue of accession, the date of accession shall be substituted for the date of application of this Regulation.

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

Done at Brussels, 20 January 2004.

*For the Council*  
*The President*  
C. MCCREEVY

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## ANNEX

## Correlation table

Regulation (EEC) No 4064/89	This Regulation
Article 1(1), (2) and (3)	Article 1(1), (2) and (3)
Article 1(4)	Article 1(4)
Article 1(5)	Article 1(5)
Article 2(1)	Article 2(1)
—	Article 2(2)
Article 2(2)	Article 2(3)
Article 2(3)	Article 2(4)
Article 2(4)	Article 2(5)
Article 3(1)	Article 3(1)
Article 3(2)	Article 3(4)
Article 3(3)	Article 3(2)
Article 3(4)	Article 3(3)
—	Article 3(4)
Article 3(5)	Article 3(5)
Article 4(1) first sentence	Article 4(1) first subparagraph
Article 4(1) second sentence	—
—	Article 4(1) second and third subparagraphs
Article 4(2) and (3)	Article 4(2) and (3)
—	Article 4(4) to (6)
Article 5(1) to (3)	Article 5(1) to (3)
Article 5(4), introductory words	Article 5(4), introductory words
Article 5(4) point (a)	Article 5(4) point (a)
Article 5(4) point (b), introductory words	Article 5(4) point (b), introductory words
Article 5(4) point (b), first indent	Article 5(4) point (b)(i)
Article 5(4) point (b), second indent	Article 5(4) point (b)(ii)
Article 5(4) point (b), third indent	Article 5(4) point (b)(iii)
Article 5(4) point (b), fourth indent	Article 5(4) point (b)(iv)
Article 5(4) points (c), (d) and (e)	Article 5(4) points (c), (d) and (e)
Article 5(5)	Article 5(5)
Article 6(1), introductory words	Article 6(1), introductory words
Article 6(1) points (a) and (b)	Article 6(1) points (a) and (b)
Article 6(1) point (c)	Article 6(1) point (c), first sentence
Article 6(2) to (5)	Article 6(2) to (5)
Article 7(1)	Article 7(1)
Article 7(3)	Article 7(2)
Article 7(4)	Article 7(3)
Article 7(5)	Article 7(4)
Article 8(1)	Article 6(1) point (c), second sentence
Article 8(2)	Article 8(1) and (2)
Article 8(3)	Article 8(3)

Regulation (EEC) No 4064/89	This Regulation
Article 8(4)	Article 8(4)
—	Article 8(5)
Article 8(5)	Article 8(6)
Article 8(6)	Article 8(7)
—	Article 8(8)
Article 9(1) to (9)	Article 9(1) to (9)
Article 9(10)	—
Article 10(1) and (2)	Article 10(1) and (2)
Article 10(3)	Article 10(3) first subparagraph, first sentence
—	Article 10(3) first subparagraph, second sentence
—	Article 10(3) second subparagraph
Article 10(4)	Article 10(4) first subparagraph
—	Article 10(4), second subparagraph
Article 10(5)	Article 10(5), first and fourth subparagraphs
—	Article 10(5), second, third and fifth subparagraphs
Article 10(6)	Article 10(6)
Article 11(1)	Article 11(1)
Article 11(2)	—
Article 11(3)	Article 11(2)
Article 11(4)	Article 11(4) first sentence
—	Article 11(4) second and third sentences
Article 11(5) first sentence	—
Article 11(5) second sentence	Article 11(3)
Article 11(6)	Article 11(5)
—	Article 11(6) and (7)
Article 12	Article 12
Article 13(1) first subparagraph	Article 13(1)
Article 13(1) second subparagraph, introductory words	Article 13(2) introductory words
Article 13(1) second subparagraph, point (a)	Article 13(2) point (b)
Article 13(1) second subparagraph, point (b)	Article 13(2) point (c)
Article 13(1) second subparagraph, point (c)	Article 13(2) point (e)
Article 13(1) second subparagraph, point (d)	Article 13(2) point (a)
—	Article 13(2) point (d)
Article 13(2)	Article 13(3)
Article 13(3)	Article 13(4) first and second sentences
Article 13(4)	Article 13(4) third sentence
Article 13(5)	Article 13(5), first sentence
—	Article 13(5), second sentence
Article 13(6) first sentence	Article 13(6)
Article 13(6) second sentence	—
—	Article 13(7) and (8)
Article 14(1) introductory words	Article 14(1) introductory words
Article 14(1) point (a)	Article 14(2) point (a)
Article 14(1) point (b)	Article 14(1) point (a)
Article 14(1) point (c)	Article 14(1) points (b) and (c)

Regulation (EEC) No 4064/89	This Regulation
Article 14(1) point (d)	Article 14(1) point (d)
—	Article 14(1) points (e) and (f)
Article 14(2) introductory words	Article 14(2) introductory words
Article 14(2) point (a)	Article 14(2) point (d)
Article 14(2) points (b) and (c)	Article 14(2) points (b) and (c)
Article 14(3)	Article 14(3)
Article 14(4)	Article 14(4)
Article 15(1) introductory words	Article 15(1) introductory words
Article 15(1) points (a) and (b)	Article 15(1) points (a) and (b)
Article 15(2) introductory words	Article 15(1) introductory words
Article 15(2) point (a)	Article 15(1) point (c)
Article 15(2) point (b)	Article 15(1) point (d)
Article 15(3)	Article 15(2)
Articles 16 to 20	Articles 16 to 20
Article 21(1)	Article 21(2)
Article 21(2)	Article 21(3)
Article 21(3)	Article 21(4)
Article 22(1)	Article 21(1)
Article 22(3)	—
—	Article 22(1) to (3)
Article 22(4)	Article 22(4)
Article 22(5)	—
—	Article 22(5)
Article 23	Article 23(1)
—	Article 23(2)
Article 24	Article 24
—	Article 25
Article 25(1)	Article 26(1), first subparagraph
—	Article 26(1), second subparagraph
Article 25(2)	Article 26(2)
Article 25(3)	Article 26(3)
—	Annex



**COMMISSION REGULATION (EC) No 140/2004**  
**of 28 January 2004**  
**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 <sup>(1)</sup>, as last amended by Regulation (EC) No 1947/2002 <sup>(2)</sup>, 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 29 January 2004.

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

Done at Brussels, 28 January 2004.

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

<sup>(1)</sup> OJ L 337, 24.12.1994, p. 66.

<sup>(2)</sup> OJ L 299, 1.11.2002, p. 17.

## ANNEX

**to the Commission Regulation of 28 January 2004 establishing the standard import values for determining the entry price of certain fruit and vegetables**

(EUR/100 kg)

CN code	Third country code <sup>(1)</sup>	Standard import value
0702 00 00	052	105,3
	204	36,9
	212	115,9
	999	86,0
0707 00 05	052	138,0
	204	77,1
	999	107,6
0709 90 70	052	107,0
	204	56,6
	999	81,8
0805 10 10, 0805 10 30, 0805 10 50	052	46,4
	204	56,0
	212	47,9
	220	37,7
	448	32,8
	624	83,5
	999	50,7
0805 20 10	052	74,2
	204	86,2
	999	80,2
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	79,2
	204	74,2
	220	80,3
	464	76,8
	624	79,1
	662	38,0
	999	71,3
0805 50 10	052	73,0
	600	62,0
	999	67,5
0808 10 20, 0808 10 50, 0808 10 90	052	40,9
	060	51,8
	400	101,6
	404	84,0
	720	75,3
	999	70,7
0808 20 50	060	61,1
	388	98,2
	400	87,1
	720	45,5
	999	73,0

<sup>(1)</sup> 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 141/2004  
of 28 January 2004**

**laying down rules for applying Council Regulation (EC) No 1257/1999 as regards the transitional rural development measures applicable to the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia and in particular paragraph 3 of Article 2 thereof,

Having regard to the Act of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia and in particular the first paragraph of Article 41 thereof,

Whereas:

- (1) Chapter IXa of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations <sup>(1)</sup> introduced by the Act of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, defines in general terms the conditions under which temporary additional support is to be granted for transitional rural development measures in the new Member States. Implementing rules should be adopted to supplement those conditions and adapt certain rules foreseen by Commission Regulation (EC) No 445/2002 of 26 February 2002 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) <sup>(2)</sup>.
- (2) Those rules must conform to the principles of subsidiarity and proportionality and must therefore be limited to what is necessary to achieve the objectives pursued.
- (3) Conditions of eligibility for certain transitional measures must therefore be specified and the support ceilings for the specific measures applicable to Malta should be fixed.
- (4) To facilitate the establishment of rural development plans comprising those measures, and their examination and approval by the Commission, common rules relating

to their structure and content must be laid down on the basis of Article 43 of Regulation (EC) No 1257/1999 in particular.

- (5) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Agricultural Structures and Rural Development,

HAS ADOPTED THIS REGULATION:

CHAPTER I

**SCOPE**

*Article 1*

**Scope**

The present Regulation lays down the implementing rules related to:

- (a) the specific rural development measures foreseen in Chapter IXa of Regulation (EC) No 1257/1999 and applicable to the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (designated hereafter as 'the new Member States');
- (b) programming and evaluation of all rural development measures for the new Member States.

CHAPTER II

**SPECIFIC MEASURES APPLICABLE TO THE NEW MEMBER STATES**

*Article 2*

**Support for semi-subsistence farms undergoing restructuring**

The business plan foreseen in Article 33b(2) of Regulation (EC) No 1257/1999 must be sufficiently detailed to be able to be used to support an application for support for investment in agricultural holdings.

<sup>(1)</sup> OJ L 160, 26.6.1999, p. 80, Regulation as last amended by the Act of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.

<sup>(2)</sup> OJ L 74, 15.3.2002, p. 1, Regulation as last amended by Regulation (EC) No 963/2003 (OJ L 138, 5.6.2003, p. 32).

*Article 3***Technical assistance**

By derogation of Article 39 of Regulation (EC) No 445/2002, rule No 11 of the Annex to Commission Regulation (EC) No 1685/2000 <sup>(1)</sup> applies to the measure referred to in Article 33e of Regulation (EC) No 1257/1999.

*Article 4***Complements to direct payments**

Eligibility conditions for granting support under the measure foreseen in Article 33h of Regulation (EC) No 1257/1999 are defined by the Commission decision approving the complementary national direct payment.

## CHAPTER III

**ADDITIONAL SUPPORT APPLICABLE TO MALTA***Article 5***Complements to State aid in Malta**

Eligibility conditions for granting support under the measure foreseen in Article 33i of Regulation (EC) No 1257/1999 are defined within the framework of the Special Market Policy Programme for Maltese Agriculture (SMPPMA) provided for in Annex XI, Chapter 4, Section A, point 1 of the Act of Accession.

## CHAPTER IV

**DEROGATIONS APPLICABLE TO CERTAIN MEMBER STATES***Article 6***Agri-environment**

The annual maximum amount per hectare for the maintenance and preservation of rubble walls in Malta provided for in the second subparagraph of Article 33m(2) of Regulation (EC) No 1257/1999 is indicated in Annex I, point A.

<sup>(1)</sup> OJ L 193, 29.7.2000, p. 39.

*Article 7***Producer groups in Malta**

1. Only those producer groups comprising a minimum percentage of the producers in the sector and representing a minimum percentage of the production in the sector shall be eligible for the minimum support provided for in the third subparagraph of Article 33d(3) of Regulation (EC) No 1257/1999.

2. The minimal amount of the support, calculated as a function of the minimum cost necessary to form a small producer group, is indicated in Annex I, point B.

## CHAPTER V

**ADMINISTRATIVE AND FINANCIAL PROVISIONS***Article 8***Evaluation**

The mid-term evaluation referred to in Articles 56 and 57 of Regulation (EC) No 445/2002 shall not apply to the new Member States during the 2004 to 2006 programming period.

*Article 9***Programming**

1. To apply point 8 of Annex II to Regulation (EC) No 445/2002 new Member States will use the indicative overall financial table included in Annex II to this Regulation.

2. In addition to the information foreseen in point 9 of Annex II to Regulation (EC) No 445/2002, the rural development plans provided for in Title III, Chapter II of Regulation (EC) No 1257/1999 contain the information listed in Annex III to this Regulation.

## CHAPTER VI

**FINAL PROVISIONS***Article 10***Entry into force**

This Regulation shall enter into force on 1 May 2004 subject to the entry into force of the Act of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.

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

Done at Brussels, 28 January 2004.

*For the Commission*  
 Franz FISCHLER  
 Member of the Commission

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ANNEX I

**Table of amounts for the measures specific to Malta**

A. Maximum amount referred to in Article 6:

Subject	EUR	
Maximum payment for maintenance and preservation of rubble walls	2 000	per hectare

B. Maximum amount referred to in Article 7, second indent:

Subject	EUR	
Support for establishment of a producer group	63 000	First year
	63 000	Second year
	63 000	Third year
	60 000	Fourth year
	50 000	Fifth year

## ANNEX II

## Annual programming (EU contribution in EUR million)

	2004	2005	2006
Total plan			

## Indicative overall financial table: rural development programmes

(EUR million)

	Programming period 2004-2006		
	Public expenditure ( <sup>(1)</sup> )	EU contribution ( <sup>(2)</sup> )	Private contribution ( <sup>(3)</sup> )
Priority A			
Measure A1 (e.g. agri-environment)			
Measure A1 projects approved under Regulation (EC) No 1268/1999 <sup>(4)</sup>			
Measure A2...			
... Measure An			
<b>Total A</b>			
Priority B ...			
Measure B1 (e.g. early retirement)			
Measure B2 ...			
... Measure Bn			
<b>Total B</b>			
Priority C			
Measure C1 (e.g. producer groups)			
Measure C1: projects approved under Regulation (EC) No 1268/1999 <sup>(4)</sup>			
Measure C2			
... Measure Cn			
<b>Total C</b>			
Priority N			
Measure N1 (e.g. afforestation)			
Measure N1: projects approved under Regulation (EC) No 1268/1999			
Measure N2 ...			
... Measure Nn			
<b>Total N</b>			
Other actions			
Technical assistance			
Evaluation			
<b>Total, other actions</b>			
<b>Total plan — (P) (<sup>(5)</sup>)</b>			

(<sup>(1)</sup>) Column reserved for planned expenditure (in terms of public expenditure), presented for indicative purposes.

(<sup>(2)</sup>) Column reserved for the Community contribution planned for each measure. The Community contribution pertaining to the expenditure to be paid shall be calculated using the rates and rules laid down in the programme for each measure. The Community contribution may be calculated as a function of the eligible public expenditure (column 2/column 1) or as a function of the total eligible cost [column 2/(column 1 + column 3)].

(<sup>(3)</sup>) Column reserved for planned expenditure (in terms of private contributions), presented for indicative purposes, where such a contribution is planned for the measure.

(<sup>4</sup>) Planned expenditure under Article 33 paragraph 5 of the Act of Accession.

(<sup>5</sup>) The calculation basis is the financial programming table annexed to the Commission decision approving the programming document as last amended.

If the same measure is listed under more than one priority the Member State shall provide, for financial management purposes, an additional table consolidating all expenditure linked to that measure. That additional table shall have the same structure as the above table and the same order as the list below.

The various measures are defined as follows:

- (a) investment in farms;
- (b) start-up assistance for young farmers;
- (c) training;
- (d) early retirement;
- (e) less-favoured areas and areas with environmental restriction s;
- (f) agri-environment and animal welfare;
- (g) improving the processing and marketing of agricultural products;
- (h) afforestation of agricultural land;
- (i) other forestry measures;
- (j) land improvement;
- (k) reparaelling;
- (l) setting up farm relief and farm management services, setting up and provision of advisory services and extension services;
- (m) marketing of quality agricultural products;
- (n) basic services for the rural economy and populations;
- (o) renovation and development of villages and protection and conservation of the rural heritage;
- (p) diversifying agricultural activities and activities close to agriculture to provide multiple activities or alternative sources of income;
- (q) managing agricultural water resources;
- (r) developing and improving infrastructures connected with the development of agriculture;
- (s) encouraging tourist and craft activities;
- (t) protecting the environment in connection with agriculture, forestry and landscape management and improving animal welfare;
- (u) restoring agricultural production potential damaged by natural disasters and introducing appropriate prevention instruments;
- (v) financial engineering;
- (x) meeting standards;
- (y) use of farm advisory services connected with meeting standards;
- (z) farmers' voluntary participation in food quality schemes;
- (aa) producer group activities related to food quality;
- (ab) semi-subsistence farms undergoing restructuring;
- (ac) producer groups;
- (ad) technical assistance;
- (ae) complements to direct payments;
- (af) complements to State aid in Malta;
- (ag) full-time farmers in Malta.

Measures (j) to (v) may be defined as a single measure: (j) encouraging the adjustment and development of rural areas.

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## ANNEX III

**Information on the specific measures and derogations referred to in Chapter IXa of Regulation (EC) No 1257/1999 to be listed in rural development plans****1. Measures applicable to all new Member States**I. *Support for semi-subsistence farms undergoing restructuring*

## A. Main features:

- definition of the semi-subsistence farm taking account of the minimum and/or maximum size of the farm, the proportion of production marketed, and/or the level of income of the eligible farm,
- definition of economic viability;

## B. Other information:

- the contents of the business plan.

II. *Producer groups*

## A. Main features:

- solely for Malta, indication of the sector or sectors benefiting from the derogation with the justification related to the extremely small total output, and the conditions of eligibility for the derogation: minimum percentage of the group's production compared to total production in the sector, minimum percentage of producers in the sector who are members of the group,
- solely for Malta, justification and calculation of annual amounts;

## B. Other information:

- description of the official procedure for recognising the groups including selection criteria,
- sectors concerned.

III. *Technical assistance*

## A. Main features:

- not applicable;

## B. Other information:

- description of beneficiaries.

IV. *Leader+ type measures*

## Acquisition of skills (Article 33f(1) of Regulation (EC) No 1257/1999)

## A. Main features:

- procedure and timetable for selecting the contractors responsible for implementing the actions;

## B. Other information:

- not applicable.

## Pilot rural development territorial strategies (Article 33f(2) of Regulation (EC) No 1257/1999)

## A. Main features:

- procedure and timetable for selecting the local action groups benefiting from the measure, including selection criteria and planned maximum number of beneficiaries,
- criteria for demonstrating administrative capacity and experience in approaches of the 'local rural development' type at region level;

## B. Other information:

- not applicable.



V. *Complements to direct payments*

- A. Main features:  
— Community contribution for each year of the programme;
- B. Other information:  
— designation of paying agency.

**2. Measures applicable to Malta**

I. *Complements to State aid*

- A. Main features:  
— not applicable;
- B. Other information:  
— designation of paying agency.

**3. Derogations applicable to all new Member States**

I. *Improving the processing and marketing of agricultural products*

- A. Main features:  
— not applicable;
- B. Other information:  
— list of undertakings benefiting from a period of transition as referred to in Article 33l(3).

**4. Derogation applicable to Estonia**

I. *Afforestation of agricultural land*

- A. Main features:  
— not applicable;
- B. Other information:  
— description of control of land use during the last five years preceding the afforestation.

**5. Derogation applicable to Malta**

I. *Agri-environment*

- A. Main features:  
— justification and calculation of annual ceilings for maintenance and preservation of rubble walls;
- B. Other information:  
— not applicable.
-

**COMMISSION REGULATION (EC) No 142/2004  
of 28 January 2004**

**opening a standing invitation to tender for the resale on the Community market of barley held by the Belgian intervention agency**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

*Article 1*

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals <sup>(1)</sup>, and in particular Article 5 thereof,

The Belgian intervention agency shall open a standing invitation to tender for the sale on the Community market of 8 343 tonnes of barley held by it.

Whereas:

*Article 2*

(1) Commission Regulation (EEC) No 2131/93 of 28 July 1998 laying down the procedure and conditions for the sale of cereals held by intervention agencies <sup>(2)</sup> provides in particular that cereals held by intervention agencies are to be sold by tendering procedure at prices preventing market disturbance.

The sale provided for in Article 1 shall take place in accordance with Regulation (EEC) No 2131/93.

However, notwithstanding that Regulation:

(2) Belgium still has intervention stocks of barley.

(a) tenders shall be drawn up on the basis of the actual quality of the lot to which they apply;

(b) the minimum selling price shall be set at a level which does not disturb the cereals market.

(3) Because of the difficult weather conditions in much of the Community, cereals production has been significantly reduced in the 2003/04 marketing year. This situation has resulted in high prices locally, causing particular difficulties for livestock holdings and the feeding-stuffs industry, which are finding it hard to obtain supplies at competitive prices.

*Article 3*

Notwithstanding Article 13(4) of Regulation (EEC) No 2131/93 the tender security is set at EUR 10 per tonne.

(4) It is therefore appropriate to make stocks of barley held by the Belgian intervention agency available on the internal market. The period of presentation of the offers for the last partial invitation to tender under Commission Regulation (EC) No 1517/2003 <sup>(3)</sup> having expired on 18 December 2003, it is advisable to open a new standing invitation to tender.

*Article 4*

1. The closing date for the submission of tenders for the first partial invitation to tender shall be 5 February 2004 at 09.00 (Brussels time).

The closing dates for the submission of tenders for subsequent partial invitations to tender shall be each Thursday at 09.00 (Brussels time), with the exception of 8 April and 20 May 2004.

(5) To take account of the situation on the Community market, provision should be made for the Commission to manage this invitation to tender.

The closing date for the submission of tenders for the last partial tendering procedure shall be 24 June 2004 at 09.00 (Brussels time).

(6) When the Belgian intervention agency notifies the Commission, the tenderers should remain anonymous.

2. Tenders must be lodged with the Belgian intervention agency:

(7) With a view to modernising management, the information required by the Commission should be sent by electronic mail.

Bureau d'intervention et de restitution belge  
(BIRB)  
Rue de Trèves/Trierstraat, 82  
B-1040 Brussels  
Fax: (32-2) 287 25 24

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

*Article 5*

Within two hours of the expiry of the time limit for the submission of tenders, the Belgian intervention agency shall notify the Commission of tenders received. They must be sent by electronic mail in accordance with the form set out in the Annex.

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21. Regulation as last amended by Regulation (EC) No 1104/2003 (OJ L 158, 27.6.2003, p. 1).

<sup>(2)</sup> OJ L 191, 31.7.1993, p. 76. Regulation as last amended by Regulation (EC) No 1630/2000 (OJ L 187, 26.7.2000, p. 24).

<sup>(3)</sup> OJ L 217, 29.8.2003, p. 32.

*Article 6*

In accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, the Commission shall set the minimum sale price or decide not to accept the tenders.

*Article 7*

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

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

Done at Brussels, 28 January 2004.

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

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 ANNEX

Standing invitation to tender for the resale of 8 343 tonnes of barley held by the Belgian intervention agency  
Regulation (EC) No 142/2004

1	2	3	4
Numbering of tenderers	Lot No	Quantity (t)	Tender price EUR/t
1			
2			
3			
etc.			

Address for electronic transmission of information in accordance with Article 5:  
AGRI-C1-REVENTE-MARCHE-UE@cec.eu.int

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**COMMISSION REGULATION (EC) No 143/2004****of 28 January 2004****opening a standing invitation to tender for the resale on the Community market of wheat held by the Swedish intervention agency**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

*Article 2*

Having regard to the Treaty establishing the European Community,

The sale provided for in Article 1 shall take place in accordance with Regulation (EEC) No 2131/93.

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals <sup>(1)</sup>, and in particular Article 5 thereof,

However, notwithstanding that Regulation:

Whereas:

(a) tenders shall be drawn up on the basis of the actual quality of the lot to which they apply;

(1) Commission Regulation (EEC) No 2131/93 of 28 July 1998 laying down the procedure and conditions for the sale of cereals held by intervention agencies <sup>(2)</sup> provides in particular that cereals held by intervention agencies are to be sold by tendering procedure at prices preventing market disturbance.

(b) the minimum selling price shall be set at a level which does not disturb the cereals market.

(2) Sweden still has intervention stocks of wheat.

*Article 3*

(3) Because of the difficult weather conditions in much of the Community, cereals production has been significantly reduced in the 2003/04 marketing year. This situation has resulted in high prices locally, causing particular difficulties for livestock holdings and the feeding-stuffs industry, which are finding it hard to obtain supplies at competitive prices.

Notwithstanding Article 13(4) of Regulation (EEC) No 2131/93 the tender security is set at EUR 10 per tonne.

(4) It is therefore appropriate to make stocks of wheat held by the Swedish intervention agency available on the internal market.

*Article 4*

(5) To take account of the situation on the Community market, provision should be made for the Commission to manage this invitation to tender.

1. The closing date for the submission of tenders for the first partial invitation to tender shall be 5 February 2004 at 09.00 (Brussels time).

(6) When the Swedish intervention agency notifies the Commission, the tenderers should remain anonymous.

The closing dates for the submission of tenders for subsequent partial invitations to tender shall be each Thursday at 09.00 (Brussels time), with the exception of 8 April and 20 May 2004.

(7) With a view to modernising management, the information required by the Commission should be sent by electronic mail.

The closing date for the submission of tenders for the last partial tendering procedure shall be 24 June 2004 at 09.00 (Brussels time).

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

2. Tenders must be lodged with the Swedish intervention agency:

HAS ADOPTED THIS REGULATION:

Statens Jordbruksverk  
S-551 82 Jönköping  
Fax: (46) 36 71 95 11

*Article 1*

The Swedish intervention agency shall open a standing invitation to tender for the sale on the Community market of 227 137 tonnes of wheat held by it.

*Article 5*

Within two hours of the expiry of the time limit for the submission of tenders, the Swedish intervention agency shall notify the Commission of tenders received. They must be sent by electronic mail in accordance with the form set out in the Annex.

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21. Regulation as last amended by Regulation (EC) No 1104/2003 (OJ L 158, 27.6.2003, p. 1).

<sup>(2)</sup> OJ L 191, 31.7.1993, p. 76. Regulation as last amended by Regulation (EC) No 1630/2000 (OJ L 187, 26.7.2000, p. 24).

*Article 6*

In accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, the Commission shall set the minimum sale price or decide not to accept the tenders.

*Article 7*

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

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

Done at Brussels, 28 January 2004.

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

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*ANNEX*

Standing invitation to tender for the resale of 227 137 tonnes of wheat held by the Swedish intervention agency  
Regulation (EC) No 143/2004

1	2	3	4
Numbering of tenderers	Lot No	Quantity (t)	Tender price EUR/t
1			
2			
3			
etc.			

Address for electronic transmission of information in accordance with Article 5:  
AGRI-C1-REVENTE-MARCHE-UE@cec.eu.int

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**COMMISSION REGULATION (EC) No 144/2004  
of 28 January 2004**

**opening a standing invitation to tender for the resale on the Community market of wheat held by  
the French intervention agency**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

*Article 2*

Having regard to the Treaty establishing the European Community,

The sale provided for in Article 1 shall take place in accordance with Regulation (EEC) No 2131/93.

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals <sup>(1)</sup>, and in particular Article 5 thereof,

However, notwithstanding that Regulation:

Whereas:

- (a) tenders shall be drawn up on the basis of the actual quality of the lot to which they apply;
- (b) the minimum selling price shall be set at a level which does not disturb the cereals market.

(1) Commission Regulation (EEC) No 2131/93 of 28 July 1998 laying down the procedure and conditions for the sale of cereals held by intervention agencies <sup>(2)</sup> provides in particular that cereals held by intervention agencies are to be sold by tendering procedure at prices preventing market disturbance.

*Article 3*

(2) France still has intervention stocks of wheat.

Notwithstanding Article 13(4) of Regulation (EEC) No 2131/93 the tender security is set at EUR 10 per tonne.

(3) Because of the difficult weather conditions in much of the Community, cereals production has been significantly reduced in the 2003/04 marketing year. This situation has resulted in high prices locally, causing particular difficulties for livestock holdings and the feeding-stuffs industry, which are finding it hard to obtain supplies at competitive prices.

*Article 4*

(4) It is therefore appropriate to make stocks of wheat held by the French intervention agency available on the internal market.

1. The closing date for the submission of tenders for the first partial invitation to tender shall be 5 February 2004 at 09.00 (Brussels time).

(5) To take account of the situation on the Community market, provision should be made for the Commission to manage this invitation to tender.

The closing dates for the submission of tenders for subsequent partial invitations to tender shall be each Thursday at 09.00 (Brussels time), with the exception of 8 April and 20 May 2004.

(6) When the French intervention agency notifies the Commission, the tenderers should remain anonymous.

The closing date for the submission of tenders for the last partial tendering procedure shall be 24 June 2004 at 09.00 (Brussels time).

(7) With a view to modernising management, the information required by the Commission should be sent by electronic mail.

2. Tenders must be lodged with the French intervention agency:

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

Office national interprofessionnel des céréales  
21, avenue Bosquet  
F-75341 Paris Cedex 07  
Fax (33) 144 18 20 80

HAS ADOPTED THIS REGULATION:

*Article 1*

The French intervention agency shall open a standing invitation to tender for the sale on the Community market of 200 000 tonnes of wheat held by it.

*Article 5*

Within two hours of the expiry of the time limit for the submission of tenders, the French intervention agency shall notify the Commission of tenders received. They must be sent by electronic mail in accordance with the form set out in the Annex.

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21. Regulation as last amended by Regulation (EC) No 1104/2003 (OJ L 158, 27.6.2003, p. 1).

<sup>(2)</sup> OJ L 191, 31.7.1993, p. 76. Regulation as last amended by Regulation (EC) No 1630/2000 (OJ L 187, 26.7.2000, p. 24).

*Article 6*

In accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, the Commission shall set the minimum sale price or decide not to accept the tenders.

*Article 7*

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

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

Done at Brussels, 28 January 2004.

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

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## ANNEX

Standing invitation to tender for the resale of 200 000 tonnes of wheat held by the French intervention agency  
Regulation (EC) No 144/2004

1	2	3	4
Numbering of tenderers	Lot No	Quantity (t)	Tender price EUR/t
1			
2			
3			
etc.			

Address for electronic transmission of information in accordance with Article 5:  
AGRI-C1-REVENTE-MARCHE-UE@cec.eu.int

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**COMMISSION REGULATION (EC) No 145/2004****of 28 January 2004****opening a standing invitation to tender for the resale on the Community market of wheat held by the German intervention agency**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

*Article 2*

Having regard to the Treaty establishing the European Community,

The sale provided for in Article 1 shall take place in accordance with Regulation (EEC) No 2131/93.

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals<sup>(1)</sup>, and in particular Article 5 thereof,

However, notwithstanding that Regulation:

Whereas:

(a) tenders shall be drawn up on the basis of the actual quality of the lot to which they apply;

(1) Commission Regulation (EEC) No 2131/93 of 28 July 1998 laying down the procedure and conditions for the sale of cereals held by intervention agencies<sup>(2)</sup> provides in particular that cereals held by intervention agencies are to be sold by tendering procedure at prices preventing market disturbance.

(b) the minimum selling price shall be set at a level which does not disturb the cereals market.

(2) Germany still has intervention stocks of wheat.

*Article 3*

(3) Because of the difficult weather conditions in much of the Community, cereals production has been significantly reduced in the 2003/04 marketing year. This situation has resulted in high prices locally, causing particular difficulties for livestock holdings and the feeding-stuffs industry, which are finding it hard to obtain supplies at competitive prices.

Notwithstanding Article 13(4) of Regulation (EEC) No 2131/93 the tender security is set at EUR 10 per tonne.

(4) It is therefore appropriate to make stocks of wheat held by the German intervention agency available on the internal market.

*Article 4*

(5) To take account of the situation on the Community market, provision should be made for the Commission to manage this invitation to tender.

1. The closing date for the submission of tenders for the first partial invitation to tender shall be 5 February 2004 at 09.00 (Brussels time).

(6) When the German intervention agency notifies the Commission, the tenderers should remain anonymous.

The closing dates for the submission of tenders for subsequent partial invitations to tender shall be each Thursday at 09.00 (Brussels time), with the exception of 8 April, 20 May and 10 June 2004.

(7) With a view to modernising management, the information required by the Commission should be sent by electronic mail.

The closing date for the submission of tenders for the last partial tendering procedure shall be 24 June 2004 at 09.00 (Brussels time).

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

2. Tenders must be lodged with the German intervention agency:

Bundesanstalt für Landwirtschaft und Ernährung  
BLE  
Adickesallee 40  
D-60322 Frankfurt am Main  
Telefax: (49-69) 156 49 62.

HAS ADOPTED THIS REGULATION:

*Article 1*

The German intervention agency shall open a standing invitation to tender for the sale on the Community market of 89 000 tonnes of wheat held by it.

*Article 5*

Within two hours of the expiry of the time limit for the submission of tenders, the German intervention agency shall notify the Commission of tenders received. They must be sent by electronic mail in accordance with the form set out in the Annex.

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21. Regulation as last amended by Regulation (EC) No 1104/2003 (OJ L 158, 27.6.2003, p. 1).

<sup>(2)</sup> OJ L 191, 31.7.1993, p. 76. Regulation as last amended by Regulation (EC) No 1630/2000 (OJ L 187, 26.7.2000, p. 24).



*Article 6*

In accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, the Commission shall set the minimum sale price or decide not to accept the tenders.

*Article 7*

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

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

Done at Brussels, 28 January 2004.

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

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## ANNEX

Standing invitation to tender for the resale of 89 000 tonnes of wheat held by the German intervention agency  
Regulation (EC) No 145/2004

1	2	3	4
Numbering of tenderers	Lot No	Quantity (t)	Tender price EUR/t
1			
2			
3			
etc.			

Address for electronic transmission of information in accordance with Article 5:  
AGRI-C1-REVENTE-MARCHE-UE@cec.eu.int

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**COMMISSION REGULATION (EC) No 146/2004**  
**of 28 January 2004**

**opening a standing invitation to tender for the resale on the Community market of wheat held by the Danish intervention agency**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

*Article 1*

The Danish intervention agency shall open a standing invitation to tender for the sale on the Community market of 92 765 tonnes of wheat held by it.

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals <sup>(1)</sup>, and in particular Article 5 thereof,

*Article 2*

Whereas:

The sale provided for in Article 1 shall take place in accordance with Regulation (EEC) No 2131/93.

(1) Commission Regulation (EEC) No 2131/93 of 28 July 1998 laying down the procedure and conditions for the sale of cereals held by intervention agencies <sup>(2)</sup> provides in particular that cereals held by intervention agencies are to be sold by tendering procedure at prices preventing market disturbance.

However, notwithstanding that Regulation:

- (a) tenders shall be drawn up on the basis of the actual quality of the lot to which they apply;
- (b) the minimum selling price shall be set at a level which does not disturb the cereals market.

(2) Denmark still has intervention stocks of wheat.

*Article 3*

(3) Because of the difficult weather conditions in much of the Community, cereals production has been significantly reduced in the 2003/04 marketing year. This situation has resulted in high prices locally, causing particular difficulties for livestock holdings and the feeding-stuffs industry, which are finding it hard to obtain supplies at competitive prices.

Notwithstanding Article 13(4) of Regulation (EEC) No 2131/93 the tender security is set at EUR 10 per tonne.

(4) It is therefore appropriate to make stocks of wheat held by the Danish intervention agency available on the internal market.

*Article 4*

1. The closing date for the submission of tenders for the first partial invitation to tender shall be 5 February 2004 at 09.00 (Brussels time).

(5) To take account of the situation on the Community market, provision should be made for the Commission to manage this invitation to tender.

The closing dates for the submission of tenders for subsequent partial invitations to tender shall be each Thursday at 09.00 (Brussels time), with the exception of 8 April and 20 May 2004.

(6) When the Danish intervention agency notifies the Commission, the tenderers should remain anonymous.

The closing date for the submission of tenders for the last partial tendering procedure shall be 24 June 2004 at 09.00 (Brussels time).

(7) With a view to modernising management, the information required by the Commission should be sent by electronic mail.

2. Tenders must be lodged with the Danish intervention agency:

Direktoratet For Fødevarer Erhverv  
Nyropsgade 30  
DK-1780 København  
Fax: (45-33) 95 80 34

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

*Article 5*

Within two hours of the expiry of the time limit for the submission of tenders, the Danish intervention agency shall notify the Commission of tenders received. They must be sent by electronic mail in accordance with the form set out in the Annex.

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21. Regulation as last amended by Regulation (EC) No 1104/2003 (OJ L 158, 27.6.2003, p. 1).

<sup>(2)</sup> OJ L 191, 31.7.1993, p. 76. Regulation as last amended by Regulation (EC) No 1630/2000 (OJ L 187, 26.7.2000, p. 24).

*Article 6*

In accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, the Commission shall set the minimum sale price or decide not to accept the tenders.

*Article 7*

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

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

Done at Brussels, 28 January 2004.

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

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## ANNEX

Standing invitation to tender for the resale of 92 765 tonnes of wheat held by the Danish intervention agency  
Regulation (EC) No 146/2004

1	2	3	4
Numbering of tenderers	Lot No	Quantity (t)	Tender price EUR/t
1			
2			
3			
etc.			

Address for electronic transmission of information in accordance with Article 5:  
AGRI-C1-REVENTE-MARCHE-UE@cec.eu.int

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**COMMISSION REGULATION (EC) No 147/2004  
of 28 January 2004**

**opening a standing invitation to tender for the resale on the Community market of wheat held by  
the Belgian intervention agency**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

*Article 1*

The Belgian intervention agency shall open a standing invitation to tender for the sale on the Community market of 68 282 tonnes of wheat held by it.

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals <sup>(1)</sup>, and in particular Article 5 thereof,

*Article 2*

Whereas:

The sale provided for in Article 1 shall take place in accordance with Regulation (EEC) No 2131/93.

(1) Commission Regulation (EEC) No 2131/93 of 28 July 1998 laying down the procedure and conditions for the sale of cereals held by intervention agencies <sup>(2)</sup> provides in particular that cereals held by intervention agencies are to be sold by tendering procedure at prices preventing market disturbance.

However, notwithstanding that Regulation:

- (a) tenders shall be drawn up on the basis of the actual quality of the lot to which they apply;
- (b) the minimum selling price shall be set at a level which does not disturb the cereals market.

(2) Belgium still has intervention stocks of wheat.

*Article 3*

(3) Because of the difficult weather conditions in much of the Community, cereals production has been significantly reduced in the 2003/04 marketing year. This situation has resulted in high prices locally, causing particular difficulties for livestock holdings and the feeding-stuffs industry, which are finding it hard to obtain supplies at competitive prices.

Notwithstanding Article 13(4) of Regulation (EEC) No 2131/93 the tender security is set at EUR 10 per tonne.

*Article 4*

(4) It is therefore appropriate to make stocks of wheat held by the Belgian intervention agency available on the internal market.

1. The closing date for the submission of tenders for the first partial invitation to tender shall be 5 February 2004 at 09.00 (Brussels time).

(5) To take account of the situation on the Community market, provision should be made for the Commission to manage this invitation to tender.

The closing dates for the submission of tenders for subsequent partial invitations to tender shall be each Thursday at 09.00 (Brussels time), with the exception of 8 April and 20 May 2004.

(6) When the Belgian intervention agency notifies the Commission, the tenderers should remain anonymous.

The closing date for the submission of tenders for the last partial tendering procedure shall be 24 June 2004 at 09.00 (Brussels time).

(7) With a view to modernising management, the information required by the Commission should be sent by electronic mail.

2. Tenders must be lodged with the Belgian intervention agency:

Bureau d'intervention et de restitution belge  
(BIRB)  
Rue de Trèves/Trierstraat 82  
B-1040 Brussels  
Fax: (32-2) 287 25 24

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

*Article 5*

Within two hours of the expiry of the time limit for the submission of tenders, the Belgian intervention agency shall notify the Commission of tenders received. They must be sent by electronic mail in accordance with the form set out in the Annex.

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21. Regulation as last amended by Regulation (EC) No 1104/2003 (OJ L 158, 27.6.2003, p. 1).

<sup>(2)</sup> OJ L 191, 31.7.1993, p. 76. Regulation as last amended by Regulation (EC) No 1630/2000 (OJ L 187, 26.7.2000, p. 24).

*Article 6*

In accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, the Commission shall set the minimum sale price or decide not to accept the tenders.

*Article 7*

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

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

Done at Brussels, 28 January 2004.

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

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 ANNEX

Standing invitation to tender for the resale of 68 282 tonnes of wheat held by the Belgian intervention agency  
Regulation (EC) No 147/2004

1	2	3	4
Numbering of tenderers	Lot No	Quantity (t)	Tender price EUR/t
1			
2			
3			
etc.			

Address for electronic transmission of information in accordance with Article 5:  
AGRI-C1-REVENTE-MARCHE-UE@cec.eu.int

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**COMMISSION REGULATION (EC) No 148/2004  
of 28 January 2004**

**determining the extent to which applications submitted in January 2004 for import licences for the tariff quotas for beef and veal provided for in Regulation (EC) No 1279/98 for Bulgaria, the Czech Republic, Slovakia, Romania, the Republic of Poland and the Republic of Hungary can be accepted**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal <sup>(1)</sup>,

Having regard to Commission Regulation (EC) No 1279/98 <sup>(2)</sup> laying down detailed rules for applying the tariff quotas for beef and veal provided for in Council Decisions 2003/286/EC, 2003/298/EC, 2003/299/EC, 2003/18/EC, 2003/263/EC and 2003/285/EC for Bulgaria, the Czech Republic, Slovakia, Romania, the Republic of Poland and the Republic of Hungary, and in particular Article 4(4) thereof,

Having regard to Commission Regulation (EC) No 2340/2003 of 29 December 2003 derogating, for the year 2004, from Regulation (EC) No 1279/98 laying down detailed rules for applying the tariff quotas for beef and veal provided for in Council Decisions 2003/286/EC, 2003/298/EC, 2003/299/EC, 2003/18/EC, 2003/263/EC and 2003/285/EC for Bulgaria, the Czech Republic, Slovakia, Romania, the Republic of Poland and the Republic of Hungary <sup>(3)</sup>, and in particular Article 1(2) thereof,

Whereas:

(1) Articles 1 and 2 of Regulation (EC) No 1279/98 set the quantities of beef and veal products originating in Poland, Hungary, the Czech Republic, Slovakia, Romania and Bulgaria which may be imported on special terms for the period 1 January to 30 June 2004. By way of derogation from the first paragraph of Article 2 of Regulation (EC) No 1279/98, for the year 2004, Article 1 of Regulation (EC) No 2340/2003 derogating, for the year 2004, from Regulation (EC) No 1279/98 split those quantities into two periods, the first of which runs from 1 January to 30 April 2004.

<sup>(1)</sup> OJ L 160, 26.6.1999, p. 21. Regulation as last amended by Regulation (EC) No 1782/2003 (OJ L 270, 21.10.2003, p. 1).

<sup>(2)</sup> OJ L 176, 20.6.1998, p. 12. Regulation as last amended by Regulation (EC) No 1144/2003 (OJ L 160, 28.06.2003, p. 44).

<sup>(3)</sup> OJ L 346, 31.12.2003, p. 31.

(2) The quantities of beef and veal products originating in Hungary, the Czech Republic, Slovakia, Romania and Bulgaria for which import licence applications have been submitted are such that the applications can be accepted in full.

(3) The quantities of beef and veal products originating in Poland for which licence applications have been submitted exceed those available and must be reduced proportionately under Article 4(4) of Regulation (EC) No 1279/98.

(4) The licence applications submitted for the period 1 January to 30 April 2004 for beef and veal products originating in Bulgaria and Romania relate to less than the quantities available. For each quota concerned the quantity available for the period 1 May to 30 June 2004 should therefore be determined, in accordance with the second subparagraph of Article 1(2) of Regulation (EC) No 2340/2003, in the light of the quantities remaining available from the previous period,

HAS ADOPTED THIS REGULATION:

*Article 1*

Each import licence application submitted in the period 1 January to 30 April 2004 in connection with the quotas referred to in Regulation (EC) No 1279/98 shall be granted for up to the following quantities:

(a) 100 % of the quantities requested of products falling within CN codes 0201 and 0202 originating in Slovakia, the Czech Republic, Romania, Bulgaria or Hungary;

(b) 100 % of the quantities requested of products falling within CN code 1602 50 originating in Romania;

(c) 0,45080 % of the quantities requested of products falling within CN codes 0201 and 0202 originating in Poland.

*Article 2*

The quantities for which import licences may be submitted for the period 1 May to 30 June 2004 under the beef and veal tariff quotas provided for in Regulation (EC) No 1279/98 as regards products originating in Bulgaria or Romania shall be as follows:

— Bulgaria:

Quota bearing order No 09.4651: 235 tonnes;

— Romania:

Quota bearing order No 09.4753:	3 944 tonnes,
Quota bearing order No 09.4765:	100 tonnes,
Quota bearing order No 09.4768:	404 tonnes.

*Article 3*

This Regulation shall enter into force on 29 January 2004.

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

Done at Brussels, 28 January 2004.

*For the Commission*

J. M. SILVA RODRÍGUEZ

*Agriculture Director-General*

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**COMMISSION REGULATION (EC) No 149/2004**  
**of 28 January 2004**  
**laying down special measures concerning the application of Regulation (EC) No 2246/2003 in the**  
**pigmeat sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EEC) No 3444/90 of 27 November 1990 laying down detailed rules for granting private storage aid for pigmeat <sup>(1)</sup>, as last amended by Regulation (EC) No 851/2003 <sup>(2)</sup>, and in particular Article 11(b) thereof,

Whereas:

An examination of the situation has indicated a risk that there will be an excessively large number of applications for the private storage aid scheme introduced by Commission Regulation (EC) No 2246/2003 <sup>(3)</sup>. Therefore, it is necessary to suspend application of the Regulation and reject the applications in question,

*Article 1*

1. Application of Regulation (EC) No 2246/2003 is hereby suspended for the period 30 January to 5 February 2004.
2. Applications submitted from 23 to 29 January 2004 for which acceptance decisions would have had to be taken during that period, are hereby rejected.

*Article 2*

This Regulation shall enter into force on 29 January 2004.

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

Done at Brussels, 28 January 2004.

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

<sup>(1)</sup> OJ L 333, 30.11.1990, p. 22.

<sup>(2)</sup> OJ L 123, 17.5.2003, p. 7.

<sup>(3)</sup> OJ L 333, 20.12.2003, p. 34.



**COMMISSION REGULATION (EC) No 150/2004**  
**of 27 January 2004**  
**establishing unit values for the determination of the customs value of certain perishable goods**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code <sup>(1)</sup>, as last amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council <sup>(2)</sup>,

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code <sup>(3)</sup>, as last amended by Regulation (EC) No 2286/2003 <sup>(4)</sup>, and in particular Article 173(1) thereof,

Whereas:

- (1) Articles 173 to 177 of Regulation (EEC) No 2454/93 provide that the Commission shall periodically establish unit values for the products referred to in the classification in Annex 26 to that Regulation.

- (2) The result of applying the rules and criteria laid down in the abovementioned Articles to the elements communicated to the Commission in accordance with Article 173(2) of Regulation (EEC) No 2454/93 is that unit values set out in the Annex to this Regulation should be established in regard to the products in question,

HAS ADOPTED THIS REGULATION:

*Article 1*

The unit values provided for in Article 173(1) of Regulation (EEC) No 2454/93 are hereby established as set out in the table in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 30 January 2004.

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

Done at Brussels, 27 January 2004.

*For the Commission*

Erkki LIIKANEN

*Member of the Commission*

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<sup>(1)</sup> OJ L 302, 19.10.1992, p. 1.

<sup>(2)</sup> OJ L 311, 12.12.2000, p. 17.

<sup>(3)</sup> OJ L 253, 11.10.1993, p. 1.

<sup>(4)</sup> OJ L 343, 31.12.2003, p. 1.

## ANNEX

Code	Description	Amount of unit values per 100 kg			
	Species, varieties, CN code	EUR	DKK	SEK	GBP
1.10	New potatoes 0701 90 50	49,01	365,13	448,16	33,78
1.30	Onions (other than seed) 0703 10 19	31,83	237,13	291,05	21,93
1.40	Garlic 0703 20 00	139,12	1 036,41	1 272,08	95,87
1.50	Leeks ex 0703 90 00	43,07	320,85	393,81	29,68
1.80	White cabbages and red cabbages 0704 90 10	107,45	800,45	982,47	74,04
1.90	Sprouting broccoli or calabrese ( <i>Brassica oleracea</i> L. convar. <i>botrytis</i> (L.) <i>Alef</i> var. <i>italica</i> Plenck) ex 0704 90 90	61,43	457,63	561,69	42,33
1.100	Chinese cabbage ex 0704 90 90	66,91	498,45	611,80	46,11
1.130	Carrots ex 0706 10 00	53,59	399,22	490,01	36,93
1.140	Radishes ex 0706 90 90	75,54	562,74	690,70	52,05
1.160	Peas ( <i>Pisum sativum</i> ) 0708 10 00	309,82	2 308,05	2 832,88	213,50
1.170	Beans:				
1.170.1	— Beans ( <i>Vigna</i> spp., <i>Phaseolus</i> spp.) ex 0708 20 00	144,07	1 073,27	1 317,33	99,28
1.170.2	— Beans ( <i>Phaseolus</i> ssp. <i>vulgaris</i> var. <i>Compressus</i> Savi) ex 0708 20 00	133,00	990,81	1 216,11	91,65
1.200	Asparagus:				
1.200.1	— green ex 0709 20 00	254,89	1 898,86	2 330,65	175,65
1.200.2	— other 0709 20 00	529,50	3 944,56	4 841,54	364,88
1.210	Aubergines (eggplants) 0709 30 00	135,38	1 012,21	1 242,39	93,63
1.220	Ribbed celery ( <i>Apium graveolens</i> L., var. <i>dulce</i> (Mill.) Pers.) ex 0709 40 00	68,13	507,55	622,96	46,95
1.230	Chantarelles 0709 59 10	994,91	7 411,68	9 097,06	685,59
1.240	Sweet peppers 0709 60 10	183,37	1 366,00	1 676,62	126,36
1.270	Sweet potatoes, whole, fresh (intended for human consumption) 0714 20 10	89,34	665,51	816,85	61,56
2.30	Pineapples, fresh ex 0804 30 00	122,95	915,90	1 124,18	84,72

Code	Description	Amount of unit values per 100 kg			
	Species, varieties, CN code	EUR	DKK	SEK	GBP
2.40	Avocados, fresh ex 0804 40 00	125,73	936,67	1 149,66	86,64
2.50	Guavas and mangoes, fresh ex 0804 50 00	—	—	—	—
2.60	Sweet oranges, fresh:				
2.60.1	— Sanguines and semi-sanguines 0805 10 10	—	—	—	—
2.60.2	— Navels, navelines, navelates, salustianas, vernas, Valencia lates, Maltese, shamoutis, ovalis, trovita and hamlins 0805 10 30	—	—	—	—
2.60.3	— Others 0805 10 50	—	—	—	—
2.70	Mandarins (including tangerines and satsumas), fresh; clementines, wilkings and similar citrus hybrids, fresh:				
2.70.1	— Clementines ex 0805 20 10	—	—	—	—
2.70.2	— Monreales and satsumas ex 0805 20 30	—	—	—	—
2.70.3	— Mandarines and wilkings ex 0805 20 50	—	—	—	—
2.70.4	— Tangerines and others ex 0805 20 70 ex 0805 20 90	—	—	—	—
2.85	Limes ( <i>Citrus aurantifolia</i> , <i>Citrus latifolia</i> ), fresh 0805 50 90	77,89	580,24	712,19	53,67
2.90	Grapefruit, fresh:				
2.90.1	— white ex 0805 40 00	49,84	371,27	455,70	34,34
2.90.2	— pink ex 0805 40 00	55,65	414,58	508,86	38,35
2.100	Table grapes 0806 10 10	188,46	1 403,96	1 723,22	129,87
2.110	Water melons 0807 11 00	42,96	320,03	392,81	29,60
2.120	Melons (other than water melons):				
2.120.1	— Amarillo, cuper, honey dew (including cantalene), ontente, piel de sapo (including verde liso), rochet, tendral, futuro ex 0807 19 00	43,03	320,54	393,43	29,65
2.120.2	— Other ex 0807 19 00	100,77	750,66	921,36	69,44
2.140	Pears				
2.140.1	— Pears — nashi ( <i>Pyrus pyrifolia</i> ), Pears — Ya ( <i>Pyrus bretschneideri</i> ) ex 0808 20 50	—	—	—	—
2.140.2	— Other ex 0808 20 50	—	—	—	—
2.150	Apricots 0809 10 00	91,22	679,56	834,09	62,86
2.160	Cherries 0809 20 95 0809 20 05	383,77	2 858,93	3 509,03	264,46

Code	Description	Amount of unit values per 100 kg			
	Species, varieties, CN code	EUR	DKK	SEK	GBP
2.170	Peaches 0809 30 90	147,58	1 099,42	1 349,42	101,70
2.180	Nectarines ex 0809 30 10	172,84	1 287,61	1 580,40	119,11
2.190	Plums 0809 40 05	154,29	1 149,37	1 410,73	106,32
2.200	Strawberries 0810 10 00	325,66	2 426,04	2 977,70	224,41
2.205	Raspberries 0810 20 10	304,95	2 271,76	2 788,34	210,14
2.210	Fruit of the species <i>Vaccinium myrtillus</i> 0810 40 30	952,72	7 097,37	8 711,27	656,52
2.220	Kiwi fruit ( <i>Actinidia chinensis</i> Planch.) 0810 50 00	145,75	1 085,78	1 332,68	100,44
2.230	Pomegranates ex 0810 90 95	117,62	876,21	1 075,46	81,05
2.240	Khakis (including sharon fruit) ex 0810 90 95	212,44	1 582,62	1 942,50	146,40
2.250	Lychees ex 0810 90 30	—	—	—	—

**COMMISSION REGULATION (EC) No 151/2004**  
**of 28 January 2004**  
**amending the rates of the refunds applicable to certain milk products exported in the form of**  
**goods not covered by Annex I to the Treaty**

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 markets in the milk and milk products sector <sup>(1)</sup>, as last amended by Regulation (EC) No 1787/2003 <sup>(2)</sup>, and in particular Article 31(3) thereof,

Whereas:

- (1) The rates of the refunds applicable from 1 January 2004 to the products listed in the Annex, exported in the form of goods not covered by Annex I to the Treaty, were fixed by Commission Regulation (EC) No 2346/2003 <sup>(3)</sup>.

- (2) It follows from applying the rules and criteria contained in Regulation (EC) No 2346/2003 to the information at present available to the Commission that the export refunds at present applicable should be altered as shown in the Annex hereto,

HAS ADOPTED THIS REGULATION:

*Article 1*

The rates of refund fixed by Regulation (EC) No 2346/2003 are hereby altered as shown in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 29 January 2004.

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

Done at Brussels, 28 January 2004.

*For the Commission*  
Erkki LIIKANEN  
*Member of the Commission*

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<sup>(1)</sup> OJ L 160, 26.6.1999, p. 48.

<sup>(2)</sup> OJ L 270, 21.10.2003, p. 121.

<sup>(3)</sup> OJ L 346, 31.12.2003, p. 45.

## ANNEX

**Rates of the refunds applicable from 29 January 2004 to certain milk products exported in the form of goods not covered by Annex I to the Treaty**

		(EUR/100 kg)
CN code	Description	Rate of refund <sup>(1)</sup>
ex 0402 10 19	Powdered milk, in granules or other solid forms, not containing added sugar or other sweetening matter, with a fat content not exceeding 1,5 % by weight (PG 2):	
	(a) on exportation of goods of CN code 3501	—
	(b) on exportation of other goods	45,15
ex 0402 21 19	Powdered milk, in granules or other solid forms, not containing added sugar or other sweetening matter, with a fat content of 26 % by weight (PG 3):	
	(a) where goods incorporating, in the form of products assimilated to PG 3, reduced-price butter or cream obtained pursuant to Regulation (EC) No 2571/97 are exported	54,05
	(b) on exportation of other goods	72,45
ex 0405 10	Butter, with a fat content by weight of 82 % (PG 6):	
	(a) where goods containing reduced-price butter or cream which have been manufactured in accordance with the conditions provided for in Regulation (EC) No 2571/97 are exported	65,10
	(b) on exportation of goods of CN code 2106 90 98 containing 40 % or more by weight of milk fat	129,68
	(c) on exportation of other goods	124,60

<sup>(1)</sup> With effect from 1 July 2003 these rates are not applicable to goods not covered by Annex I to the Treaty when exported to the Czech Republic, Estonia, Latvia, Lithuania, Slovakia or Slovenia, and to the goods referred to in Article 1(2) of Regulation (EC) No 999/2003 when exported to Hungary. With effect from 1 November 2003 these rates are not applicable to goods not covered by Annex I to the Treaty when exported to Malta.

**COMMISSION REGULATION (EC) No 152/2004**  
**of 28 January 2004**  
**on the issue of import licences for rice against applications submitted during the first 10 working days of January 2004 pursuant to Regulation (EC) No 327/98**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1095/96 of 18 June 1996 on the implementation of concessions set out in Schedule CXL drawn up in the wake of the conclusion of GATT XXIV.6 negotiations <sup>(1)</sup>,

Having regard to Council Decision 96/317/EC of 13 May 1996 concerning the conclusion of the results of consultations with Thailand under GATT Article XXIII <sup>(2)</sup>,

Having regard to Commission Regulation (EC) No 327/98 of 10 February 1998 opening and providing for the administration of certain tariff quotas for imports of rice and broken rice <sup>(3)</sup>, as last amended by Regulation (EC) No 2458/2001 <sup>(4)</sup>, and in particular Article 5(2) thereof,

Whereas:

Examination of the quantities for which applications have been submitted under the January 2004 tranche shows that licences should be issued for the quantities applied for, reduced, where appropriate, by the percentages not covered and fixing the quantities carried over to the subsequent tranche,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. Import licences for rice against applications submitted during the first 10 working days of January 2004 pursuant to Regulation (EC) No 327/98 and notified to the Commission shall be issued for the quantities applied for, reduced, where appropriate, by the percentages set out in the Annex hereto.

2. The available quantities carried over to the subsequent tranche are set out in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 29 January 2004.

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

Done at Brussels, 28 January 2004.

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

<sup>(1)</sup> OJ L 146, 20.6.1996, p. 1.

<sup>(2)</sup> OJ L 122, 22.5.1996, p. 15.

<sup>(3)</sup> OJ L 37, 11.2.1998, p. 5.

<sup>(4)</sup> OJ L 331, 15.12.2001, p. 10.

## ANNEX

Reduction percentages to be applied to quantities applied for under the tranche for January 2004 and quantities carried over to the following tranche:

## (a) semi-milled and wholly milled rice falling within CN code 1006 30

Origin	Reduction percentage for the January 2004 tranche	Quantity carried over to the tranche for May 2004 (tonnes)
United States of America	0 <sup>(1)</sup>	199,994
Thailand	0 <sup>(1)</sup>	2 904,686
Australia	—	—
Other origins	—	—

<sup>(1)</sup> Issue for the quantity applied for.

## (b) husked rice falling within CN code 1006 20

Origin	Reduction percentage for the January 2004 tranche	Quantity carried over to the tranche for May 2004 (tonnes)
United States of America	0 <sup>(1)</sup>	11
Thailand	—	—
Australia	0 <sup>(1)</sup>	2 608
Other origins	—	—

<sup>(1)</sup> Issue for the quantity applied for.

## (c) broken rice CN code 1006 40 00

Origin	Reduction percentage for the January 2004 tranche	Quantity carried over to the tranche for July 2004 (tonnes)
Thailand	11,63	—
Australia	0 <sup>(1)</sup>	3 796
Guyana	0 <sup>(1)</sup>	2 834
United States of America	0 <sup>(1)</sup>	607
Other origins	75	—

<sup>(1)</sup> Issue for the quantity applied for.



**COMMISSION REGULATION (EC) No 153/2004**  
**of 28 January 2004**  
**amending 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 <sup>(1)</sup>, as last amended by Regulation (EC) No 411/2002 <sup>(2)</sup>,

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 <sup>(3)</sup>, as last amended by Regulation (EC) No 2294/2003 <sup>(4)</sup>, and in particular Article 4(1) thereof,

Whereas:

- (1) Import duties in the rice sector have been fixed by Commission Regulation (EC) No 99/2004 <sup>(5)</sup>.

- (2) Article 4(1) of Regulation (EC) No 1503/96 provides that if during the period of application, the average import duty calculated differs by EUR 10 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 99/2004,

HAS ADOPTED THIS REGULATION:

*Article 1*

Annexes I and II to Regulation (EC) No 99/2004 are hereby replaced by Annexes I and II to this Regulation.

*Article 2*

This Regulation shall enter into force on 29 January 2004.

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

Done at Brussels, 28 January 2004.

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

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<sup>(1)</sup> OJ L 329, 30.12.1995, p. 18.

<sup>(2)</sup> OJ L 62, 5.3.2002, p. 27.

<sup>(3)</sup> OJ L 189, 30.7.1996, p. 71.

<sup>(4)</sup> OJ L 340, 24.12.2003, p. 12.

<sup>(5)</sup> OJ L 15, 22.1.2004, p. 15.

## ANNEX I

## Import duties on rice and broken rice

(EUR/t)

CN code	Duties <sup>(5)</sup>				
	Third countries (except ACP and Bangla- desh) <sup>(7)</sup>	ACP <sup>(1)</sup> <sup>(2)</sup> <sup>(3)</sup>	Bangladesh <sup>(4)</sup>	Basmati India and Pakistan <sup>(6)</sup>	Egypt <sup>(8)</sup>
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	197,39	64,75	94,36		148,04
1006 20 13	197,39	64,75	94,36		148,04
1006 20 15	197,39	64,75	94,36		148,04
1006 20 17	244,77	81,33	118,04	0,00	183,58
1006 20 92	197,39	64,75	94,36		148,04
1006 20 94	197,39	64,75	94,36		148,04
1006 20 96	197,39	64,75	94,36		148,04
1006 20 98	244,77	81,33	118,04	0,00	183,58
1006 30 21	365,18	115,42	167,68		273,89
1006 30 23	365,18	115,42	167,68		273,89
1006 30 25	365,18	115,42	167,68		273,89
1006 30 27	(7)	133,21	193,09		312,00
1006 30 42	365,18	115,42	167,68		273,89
1006 30 44	365,18	115,42	167,68		273,89
1006 30 46	365,18	115,42	167,68		273,89
1006 30 48	(7)	133,21	193,09		312,00
1006 30 61	365,18	115,42	167,68		273,89
1006 30 63	365,18	115,42	167,68		273,89
1006 30 65	365,18	115,42	167,68		273,89
1006 30 67	(7)	133,21	193,09		312,00
1006 30 92	365,18	115,42	167,68		273,89
1006 30 94	365,18	115,42	167,68		273,89
1006 30 96	365,18	115,42	167,68		273,89
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 348, 21.12.2002, p. 5) and amended Commission Regulation (EC) No 638/2003 (OJ L 93, 10.4.2003, 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)	( <sup>1</sup> )	244,77	416,00	197,39	365,18	( <sup>1</sup> )
2. Elements of calculation:						
(a) Arag cif price (EUR/tonne)	—	292,26	205,25	363,51	431,41	—
(b) fob price (EUR/tonne)	—	—	—	339,54	407,44	—
(c) Sea freight (EUR/tonne)	—	—	—	23,97	23,97	—
(d) Source	—	USDA and operators	USDA and operators	Operators	Operators	—

(<sup>1</sup>) Duties fixed in the Common Customs Tariff.

**DIRECTIVE 2003/114/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 22 December 2003**  
**amending Directive 95/2/EC on food additives other than colours and sweeteners**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(2)</sup>,

Whereas:

- (1) Food additives may be approved for use in foodstuffs only if they comply with Annex II to Council Directive 89/107/EEC of 21 December 1988 on the approximation of the laws of the Member States concerning food additives authorised for use in foodstuffs intended for human consumption <sup>(3)</sup>.
- (2) Directive 95/2/EC of the European Parliament and of the Council of 20 February 1995 on food additives other than colours and sweeteners <sup>(4)</sup> lays down a list of food additives that may be used in the Community and the conditions for their use.
- (3) There have been technical developments in the field of food additives since the adoption of Directive 95/2/EC. That Directive should be adapted to take account of those developments.
- (4) Council Directive 88/388/EEC of 22 June 1988 on the approximation of the laws of the Member States relating to flavourings for use in foodstuffs and to source materials for their production <sup>(5)</sup> provides for the adoption of a list of additives necessary for the storage and use of flavourings, and the adoption of any special conditions for the use of such additives that may be necessary for the protection of public health and to ensure fair trade.

(5) It is desirable to incorporate into Directive 95/2/EC those measures on additives necessary for the storage and use of flavourings, in order to contribute to transparency and consistency of Community legislation, and to facilitate compliance with Community legislation on food additives by food manufacturers, especially by small and medium-sized enterprises. In addition, according to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety <sup>(6)</sup>, flavourings fall within the definition of 'food'.

(6) While the use of additives which are necessary to ensure the safety and quality of flavourings and to facilitate their storage and use should be authorised, the levels of additives present in such flavourings should be the minimum required to achieve the intended purpose. In addition, consumers should be guaranteed correct, adequate and non-misleading information on the use of additives.

(7) The presence of an additive in a foodstuff, due to the use of a flavouring, is generally low and the additive does not have a technological function in the foodstuff. However, if under certain circumstances the additive does have a technological function in the compound foodstuff, it should be considered as an additive of the compound foodstuff and not as an additive of the flavouring, and the relevant rules relating to the additive in the particular foodstuff should apply, including the labelling rules laid down in Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs <sup>(7)</sup>.

(8) In accordance with Directive 88/388/EEC, food manufacturers should be informed about the concentrations of all additives in flavourings in order to enable them to comply with Community legislation. That Directive also requires quantitative labelling of each component subject to a quantitative limitation in a foodstuff. A quantitative limitation is expressed either numerically or by the 'quantum satis' principle.

<sup>(1)</sup> OJ C 208, 3.9.2003, p. 30.

<sup>(2)</sup> Opinion of the European Parliament of 3 July 2003 (not yet published in the Official Journal), and Decision of the Council of 1 December 2003.

<sup>(3)</sup> OJ L 40, 11.2.1989, p. 27. Directive as amended by Directive 94/34/EC of the European Parliament and of the Council (OJ L 237, 10.9.1994, p. 1).

<sup>(4)</sup> OJ L 61, 18.3.1995, p. 1. Directive as last amended by Directive 2003/52/EC (OJ L 178, 17.7.2003, p. 23).

<sup>(5)</sup> OJ L 184, 15.7.1988, p. 61. Directive as amended by Commission Directive 91/71/EEC (OJ L 42, 15.2.1991, p. 25).

<sup>(6)</sup> OJ L 31, 1.2.2002, p. 1. Regulation as amended by Regulation (EC) No 1642/2003 (OJ L 245, 29.9.2003, p. 4).

<sup>(7)</sup> OJ L 109, 6.5.2000, p. 29. Directive as last amended by Directive 2003/89/EC (OJ L 308, 25.11.2003, p. 15).

- (9) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of ensuring market unity and a high level of consumer protection to lay down rules on the use of additives in flavourings. This Directive does not go beyond what is necessary in order to achieve the objectives pursued in accordance with the third paragraph of Article 5 of the Treaty.
- (10) In accordance with a request from a Member State and the opinion of the Scientific Committee on Food, established by Commission Decision 97/579/EC of 23 July 1997 setting up Scientific Committees in the field of consumer health and food safety <sup>(1)</sup>, hydrogenated poly-1-decene, which was authorised at national level under Directive 89/107/EEC, should be authorised at Community level.
- (11) Biphenyl (E 230), orthophenyl phenol (E 231) and sodium orthophenyl phenol (E 232) are listed as preservatives in and on citrus fruits in Directive 95/2/EC. However, they fall under the definition of 'plant protection products' in Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market <sup>(2)</sup>. Therefore, they should no longer come within the scope of Directive 95/2/EC. The Member States and the Commission should take all possible steps to ensure that there is no legal vacuum with regard to these substances. Authorisation to place on the market these substances as plant protection products should be dealt with as swiftly as possible.
- (12) On 4 April 2003, the Scientific Committee on Food stated that the temporary acceptable daily intake for E 214 to E 219 p-hydroxybenzoic acid alkyl esters and their sodium salts should be withdrawn if no further data are submitted in respect of intake and toxicity.
- (13) Directive 95/2/EC should therefore be amended accordingly.
- (14) Council Directive 67/427/EEC of 27 June 1967 on the use of certain preservatives for the surface treatment of citrus fruit and on the control measures to be used for the qualitative and quantitative analysis of preservatives in and on citrus fruit <sup>(3)</sup> lays down the control measures on preservatives in and on citrus fruits. Since those preservatives are no longer authorised for use in citrus fruits by Directive 95/2/EC, it is necessary to repeal Directive 67/427/EEC.
- (15) The Scientific Committee on Food has been consulted on the adoption of provisions that may have an effect upon public health, pursuant to Article 6 of Directive 89/107/EEC,

HAVE ADOPTED THIS DIRECTIVE:

### Article 1

Directive 95/2/EC is hereby amended as follows:

1. Article 1(3)(v) shall be replaced by the following:

- (v) "stabilisers" are substances which make it possible to maintain the physico-chemical state of a foodstuff; stabilisers include substances which enable the maintenance of a homogenous dispersion of two or more immiscible substances in a foodstuff, substances which stabilise, retain or intensify an existing colour of a foodstuff and substances which increase the binding capacity of the food, including the formation of cross-links between proteins enabling the binding of food pieces into re-constituted food;

2. Article 3 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'1. The presence of a food additive is permissible:

- (a) in a compound foodstuff other than one mentioned in Article 2(3), to the extent to which the food additive is permitted in one of the ingredients of the compound foodstuff;
- (b) in a foodstuff where a flavouring has been added, to the extent to which the food additive is permitted in the flavouring in compliance with this Directive and has been carried over to the foodstuff via the flavouring, provided the food additive has no technological function in the final foodstuff; or
- (c) if the foodstuff is destined to be used solely in the preparation of a compound foodstuff and to an extent such that the compound foodstuff conforms to the provisions of this Directive.;

(b) the following paragraph shall be added:

'3. The level of additives in flavourings shall be limited to the minimum necessary to guarantee the safety and quality of flavourings and to facilitate their storage. Furthermore, the presence of additives in flavourings must not mislead consumers or present a hazard to their health. If the presence of an additive in a foodstuff, as a consequence of adding flavourings, has a technological function in the foodstuff, it shall be considered as an additive of the foodstuff and not as an additive of the flavouring.;

3. the Annexes shall be amended as set out in the Annex to this Directive.

### Article 2

1. Before 1 July 2004, the Commission and the European Food Safety Authority shall review the conditions for the use of additives E 214 to E 219.

<sup>(1)</sup> OJ L 237, 28.8.1997, p. 18. Decision as amended by Decision 2000/443/EC (OJ L 179, 18.7.2000, p. 13).

<sup>(2)</sup> OJ L 230, 19.8.1991, p. 1. Directive as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).

<sup>(3)</sup> OJ L 148, 11.7.1967, p. 1.

2. Before 27 January 2006, the Commission shall submit to the European Parliament and the Council a report on the progress of the re-evaluation of additives. This re-evaluation shall in particular focus on E 432 to E 436 (polysorbates) as well as E 251 and E 252 (nitrates) and E 249 and E 250 (nitrites).

*Article 3*

Directive 67/427/EEC shall be repealed.

*Article 4*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive in order to:

- authorise trade in and use of products conforming with this Directive by 27 July 2005 at the latest,
- prohibit trade in and use of products not conforming with this Directive by 27 January 2006 at the latest; however, products placed on the market or labelled before that date which do not comply with this Directive may be marketed until stocks are exhausted.

They shall forthwith inform the Commission thereof.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

*Article 5*

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

*Article 6*

This Directive is addressed to the Member States.

Done at Brussels, 22 December 2003.

*For the European Parliament*

*The President*

P. COX

*For the Council*

*The President*

A. MATTEOLI

## ANNEX

The Annexes to Directive 95/2/EC shall be amended as follows:

## 1. in Annex I:

(a) Note 2 shall be replaced by the following:

'2. The substances listed under numbers E 407, E 407a and E 440 may be standardised with sugars, on condition that this is stated in addition to the number and designation.';

(b) in the list of additives:

- the entire entry for E 170 shall be replaced by 'E 170 Calcium carbonate';
- in the entry for E 466, the name 'Cellulose gum' shall be added,
- in the entry for E 469, the name 'Enzymatically hydrolysed cellulose gum' shall be added;

## 2. in Annex II:

(a) the name 'E 170 Calcium carbonates' shall be replaced throughout by 'E 170 Calcium carbonate';

(b) the following shall be added to the list of additives and the maximum levels concerning 'Cocoa and chocolate products as defined in Directive 2000/36/EC':

	'E 472c Citric acid esters of mono- and diglycerides of fatty acids'	quantum satis'
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(c) the following shall be inserted in the list of additives and the maximum level for 'Frozen and deep-frozen unprocessed fruit and vegetables; prepacked, refrigerated unprocessed fruit and vegetables ready for consumption and prepacked, unprocessed and peeled potatoes':

	'E 296 Malic acid'	quantum satis (only for peeled potatoes)'
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(d) the following shall be added to the list of additives and the maximum level for 'Fruit compote':

	'E 440 Pectin E 509 Calcium chloride'	quantum satis (only for fruit compote other than apple)'
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(e) the following shall be inserted in the list of additives and the maximum level for 'Mozzarella and whey cheese':

	'E 460ii Powdered cellulose'	quantum satis (only for grated and sliced cheese)'
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(f) the following rows shall be added at the end of the Annex:

'UHT goat milk'	E 331 Sodium citrates	4 g/l
Chestnuts in liquid	E 410 Locust bean gum E 412 Guar gum E 415 Xanthane gum	quantum satis'

## 3. in Annex III:

A. part A shall be amended as follows:

(a) the designation 'Partially baked, pre-packed bakery wares intended for retail sale' shall be replaced by the following: 'Partially baked, pre-packed bakery wares intended for retail sale and energy-reduced bread intended for retail sale';

(b) at the end of this part, the following rows shall be added:

'Crayfish tails, cooked, and prepacked marinated cooked molluscs'	2 000					
Flavourings				1 500'		

B. part C shall be amended as follows:

(a) the following rows shall be deleted:

E 230	Biphenyl, diphenyl	Surface treatment of citrus fruit	70 mg/kg
E 231	Orthophenyl phenol (*)	} Surface treatment of citrus fruit	12 mg/kg individually or in combination expressed as orthophenyl phenol
E 232	Sodium orthophenyl phenol (*)		

(\*) The deletion of E 231 orthophenyl phenol and E 232 sodium orthophenyl phenol shall enter into force as soon as requirements for the labelling of foodstuffs treated with these substances become applicable by virtue of Community legislation on maximum residue limits for pesticides.'

(b) the following foodstuff shall be added to E 1105:

		'Wine in accordance with Regulation (EC) No 1493/1999 (*) and its implementing Regulation (EC) No 1622/2000 (**)	Pro memoria
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(\*) Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine (OJ L 179, 14.7.1999, p.1). Regulation as last amended by Commission Regulation (EC) No 1795/2003 (OJ L 262, 14.10.2003, p. 1).

(\*\*) Commission Regulation (EC) No 1622/2000 of 24 July 2000 laying down certain detailed rules for implementing Regulation (EC) No 1493/1999 on the common organisation of the market in wine and establishing a Community code of oenological practices and processes (OJ L 194, 31.7.2000, p.1). Regulation as last amended by Regulation (EC) No 1410/2003 (OJ L 201, 8.8.2003, p. 9).'

C. part D shall be amended as follows:

(a) the following foodstuffs and maximum levels shall be added at the end of this part:

E 310	Propyl gallate	Essential oils	1 000 mg/kg (gallates and BHA, individually or in combination)
E 311	Octyl gallate		
E 312	Dodecyl gallate		
E 320	Butylated hydroxyanisole (BHA)	Flavourings other than essential oils	100 mg/kg (gallates, individually or in combination) or 200 mg/kg (BHA)'

(b) in the list of foodstuffs concerning E 315 and E 316, the designation 'Semi-preserved and preserved meat products' shall be replaced by the following: 'Cured meat products and preserved meat products';

4. in Annex IV:

(a) the following foodstuff and maximum level concerning E 338 to E 452 shall be added:

		'Flavourings	40 g/kg'
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(b) the following foodstuff and maximum level concerning E 338 to E 452 shall be deleted:

		'Cider and perry	2 g/l'
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(c) the following foodstuff and maximum level shall be added to E 416:

		'Flavourings	50 g/kg'
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(d) the following foodstuffs and maximum levels concerning E 432 to E 436 shall be added:

		'Flavourings, except liquid smoke flavourings and flavourings based on spice oleoresins (*)	10 g/kg
		Foodstuffs containing liquid smoke flavourings and flavourings based on spice oleoresins	1 g/kg

(\*) Spice oleoresins are defined as extracts of spices from which the extraction solvent has been evaporated leaving a mixture of the volatile oil and resinous material from the spice.'



(e) the following foodstuff and maximum level concerning E 444 shall be added:

		'Flavoured cloudy spirit drinks containing less than 15 % alcohol by volume	300 mg/l'
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(f) the following entry concerning E 551 shall be inserted after the list of foodstuffs and maximum levels for E 535 to E 538:

'E 551	Silicon dioxide	Flavourings	50 g/kg'
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(g) the following foodstuff and maximum level shall be added to E 900:

		'Flavourings	10 mg/kg'
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(h) in the list of foodstuffs and maximum levels for E 901 to E 904, the entry: 'E 903 Carnauba wax' shall be deleted and the following entry concerning E 903 shall be added after the entry 'E 904 shellac':

'E 903	Carnauba wax	As glazing agents only: — confectionery (including chocolate)  — small products of fine bakery wares coated with chocolate  — snacks — nuts — coffee beans — dietary food supplements — fresh citrus fruits, melons, apples, pears, peaches and pineapples (surface treatment only)	500 mg/kg 1 200 mg/kg (only for chewing gum) 200 mg/kg 200 mg/kg 200 mg/kg 200 mg/kg 200 mg/kg
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(i) the following foodstuffs and maximum levels shall be added to E 459:

		'Encapsulated flavourings in — flavoured teas and flavoured powdered instant drinks — flavoured snacks	500 mg/l  1 g/kg in foodstuffs as consumed or as reconstituted according to the instructions of the manufacturer'
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(j) the following rows shall be added at the end of the Annex:

'E 907	Hydrogenated poly-1-decene	As glazing agent for — sugar confectionery — dried fruits	2 g/kg 2 g/kg
E 1505 E 1517 E 1518 E 1520	Triethyl citrate Glyceryl diacetate (diacetin) Glyceryl triacetate (triacetin) Propan-1,2-diol (propylene glycol)	Flavourings	3 g/kg from all sources in foodstuffs as consumed or as reconstituted according to the instructions of the manufacturer; individually or in combination. In the case of beverages, the maximum level of E 1520 shall be 1 g/l.
E 1519	Benzyl alcohol	Flavourings for — liqueurs, aromatised wines, aromatised wine-based drinks and aromatised wine-products cocktails  — confectionery including chocolate and fine bakery wares	100 mg/l  250 mg/kg from all sources in foodstuffs as consumed or as reconstituted according to instruction of the manufacturer'

## 5. in Annex V:

(a) the following row shall be added at the end of the Annex:

'E 555	Potassium aluminium silicate	In E 171 titanium dioxide and E 172 iron oxides and hydroxides (max 90 % relative to the pigment)
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(b) for E 468, the name 'Cross-linked cellulose gum' shall be added;

## 6. in Annex VI:

(a) in the introductory note, the following subparagraph shall be inserted after the first subparagraph:

'Formulae and weaning foods for infants and young children may contain E 1450 starch sodium octenyl succinate resulting from the addition of vitamin preparations or polyunsaturated fatty acid preparations. The carry over of E 1450 in the product ready for consumption is not to be more than 100 mg/kg from vitamin preparations and 1 000 mg/kg from polyunsaturated fatty acid preparations.'

(b) in part 4

— the title shall be replaced by the following:

'FOOD ADDITIVES PERMITTED IN DIETARY FOODS FOR INFANTS AND YOUNG CHILDREN FOR SPECIAL MEDICAL PURPOSES AS DEFINED IN DIRECTIVE 1999/21/EC (\*)

(\*) Commission Directive 1999/21/EC of 25 March 1999 on dietary foods for special medical purposes, (OJ L 91, 7.4.1999, p. 29).'

— the following shall be added to the table:

'E 472c	Citric acid esters of mono- and diglycerides of fatty acids	7,5 g/l sold as powder 9 g/l sold as liquid	From birth onwards'
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**DIRECTIVE 2003/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 22 December 2003**  
**amending Directive 94/35/EC on sweeteners for use in foodstuffs**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

After consultation of the Scientific Committee on Food, pursuant to Article 6 of Council Directive 89/107/EEC of 21 December 1988 on the approximation of the laws of the Member States concerning food additives authorised for use in foodstuffs intended for human consumption <sup>(3)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(4)</sup>,

Whereas:

- (1) Directive 94/35/EC of the European Parliament and of the Council of 30 June 1994 on sweeteners for use in foodstuffs <sup>(5)</sup> lays down a list of sweeteners that may be used in the Community and their conditions of use.
- (2) Since 1996, two new sweeteners, sucralose and the salt of aspartame and acesulfame, have been found acceptable for use in food by the Scientific Committee on Food.
- (3) The opinion of the Scientific Committee on Food on cyclamic acid and its sodium and calcium salts (which led to the establishment of a new acceptable daily intake (ADI)) and recent studies on the intake of cyclamates lead to a reduction of the maximum usable doses of cyclamic acid and its sodium and calcium salts.
- (4) The designation of certain food categories in Directive 94/35/EC should be adapted to take into account Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements <sup>(6)</sup> and of specific directives adopted for some groups of foodstuffs listed in Annex I to Council Directive 89/398/EEC <sup>(7)</sup>.

(5) The use of the food additives concerned complies with the general criteria laid down in Annex II to Directive 89/107/EEC.

(6) Articles 53 and 54 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety <sup>(8)</sup> establish procedures for taking emergency measures in relation to food of Community origin or imported from a third country. They allow the Commission to adopt such measures in situations where food is likely to constitute a serious risk to human health, animal health or the environment and where such risk cannot be contained satisfactorily by measures taken by the Member State(s) concerned.

(7) The measures necessary for implementation of Directive 94/35/EC should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(9)</sup>.

(8) Directive 94/35/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 94/35/EC is hereby amended as follows:

1. Article 4 shall be replaced by the following:

*'Article 4*

It may be decided in accordance with the procedure laid down in Article 7:

- where there are differences of opinion as to whether sweeteners can be used in a given foodstuff under the terms of this Directive, whether that foodstuff is to be considered as belonging to one of the categories listed in the third column of the Annex, and

<sup>(1)</sup> OJ C 262 E of 29.10.2002, p. 429.

<sup>(2)</sup> OJ C 85, 8.4.2003, p. 34.

<sup>(3)</sup> OJ L 40, 11.2.1989, p. 27. Directive as amended by Directive 94/34/EC of the European Parliament and of the Council (OJ L 237, 10.9.1994, p. 1).

<sup>(4)</sup> Opinion of the European Parliament of 10 April 2003 (not yet published in the Official Journal), Council Common Position of 25 June 2003 (OJ C 277 E, 18.11.2003, p. 1) and position of the European Parliament of 22 October 2003 (not yet published in the Official Journal).

<sup>(5)</sup> OJ L 237, 10.9.1994, p. 3. Directive as amended by Directive 96/83/EC (OJ L 48, 19.2.1997, p. 16).

<sup>(6)</sup> OJ L 183, 12.7.2002, p. 51.

<sup>(7)</sup> OJ L 186, 30.6.1989, p. 27. Directive as last amended by Directive 1999/41/EC of the European Parliament and of the Council (OJ L 172, 8.7.1999, p. 38).

<sup>(8)</sup> OJ L 31, 1.2.2002, p. 1.

<sup>(9)</sup> OJ L 184, 17.7.1999, p. 23.

- whether a food additive listed in the Annex and authorised at “quantum satis” is used in accordance with the criteria referred to in Article 2.’;
2. a third indent shall be added to Article 5(2):  
 ‘— salt of aspartame and acesulfame: “contains a source of phenylalanine”.’;
3. Article 7 shall be replaced by the following:  
 ‘Article 7  
 1. The Commission shall be assisted by the Standing Committee on the Food Chain and Animal Health set up pursuant to Article 58 of Regulation (EC) No 178/2002 (\*), hereinafter referred to as “the Committee”.  
 2. Where reference is made to this Article, Articles 5 and 7 of Decision 1999/468/EC (\*\*) shall apply, having regard to the provisions of Article 8 thereof.  
 The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.  
 3. The Committee shall adopt its rules of procedure.  
 (\*) OJ L 31, 1.2.2002, p. 1.  
 (\*\*) Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23).’
4. the Annex shall be amended in accordance with the Annex to this Directive.

#### Article 2

By 29 January 2006 at the latest, the Commission shall submit a report to the European Parliament and the Council outlining the progress made in the re-evaluations of additives under way and setting out a provisional calendar for future re-evaluations, especially those for sucralose and salt of aspartame-acesulfame. These re-evaluations shall be carried out on the basis of consumer data supplied by the Member States and shall take account of the effects of additives on vulnerable population groups.

#### Article 3

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive in order to:

- authorise trade in and use of products conforming with this Directive by 29 January 2005 at the latest,
- prohibit trade in and use of products not conforming with this Directive by 29 July 2005 at the latest; however, products placed on the market before that date which do not comply with this Directive may be marketed until 29 January 2006.

They shall forthwith inform the Commission thereof.

When Member States adopt these measures, 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 4

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

#### Article 5

This Directive is addressed to the Member States.

Done at Brussels, 22 December 2003.

*For the European Parliament*

*The President*

P. COX

*For the Council*

*The President*

A. MATTEOLI

## ANNEX

The Annex to Directive 94/35/EC is hereby amended as follows:

1. in the third column of the tables the following categories of foodstuffs shall be renamed:
  - (a) instead of 'Complete formulae for weight control intended to replace total daily food intake or an individual meal' to read 'Foods intended for use in energy-restricted diets for weight reduction as referred to in Directive 96/8/EC (\*)';
  - (b) instead of 'Complete formulae and nutritional supplements for use under medical supervision' to read 'Dietary foods for special medical purposes as defined in Directive 1999/21/EC (\*\*);
  - (c) instead of 'Liquid food supplements/dietary integrators' to read 'Food supplements as defined in Directive 2002/46/EC (\*\*\*) supplied in a liquid form';
  - (d) instead of 'Solid food supplements/dietary integrators' to read 'Food supplements as defined in Directive 2002/46/EC supplied in a solid form';
  - (e) instead of 'Food supplements/dietary integrators based on vitamins and/or mineral elements, syrup-type or chewable' to read 'Food supplements as defined in Directive 2002/46/EC, based on vitamins and/or mineral elements and supplied in a syrup-type or chewable form';

2. the following footnotes shall be added after the tables:

(\*) Commission Directive 96/8/EC of 26 February 1996 on foods intended for use in energy-restricted diets for weight reduction (OJ L 55, 6.3.1996, p. 22).

(\*\*) Commission Directive 1999/21/EC of 25 March 1999 on dietary foods for special medical purposes (OJ L 91, 7.4.1999, p. 29).

(\*\*\*) Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (OJ L 183, 12.7.2002, p. 51).'

3. for E 951 'Aspartame' the following category shall be added under 'Confectionery':

'— Essoblatten	1 000 mg/kg'
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4. for E 952 cyclamic acid and its sodium and calcium salts:

- (a) for the following categories of foodstuffs, the maximum usable dose of '400 mg/l' shall be replaced by '250 mg/l':

- Water-based flavoured drinks, energy-reduced or with no added sugar;
- Milk- and milk derivative-based or fruit-juice-based drinks, energy-reduced or with no added sugar;

- (b) the following categories of foodstuffs and maximum usable doses shall be deleted:

'— Confectionery with no added sugar	500 mg/kg
— Cocoa- or dried-fruit-based confectionery, energy-reduced or with no added sugar	500 mg/kg
— Starch-based confectionery, energy-reduced or with no added sugar	500 mg/kg
— Chewing gum with no added sugar	1 500 mg/kg
— Breath-freshening micro-sweets, with no added sugar	2 500 mg/kg
— Edible ices, energy-reduced or with no added sugar	250 mg/kg'

5. the following tables shall be added:

'EC No	Name	Foodstuffs	Maximum usable dose
E 955	Sucralose	<b>Non-alcoholic drinks</b>	
		— Water-based flavoured drinks, energy-reduced or with no added sugar	300 mg/l
		— Milk- and milk-derivative-based or fruit-juice-based drinks, energy-reduced or with no added sugar	300 mg/l
		<b>Desserts and similar products</b>	
		— Water-based flavoured desserts, energy-reduced or with no added sugar	400 mg/kg
		— Milk- and milk-derivative-based preparations, energy-reduced or with no added sugar	400 mg/kg
		— Fruit- and vegetable-based desserts, energy-reduced or with no added sugar	400 mg/kg
		— Egg-based desserts, energy-reduced or with no added sugar	400 mg/kg
		— Cereal-based desserts, energy-reduced or with no added sugar	400 mg/kg
		— Fat-based desserts, energy-reduced or with no added sugar	400 mg/kg
		— "Snacks": certain flavours of ready to eat, pre-packed, dry, savoury starch products and coated nuts	200 mg/kg
		<b>Confectionery</b>	
		— Confectionery with no added sugar	1 000 mg/kg
		— Cocoa- or dried-fruit-based confectionery, energy-reduced or with no added sugar	800 mg/kg
		— Starch-based confectionery, energy-reduced or with no added sugar	1 000 mg/kg
		— Cornets and wafers, for ice cream, with no added sugar	800 mg/kg
		— <i>Essoblaten</i>	800 mg/kg
		— Cocoa-, milk-, dried-fruit- or fat-based sandwich spreads, energy-reduced or with no added sugar	400 mg/kg
		— Breakfast cereals with a fibre content of more than 15 %, and containing at least 20 % bran, energy-reduced or with no added sugar	400 mg/kg
		— Breath-freshening micro-sweets with no added sugar	2 400 mg/kg
		— Strongly flavoured freshening throat pastilles with no added sugar	1 000 mg/kg
		— Chewing gum with no added sugar	3 000 mg/kg
		— Energy-reduced tablet form confectionery	200 mg/kg
— Cider and Perry	50 mg/l		
— Drinks consisting of a mixture of a non-alcoholic drink and beer, cider, perry, spirits or wine	250 mg/l		
— Spirit drinks containing less than 15 % alcohol by volume	250 mg/l		
— Alcohol-free beer or with an alcohol content not exceeding 1,2 % vol	250 mg/l		

EC No	Name	Foodstuffs	Maximum usable dose
		<ul style="list-style-type: none"> <li>— 'Bière de table/Tafelbier/Table beer' (original wort content less than 6 %) except for 'Obergäriges Einfachbier'</li> <li>— Beers with a minimum acidity of 30 milli-equivalents expressed as NaOH</li> <li>— Brown beers of the 'oud bruin' type</li> <li>— Energy-reduced beer</li> <li>— Edible ices, energy-reduced or with no added sugar</li> <li>— Canned or bottled fruit, energy-reduced or with no added sugar</li> <li>— Energy-reduced jams, jellies and marmalades</li> <li>— Energy-reduced fruit and vegetable preparations</li> <li>— Sweet-sour preserves of fruit and vegetables</li> <li>— <i>Feinkostsalat</i></li> <li>— Sweet-sour preserves and semi-preserves of fish and marinades of fish, crustaceans and molluscs</li> <li>— Energy-reduced soups</li> <li>— Sauces</li> <li>— Mustard</li> <li>— Fine bakery products for special nutritional uses</li> <li>— Foods intended for use in energy-restricted diets for weight reduction as referred to in Directive 1996/8/EC</li> <li>— Dietary foods for special medical purposes as defined in Directive 1999/21/EC</li> <li>— Food supplements as defined in Directive 2002/46/EC supplied in a liquid form</li> <li>— Food supplements as defined in Directive 2002/46/EC supplied in a solid form</li> <li>— Food supplements as defined in Directive 2002/46/EC, based on vitamins and/or mineral elements and supplied in a syrup-type or chewable form</li> </ul>	<ul style="list-style-type: none"> <li>250 mg/l</li> <li>250 mg/l</li> <li>250 mg/l</li> <li>10 mg/l</li> <li>320 mg/kg</li> <li>400 mg/kg</li> <li>400 mg/kg</li> <li>400 mg/kg</li> <li>180 mg/kg</li> <li>140 mg/kg</li> <li>120 mg/kg</li> <li>45 mg/l</li> <li>450 mg/kg</li> <li>140 mg/kg</li> <li>700 mg/kg</li> <li>320 mg/kg</li> <li>400 mg/kg</li> <li>240 mg/l</li> <li>800 mg/kg</li> <li>2 400 mg/kg</li> </ul>
E 962	Salt of aspartame-acesulfame1 (*)	<p><b>Non-alcoholic drinks</b></p> <ul style="list-style-type: none"> <li>— Water-based flavoured drinks, energy-reduced or with no added sugar</li> <li>— Milk- and milk-derivative-based or fruit-juice-based drinks, energy-reduced or with no added sugar</li> </ul> <p><b>Desserts and similar products</b></p> <ul style="list-style-type: none"> <li>— Water-based flavoured desserts, energy-reduced or with no added sugar</li> <li>— Milk- and milk-derivative-based preparations, energy-reduced or with no added sugar</li> <li>— Fruit- and vegetable-based desserts, energy-reduced or with no added sugar</li> </ul>	<ul style="list-style-type: none"> <li>350 mg/l (a)</li> <li>350 mg/l (a)</li> <li>350 mg/kg (a)</li> <li>350 mg/kg (a)</li> <li>350 mg/kg (a)</li> </ul>

EC No	Name	Foodstuffs	Maximum usable dose
		— Egg-based desserts, energy-reduced or with no added sugar	350 mg/kg (a)
		— Cereal-based desserts, energy-reduced or with no added sugar	350 mg/kg (a)
		— Fat-based desserts, energy-reduced or with no added sugar	350 mg/kg (a)
		— 'Snacks': certain flavours of ready to eat, prepacked, dry, savoury starch products and coated nuts	500 mg/kg (b)
		<b>Confectionery</b>	
		— Confectionery with no added sugar	500 mg/kg (a)
		— Cocoa- or dried-fruit-based confectionery, energy-reduced or with no added sugar	500 mg/kg (a)
		— Starch-based confectionery, energy-reduced or with no added sugar	1 000 mg/kg (a)
		— <i>Essoblaten</i>	1 000 mg/kg (b)
		— Cocoa-, milk-, dried-fruit or fat-based sandwich spreads, energy-reduced or with no added sugar	1 000 mg/kg (b)
		— Breakfast cereals with a fibre content of more than 15 %, and containing at least 20 % bran, energy-reduced or with no added sugar	1 000 mg/kg (b)
		— Breath-freshening micro-sweets with no added sugar	2 500 mg/kg (a)
		— Chewing gum with no added sugar	2 000 mg/kg (a)
		— Cider and perry	350 mg/l (a)
		— Drinks consisting of a mixture of a non-alcoholic drink and beer, cider, perry, spirits or wine	350 mg/l (a)
		— Spirit drinks containing less than 15 % alcohol by volume	350 mg/l (a)
		— Alcohol-free beer or with an alcohol content not exceeding 1,2 % vol	350 mg/l (a)
		— 'Bière de table/Tafelbier/Table beer' (original wort content less than 6 %) except for 'Obergäriges Einfachbier'	350 mg/l (a)
		— Beers with a minimum acidity of 30 milli-equivalents expressed as NaOH	350 mg/l (a)
		— Brown beers of the ' <i>oud bruin</i> ' type	350 mg/l (a)
		— Energy-reduced beer	25 mg/l (b)
		— Edible ices, energy-reduced or with no added sugar	800 mg/kg (b)
		— Canned or bottled fruit, energy-reduced or with no added sugar	350 mg/kg (a)
		— Energy-reduced jams, jellies and marmalades	1 000 mg/kg (b)
		— Energy-reduced fruit and vegetable preparations	350 mg/kg (a)
		— Sweet-sour preserves of fruit and vegetables	200 mg/kg (a)
		— Feinkostsalat	350 mg/kg (b)



EC No	Name	Foodstuffs	Maximum usable dose
		— Sweet-sour preserves and semi-preserves of fish and marinades of fish, crustaceans and molluscs	200 mg/kg (a)
		— Energy-reduced soups	110 mg/l (b)
		— Sauces	350 mg/kg (b)
		— Mustard	350 mg/kg (b)
		— Fine bakery products for special nutritional uses	1 000 mg/kg (a)
		— Foods intended for use in energy-restricted diets for weight reduction as referred to in Directive 1996/8/EC	450 mg/kg (a)
		— Dietary foods for special medical purposes as defined in Directive 1999/21/EC	450 mg/kg (a)
		— Food supplements as defined in Directive 2002/46/EC supplied in a liquid form	350 mg/l (a)
		— Food supplements as defined in Directive 2002/46/EC supplied in a solid form	500 mg/kg (a)
		— Food supplements as defined in Directive 2002/46/EC, based on vitamins and/or mineral elements and supplied in a syrup-type or chewable form	2 000 mg/kg (a)

(\*) Maximum usable doses for the salt of aspartame-acesulfame are derived from the maximum usable doses for its constituent parts, aspartame (E951) and acesulfame-K (E950). The maximum usable doses for both aspartame (E951) and acesulfame-K (E950) are not to be exceeded by use of the salt of aspartame-acesulfame, either alone or in combination with E950 or E951. Limits in this column are expressed either as (a) acesulfame-K equivalents or (b) aspartame equivalents.

## II

(Acts whose publication is not obligatory)

## COMMISSION

## COMMISSION DECISION

of 23 January 2004

amending Decision 2002/907/EC temporarily recognising the surveillance network system for bovine holdings introduced in France pursuant to Council Directive 64/432/EEC

(notified under document number C(2004) 104)

(Text with EEA relevance)

(2004/88/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine <sup>(1)</sup>, and in particular Article 14(5) thereof,

Whereas:

(1) In accordance with Article 6(2)(a), (b) and (c) of Directive 64/432/EEC, bovine animals for breeding and production intended for trade must undergo individual testing for tuberculosis, brucellosis and enzootic leucosis respectively, unless they originate in or come from a Member State or region thereof recognised officially free of the respective disease or an approved system of surveillance networks is implemented in the territory of that Member State.

(2) France is recognised officially free of bovine tuberculosis and enzootic bovine leucosis in accordance with Commission Decision 2003/467/EC <sup>(2)</sup>, and 97,33 % of bovine herds were officially free from bovine brucellosis at 31 December 2002.

(3) Commission Decision 2002/907/EC of 15 November 2002 temporarily recognising the surveillance network system for bovine holdings introduced in France under Council Directive 64/432/EEC <sup>(3)</sup>, requires that the provisional approval of the surveillance network system granted in November 2002 and the approval of the database granted in May 2001 shall be reviewed by 31 December 2003 in the light of inspection findings.

(4) Following a request by the competent authorities of France, a veterinary inspection mission was carried out which audited the system of surveillance networks for bovine holdings implemented in that Member State.

(5) Although substantial improvements were found during the mission, the system was at the time of the mission not yet fully implemented in particular in relation to all dealers, markets and abattoirs. In addition, financing by the competent authorities of France of the measures necessary to associate dealers to the surveillance network system was only guaranteed until April 2004.

(6) It is therefore the purpose of this Decision to extend the temporary approval of the system of surveillance networks established in France and to review this approval in the light of the progress made by that Member State to ensure the fully operational character of the system.

(7) Decision 2002/907/EC should be amended accordingly.

<sup>(1)</sup> OJ L 21, 29.7.1964, p. 1977/64. Directive as last amended by Regulation (EC) No 21/2004 (OJ L 5, 9.1.2004, p. 8).

<sup>(2)</sup> OJ L 156, 25.6.2003, p. 74.

<sup>(3)</sup> OJ L 313, 16.11.2002, p. 32.

- (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,

*Article 2*

The provisional approval referred to in Article 1 of Decision 2002/907/EC shall be reviewed before 30 April 2004.

HAS ADOPTED THIS DECISION:

*Article 3*

This Decision is addressed to the Member States.

*Article 1*

Article 1 of Decision 2002/907/EC shall be replaced by the following:

*'Article 1*

The surveillance network system for bovine holdings provided for in Article 14 of Directive 64/432/EEC introduced in France is hereby considered to be provisionally operational from 5 November 2002 until 30 April 2004 at the latest.'

Done at Brussels, 23 January 2004.

*For the Commission*

David BYRNE

*Member of the Commission*

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