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Legislation

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Contents

[1] Text with EEA relevance

(Continued overleaf)

EN

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

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

II *Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory*

Note to the reader (see page 3 of the cover)

EN

[1] Text with EEA relevance

I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COMMISSION REGULATION (EC) No 145/2009

of 20 February 2009

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 Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [1],

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector [2], and in particular Article 138(1) thereof,

Whereas:

Regulation (EC) No 1580/2007 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 Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 21 February 2009.

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

Done at Brussels, 20 February 2009.

For the Commission
Jean-Luc DEMARTY
Director-General for Agriculture and Rural Development

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 350, 31.12.2007, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	IL	129,4
	JO	62,0
	MA	42,1
	TN	132,6
	TR	82,6
	ZZ	89,7
0707 00 05	JO	161,3
	MA	77,9
	MK	147,9
	TR	164,7
	ZZ	138,0
0709 90 70	JO	239,8
	MA	71,3
	TR	125,2
	ZZ	145,4
0709 90 80	EG	94,1
	ZZ	94,1
0805 10 20	EG	45,6
	IL	55,3
	MA	50,4
	TN	47,6
	TR	61,5
	ZZ	52,1
0805 20 10	IL	144,4
	MA	84,5
	TR	73,0
	ZZ	100,6
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	EG	75,3
	IL	94,8
	JM	95,1
	MA	69,5
	PK	50,6
	TR	60,8
	ZZ	74,4
0805 50 10	EG	81,5
	MA	44,0
	TR	61,0
	ZZ	62,2
0808 10 80	CA	89,7
	CL	67,7
	CN	83,1
	MK	25,7
	US	107,9
	ZZ	74,8
0808 20 50	AR	103,4
	CL	73,7
	CN	73,7
	US	112,7
	ZA	109,7
	ZZ	94,6

(1) Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 146/2009

of 20 February 2009

amending Annex II to Regulation (EC) No 2076/2005 as regards imports of fishery products from Cameroon

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin [1], and in particular Article 9 thereof,

Having regard to Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption [2], and in particular Article 16 thereof,

Whereas:

(1) Article 11(1) of Regulation (EC) No 854/2004 provides that products of animal origin are to be imported only from a third country or a part of a third country that appears on a list drawn up in accordance with that Regulation.

(2) Commission Regulation (EC) No 2076/2005 of 5 December 2005 laying down transitional arrangements for the implementation of Regulations (EC) No 853/2004, (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council [3] provides, by way of derogation from Article 11(1) of Regulation (EC) No 854/2004, that Member States, subject to certain conditions, may authorise imports of fishery products from the third countries listed in Annex II to that Regulation.

(3) Those third countries in which no Community inspection had been undertaken yet to check their sanitary conditions and ascertain whether the controls applied by their competent authorities are equivalent to the requirements under Community legislation were listed in Annex II to Regulation (EC) No 2076/2005. Cameroon is thus currently listed in Annex II to Regulation (EC) No 2076/2005.

(4) A Community inspection carried out in Cameroon in 2003 revealed serious shortcomings as regards hygiene in the handling of fishery products and in the capacity of the competent authorities of that third country to carry out reliable checks on fishery products. Accordingly, Cameroon cannot provide the necessary guarantees that fishery products have been obtained in conditions at least equivalent to those governing the production and placing on the market of fishery products in the Community. Following the inspection, Cameroon suspended its exports of fishery products to the EU.

(5) Since 2004, Cameroon's competent authority has not informed the Community of progress in the implementation of corrective action to remedy to the shortcomings observed in 2003. In 2008, Cameroon declined a Community on-the-spot inspection arguing that no Cameroonian fishery establishment or vessel envisages exporting fishery products to the EU in the short term.

(6) Imports into the Community of fishery products from Cameroon should therefore no longer be authorised.

(7) Regulation (EC) No 2076/2005 should therefore be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EC) No 2076/2005 is replaced by the text in the Annex to this Regulation.

[1] OJ L 139, 30.4.2004, p. 55, as corrected by OJ L 226, 25.6.2004, p. 22.
[2] OJ L 139, 30.4.2004, p. 206, as corrected by OJ L 226, 25.6.2004, p. 83.
[3] OJ L 338, 22.12.2005, p. 83.

Article 2

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, 20 February 2009.

For the Commission
Androulla VASSILIOU
Member of the Commission

ANNEX

'ANNEX II

List of third countries and territories from which imports of fishery products in whatever form for human consumption may be permitted

AO — ANGOLA

AZ — AZERBAIJAN (1)

BJ — BENIN

CG — REPUBLIC OF CONGO (2)

ER — ERITREA

IL — ISRAEL

MM — MYANMAR

SB — SOLOMON ISLANDS

SH — SAINT HELENA

TG — TOGO

(1) Authorised only for imports of caviar.
(2) Authorised only for imports of fishery products caught, frozen and packed in their final packaging at sea.'

COMMISSION REGULATION (EC) No 147/2009

of 20 February 2009

on defining the destination zones for exports refunds, export levies and certain export licences for cereals and rice

(Codified version)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [1], and in particular its Article 170, in conjunction with Article 4 thereof,

Whereas:

(1) Commission Regulation (EEC) No 2145/92 of 29 July 1992 redefining the destination zones for exports refunds, export levies and certain export licences for cereals and rice [2] has been substantially amended several times [3]. In the interests of clarity and rationality the said Regulation should be codified.

(2) The destination zones to be used for the purpose of setting export refunds and levies on cereals and rice should be determined.

(3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

The destination zones to be used for the purpose of setting differentiated export refunds and levies are delimited in Annex I to this Regulation for the products referred to in points (a), (b) and (c) of Part I and in points (a) and (b) of Part II of Annex I to Regulation (EC) No 1234/2007.

Article 2

Regulation (EEC) No 2145/92 is repealed.

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

Article 3

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

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

Done at Brussels, 20 February 2009.

For the Commission
The President
José Manuel BARROSO

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[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 214, 30.7.1992, p. 20.
[3] See Annex II.

ANNEX I

Zone I

(a) Morocco

Algeria

Tunisia

(b) Egypt

Israel

Lebanon

Syria

Turkey

Western Sahara

(c) Libya

Zone II

(a) Norway

Faeroe Islands

Iceland

(b) Russia (North)

Belarus

Zone III

(a) Bosnia and Herzegovina

Croatia

Territory of the former Yugoslavia excluding Slovenia, Croatia and Bosnia-Herzegovina

(b) Albania

(c) Russia (South)

Armenia

Georgia

Azerbaijan

Republic of Moldova

Ukraine

Kazakhstan

Kyrgyzstan

Uzbekistan

Tajikistan

Turkmenistan

Zone IV

(a) Mexico

Countries and territories of Central America (except ACP countries)

(b) Greater and Lesser Antilles and Bermuda (except ACP countries, Puerto Rico and OCTs)

(c) Countries and territories of South America (Atlantic Coast, other than OCTs)

(d) Countries and territories of South America (Pacific Coast)

Zone V

Republic of South Africa

Zone VI

Countries and territories of the Arabian Peninsula

Jordan

Iraq

Iran

Zone VII

(a) Afghanistan

Pakistan

India (including Sikkim)

Nepal

Sri Lanka

Bangladesh

Myanmar

Bhutan

Islands of the Indian Ocean (except ACP countries and OCTs)

(b) Thailand

Cambodia

Laos

Japan

Indonesia

Malaysia

Philippines

(c) Other countries and territories of Asia and Oceania (except OCTs)

Australia

New Zealand

Zone VIII

(a) (ACP countries)

Angola

Antigua and Barbuda

Bahamas

Barbados

Belize

Benin

Botswana

Burkina Faso

Burundi

Cameroon

Cape Verde

Central African Republic

Comoros (not including Mayotte)

Congo

Côte d'Ivoire

Djibouti

Dominica

Ethiopia

Fiji

Gabon

Gambia

Ghana

Grenada

Guinea

Guinea-Bissau

Equatorial Guinea

Guyana

Haiti

Jamaica

Kenya

Kiribati

Lesotho

Liberia

Madagascar

Malawi

Mali

Mauritius

Mauritania

Mozambique

Namibia

Niger

Nigeria

Uganda

Papua New Guinea

Dominican Republic

Rwanda

Saint Kitts and Nevis

Saint Vincent and the Grenadines

Saint Lucia

Salomon Islands

Samoa

São Tomé and Príncipe

Senegal

Seychelles

Sierra Leone

Somalia

Sudan

Suriname

Swaziland

Tanzania

Chad

Togo

Tonga

Trinidad and Tobago

Tuvalu

Vanuatu

Democratic Republic of the Congo

Zambia

Zimbabwe

(b) (OCTs)

French Polynesia

New Caledonia and dependencies

Wallis and Futuna

French Southern Territories

Saint Pierre and Miquelon

Mayotte

Netherlands Antilles

Aruba

Greenland

Anguilla

Cayman Islands

Falkland Islands

South Georgia and the South Sandwich Islands

Turks and Caicos Islands

British Virgin Islands

Montserrat

Pitcairn Islands

St Helena and dependencies

British Antarctic Territory

British Indian Ocean Territory

ANNEX II

Repealed Regulation with list of its successive amendments

Commission Regulation (EEC) No 2145/92 (OJ L 214, 30.7.1992, p. 20).	
Commission Regulation (EC) No 3304/94 (OJ L 341, 30.12.1994, p. 48).	Only Article 1(2)
Commission Regulation (EC) No 1950/2005 (OJ L 312, 29.11.2005, p. 18).	Only Article 3
Commission Regulation (EC) No 1996/2006 (OJ L 398, 30.12.2006, p. 1).	Only Article 2

ANNEX III

Correlation table

Regulation (EEC) No 2145/92	This Regulation
Article 1, first paragraph	Article 1
Article 1, second paragraph	—
—	Article 2
Article 2, first paragraph	Article 3
Article 2, second paragraph	—
Annex	Annex I
—	Annex II
—	Annex III

COMMISSION REGULATION (EC) No 148/2009

of 20 February 2009

repealing 11 obsolete Regulations in the field of the common fisheries policy

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Spain and Portugal, and in particular Article 175 thereof,

Having regard to Council Regulation (EEC) No 3117/85 of 4 November 1985 laying down general rules on the granting of compensatory indemnities in respect of sardines [1], and in particular Article 4 thereof,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy [2], and in particular Article 3(4) and Article 21(3) and (4) thereof,

Having regard to Council Regulation (EC) No 2406/96 of 26 November 1996 laying down common marketing standards for certain fishery products [3], and in particular article 2(3) thereof,

Having regard to Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products [4], and in particular Articles 25, 27(6) and 37 thereof,

Whereas:

(1) Improving the transparency of Community law is an essential element of the better lawmaking strategy that Community institutions are implementing. In that context it is appropriate to remove from active legislation those acts which no longer have real effect.

(2) The following Regulations relating to the common fisheries policy have become obsolete, even though formally they are still in force:

— Commission Regulation (EEC) No 3459/85 of 6 December 1985 laying down detailed rules for the granting of a compensatory allowance for Atlantic sardines [5]. That Regulation has exhausted its effects since in the basic legislation changes have been made, which are incompatible with the application of that act,

— Commission Regulation (EEC) No 254/86 of 4 February 1986 laying down detailed rules for the progressive abolition of the quantitative restrictions applicable in the Member States other than Spain and Portugal for preserved sardines and tuna originating in Spain [6]. That Regulation has exhausted its effects since it covered a transitional period which has lapsed,

— Commission Regulation (EEC) No 3599/90 of 13 December 1990 remedying the prejudice caused by the halting of fishing for common sole by vessels flying the flag of a Member State in 1989 [7]. That Regulation has exhausted its effects since it covered year 1989 only,

— Commission Regulation (EEC) No 3863/91 of 16 December 1991 determining a minimum marketing size for crabs applicable in certain coastal areas of the United Kingdom [8]. That Regulation has exhausted its effects since in the basic legislation changes have been made, which are incompatible with the application of that act,

— Commission Regulation (EC) No 897/94 of 22 April 1994 laying down detailed rules for the application of Council Regulation (EEC) No 2847/93 as regards pilot projects relating to continuous position monitoring of Community fishing vessels [9]. That Regulation has exhausted its effects since in the basic legislation changes have been made, which are incompatible with the application of that act,

— Commission Regulation (EC) No 1419/96 of 22 July 1996 fixing the amount of the private storage aid for the squid *Loligo patagonica* [10]. That Regulation has exhausted its effects since in the basic legislation changes have been made, which are incompatible with the application of that act,

— Commission Regulation (EC) No 2378/1999 of 9 November 1999 amending Regulation (EC) No 1282/1999 providing for the granting of compensation to producers' organisations in respect of tuna delivered to the processing industry from 1 October to 31 December 1998 [11]. That Regulation has exhausted its effects since it covered year 1998 only,

[1] OJ L 297, 9.11.1985, p. 1.
[2] OJ L 261, 20.10.1993, p. 1.
[3] OJ L 334, 23.12.1996, p. 1.
[4] OJ L 17, 21.1.2000, p. 22.
[5] OJ L 332, 10.12.1985, p. 16.
[6] OJ L 31, 6.2.1986, p. 13.
[7] OJ L 350, 14.12.1990, p. 50.
[8] OJ L 363, 31.12.1991, p. 1.
[9] OJ L 104, 23.4.1994, p. 18.
[10] OJ L 182, 23.7.1996, p. 11.
[11] OJ L 287, 10.11.1999, p. 12.

— Commission Regulation (EC) No 1103/2000 of 25 May 2000 providing for the granting of compensation to producers' organisations in respect of tuna delivered to the processing industry from 1 July to 30 September 1999 [1]. That Regulation has exhausted its effects since it covered year 1999 only,

— Commission Regulation (EC) No 1702/2000 of 31 July 2000 prohibiting fishing for cod by vessels flying the flag of Spain [2]. That Regulation has exhausted its effects since it applied to quota allocations for the year 2000,

— Commission Regulation (EC) No 585/2001 of 26 March 2001 providing for compensation to producer organisations for tuna delivered to the processing industry between 1 January and 31 March 2000 [3]. That Regulation has exhausted its effects since it covered year 2000 only,

— Commission Regulation (EC) No 2496/2001 of 19 December 2001 providing for compensation to producer organisations for tuna delivered to the processing industry between 1 January and 31 March 2001 [4]. That Regulation has exhausted its effects since it covered year 2001 only.

(3) For reasons of legal security and clarity, the Regulations referred to in recital 2 should be repealed.

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulations to be repealed

Regulations: (EEC) No 3459/85, (EEC) No 254/86, (EEC) No 3599/90, (EEC) No 3863/91, (EC) No 897/94, (EC) No 1419/96, (EC) No 2378/1999, (EC) No 1103/2000, (EC) No 1702/2000, (EC) No 585/2001 and (EC) No 2496/2001 are repealed.

Article 2

Entry into force

This Regulation shall enter into force on the seventh 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, 20 February 2009.

For the Commission
Joe BORG
Member of the Commission

[1] OJ L 125, 26.5.2000, p. 18.
[2] OJ L 195, 1.8.2000, p. 21.
[3] OJ L 86, 27.3.2001, p. 8.
[4] OJ L 337, 20.12.2001, p. 25.

COMMISSION REGULATION (EC) No 149/2009

of 20 February 2009

amending Regulation (EC) No 214/2001 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in skimmed milk powder

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [1], and in particular Article 43, in conjunction with Article 4 thereof,

Whereas:

(1) Article 10(1)(f) of Regulation (EC) No 1234/2007 provides for public intervention of skimmed milk powder.

(2) Commission Regulation (EC) No 214/2001 [2] has laid down the detailed rules concerning the public intervention of skimmed milk powder.

(3) In view of new arrangements and in the light of the experience gained, it is appropriate to amend and, where necessary, simplify the detailed rules governing intervention on the market in skimmed milk powder.

(4) Article 10(1)(f) of Regulation (EC) No 1234/2007 sets a new standard of 34 %, by weight of the fat free dry matter, for protein in skimmed milk powder, therefore the definition of the eligible product should be amended.

(5) Article 13(1)(d) in conjunction with Article 18(2)(e) of Regulation (EC) No 1234/2007 limit public intervention of skimmed milk powder at fixed price to a quantity offered of 109 000 tonnes for the period 1 March to 31 August.

(6) In order to comply with the limit of 109 000 tonnes it is appropriate to provide for a reflexion period during which, before a decision is taken on the offers, special measures can be taken applying in particular to pending offers. Those measures may consist of closure of intervention, application of an allocation percentage and rejection of pending offers. They require swift action and the Commission should be enabled to take all necessary measures without delay. In view of the public holidays in April 2009, derogation should be made as regards the dates for submitting the offers in order to ensure compliance with the limit of 109 000 tonnes to be purchased at fixed price.

(7) The level of the security shall ensure that the offers presented are not withdrawn, therefore a security of EUR 5 per 100 kg shall apply to all the tenders in the framework of this Regulation.

(8) Private storage of skimmed milk powder has been abolished by Council Regulation (EC) No 1152/2007 [3], the references to this scheme should be deleted.

(9) Small residual quantities, left in storehouses, should be avoided and quantities up to 5 000 kg should be offered to awarded tenderers.

(10) Regulation (EC) No 214/2001 should be amended accordingly.

(11) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of the Agricultural Markets,

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 37, 7.2.2001, p. 100.
[3] OJ L 258, 4.10.2007, p. 3.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 214/2001 is amended as follows:

1. Article 1 is replaced by the following:

'*Article 1*

This Regulation lays down the detailed rules for intervention on the market in skimmed milk powder as provided for in Article 10(1)(f) of Council Regulation (EC) No 1234/2007 (*), as regards:

(a) buying-in at fixed price as referred in Article 13(1)(d) in conjunction with Article 18(1)(c) of Regulation (EC) No 1234/2007;

(b) buying-in under a standing invitation to tender as referred in Article 13(3) of Regulation (EC) No 1234/2007;

(c) the sale of skimmed milk powder from public storage in a standing invitation to tender.

(*) OJ L 299, 16.11.2007, p. 1.'

2. Article 2 is amended as follows:

(a) paragraph 1 is amended as follows:

'1. The intervention agency shall buy in only skimmed milk powder which complies with Article 10(1)(f) of Regulation (EC) No 1234/2007 and paragraphs 2 to 7 of this Article and which is offered for intervention in the period from 1 March to 31 August.';

(b) paragraph 2 is replaced by the following:

'2. The competent authorities shall check the quality of skimmed milk powder using the analytical methods set out in Annex I to this Regulation on the basis of samples taken in accordance with the rules set out in Annex III to this Regulation. The checks must establish that, except authorised raw materials used for protein adjustment as referred to in Annex I(4)(b) to Council Directive 2001/114/EC (*) the skimmed milk powder does not contain other products, in particular buttermilk or whey, as defined in Annex I to this Regulation.

Protein adjustment, if applicable, shall occur in liquid phase.

However, if the Commission so agrees, Member States may set up a system of self-checking under their own supervision for certain quality requirements and certain approved undertakings.

(*) OJ L 15, 17.1.2002, p. 19.'

3. in Article 4(1), the second subparagraph is replaced by the following:

'The certificate shall contain the information referred to in points (a), (b) and (c) of Article 2(6) and a confirmation that the skimmed milk powder has been produced from skimmed milk in an approved undertaking in the Community and protein adjustment, if applicable, occurred in liquid phase, as laid down in Article 10(1)(f) of Regulation (EC) No 1234/2007.'

4. the title of Section 2 is amended as follows:

'Section 2

Procedure for buying-in at fixed price'

5. Article 5 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) The second subparagraph is deleted;

(ii) a new subparagraph is added:

'Offers submitted on a Saturday, Sunday or public holiday shall be deemed to be received by the intervention agency on the first working day following the day on which they were submitted.

Offers submitted in the period from 6 to 13 April 2009 shall be deemed to be received by the intervention agency on 14 April 2009.'

(b) in paragraph 3, point (c) is replaced by the following:

'(c) proof is furnished that the seller has lodged a security of EUR 5 per 100 kg in the Member State in which the offer is submitted, no later than the day on which the offer is received.';

(c) a new paragraph is added:

'5. Offers may not be withdrawn after they have been received by the intervention agency.'

6. Article 6 is replaced by the following:

'*Article 6*

Maintenance of the offer, delivery of the skimmed milk powder to the warehouse designated by the intervention agency within the time limit laid down in Article 7(2) of this Regulation and compliance with the requirements of Article 2 of this Regulation shall constitute primary requirements within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85 (*).

(*) OJ L 205, 3.8.1985, p. 5.'

7. Article 7 is amended by the following:

(a) paragraph 1 is replaced by the following:

'1. After checking the offer, and on the fifth working day following the day of receipt of the offer to sell, the intervention agency shall issue a delivery order provided that the Commission does not adopt special measures in accordance with Article 9a(3).

The delivery order shall be dated and numbered and shall show:

(a) the quantity of the skimmed milk powder to be delivered;

(b) the final date for delivery;

(c) the storage depot to which it must be delivered.

Delivery orders shall not be issued for quantities that had not been notified in accordance with Article 9a(1).';

(b) paragraphs 3 and 4 are replaced by the following:

'3. The security provided for in Article 5(3)(c) shall be released as soon as the seller has delivered the quantity indicated on the delivery order within the time limit laid down therein and conformity with the requirements of Article 2 has been established.

Where the skimmed milk powder does not conform to the requirements laid down in Article 2, the skimmed milk powder shall be rejected and the security shall be forfeited in respect of the quantities rejected.

4. The skimmed milk powder shall be deemed to be taken over by the intervention agency on the day when the full quantity of skimmed milk powder covered by the delivery order enters the storage depot designated by the intervention agency, but no earlier than the day after the delivery order is issued.'

8. in Article 8, paragraph 2 is deleted;

9. the following Article 9a is added in Section 2:

'*Article 9a*

1. Not later than 14.00 (Brussels time) each Monday, the Member States shall inform the Commission of the quantities of skimmed milk powder which, during the preceding week, have been the subject of an offer to sell in accordance with Article 5.

2. Once it is observed that the offers referred to in Article 5, in a certain year, approach 80 000 tonnes, the Commission shall inform the Member States as of which date they shall communicate the information referred to in paragraph 1 each working day before 14.00 (Brussels time) for the quantities of skimmed milk powder offered the preceding working day.

3. In order to comply with the limit referred to in Article 13(1)(d) of Regulation (EC) No 1234/2007 the Commission shall decide, without assistance of the Committee referred to in Article 195(1) of the same Regulation:

(a) to close intervention buying-in at fixed price;

(b) where acceptance of the full quantity offered on a certain day would lead to the maximum quantity being exceeded, to set a single percentage by which the total quantity of the offers received on that day from each seller are reduced;

(c) where appropriate, to reject offers for which no delivery order has been issued.

By way of derogation from Article 5(5) of this Regulation, a seller which is subject to a reduced acceptance of his offer as referred in point (b) of this paragraph may decide to withdraw his offer within five working days from the publication of the regulation fixing the reduction percentage.';

10. Article 11 is replaced by the following:

'*Article 11*

1. The intervention agency shall choose the nearest available warehouse to the place where the skimmed milk powder is stored.

However, the intervention agency may choose another warehouse situated within a maximum distance of 350 km provided that the choice of that warehouse does not result in additional storage costs.

The intervention agency may choose a warehouse situated beyond that distance if the resulting expenditure, including storage and transport costs, is lower. In that case the intervention agency shall notify the Commission of its choice forthwith.

2. Where the intervention agency buying-in the skimmed milk powder is in a Member State other than the one in whose territory the offered skimmed milk powder is stored, no account shall be taken, in calculating the maximum distance referred to in paragraph 1 of the distance between the store of the vendor and the border of the Member State of the purchasing intervention agency.

3. Beyond the maximum distance referred to in paragraph 1, the additional transport costs borne by the intervention agency shall be EUR 0,05 per tonne and per kilometre.';

11. Article 13 is replaced by the following:

'*Article 13*

Where the Commission decides that skimmed milk powder is to be bought in through an open standing invitation to tender pursuant to Article 13(3) of Regulation (EC) No 1234/2007 in conjunction with 18(2)(e) of the said Regulation and in accordance with the procedure referred to in Article 195(2) thereof, Articles 2, 3, 4, 10, 11 and 12 of this Regulation shall apply unless otherwise provided in this Section.'

12. Article 14(2) is replaced by the following:

'2. The time limit for the submission of tenders in response to the individual invitations to tender shall be 11.00 (Brussels time) on the third Tuesday of the month except for the fourth Tuesday of August. If Tuesday is a public holiday the time limit shall be 11.00 (Brussels time) on the previous working day.'

13. in Article 15, paragraph 3 is amended as follows:

(a) point (a) is replaced by the following:

'(a) they relate to skimmed milk powder manufactured during the 31 days or, where applicable, four weeks preceding the closing date for submission of tenders as referred to in Article 14(2).';

(b) point (d) is replaced by the following:

'(d) proof is furnished that the tenderer has lodged a security of EUR 5 per 100 kg for the invitation to tender concerned, in the Member State in which the tender was submitted, before the closing date for submission of tenders.'

14. Article 16 is replaced by the following:

'*Article 16*

Maintenance of the offer, delivery of the skimmed milk powder to the warehouse designated by the intervention agency within the time limit laid down in Article 19(3) of this Regulation and compliance with the requirements of Article 2 thereof shall constitute primary requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85.';

15. in Article 17, paragraph 2 is replaced by the following:

'2. In the light of the tenders received for each invitation to tender, the Commission shall fix a maximum buying-in price in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007.'

16. Article 19 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. The intervention agency shall immediately issue to successful tenderers a dated and numbered delivery order indicating:

(a) the quantity to be delivered;

(b) the final date for delivery of the skimmed milk powder;

(c) the storage depot to which it must be delivered.

Delivery orders shall not be issued for quantities that had not been notified in accordance with Article 17(1).';

(b) paragraph 4 is replaced by the following:

'4. The security provided for in Article 15(3)(d) shall be released as soon as the seller has delivered the quantity indicated on the delivery order within the time limit laid down therein and conformity with the requirements of Article 2 has been established.

Where the skimmed milk powder does not conform to the requirements laid down in Article 2, the skimmed milk powder shall be rejected and the security shall be forfeited in respect of the quantities rejected.'

17. Article 20 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The intervention agency shall pay the successful tenderer the price indicated in his tender as referred in Article 15(2)(c) between the 120th and the 140th day following the date on which the skimmed milk powder is taken over, provided that it is found to comply with Article 2(1), (2), (3), (5), (6) and (7) and Article 15(3)(a).';

(b) paragraph 2 is deleted.

18. in Article 22, paragraph 2 is replaced by the following:

'2. The time limit for the submission of tenders in response to the individual invitations to tender shall be 11.00 (Brussels time) on the third Tuesday of the month. However, in August it shall be 11.00 (Brussels time) on the fourth Tuesday and in December it shall be 11.00 (Brussels time) on the second Tuesday. If Tuesday is a public holiday the time limit shall be 11.00 (Brussels time) on the previous working day.'

19. Article 24c is amended as follows:

(a) paragraph 6 is replaced by the following:

'6. Where after the acceptance of all successful tenders the quantity left in the warehouse is less than 5 000 kg, this remaining quantity shall be offered by the intervention agency to the successful tenderers starting with the one who offered the highest price. The successful tenderer shall be offered the option to buy the remaining quantity for the same price as the one awarded to him.';

(b) the following paragraph is added:

'7. No later than the third working day of the week following publication of the decision referred to in Article 24a(2), Member States shall send the Commission the name and address of each tenderer corresponding to the coded number referred to in Article 24a(1).'

20. in Article 24e, the following paragraph is added:

'3. Except in cases of *force majeure*, if the successful tenderer has not complied with the requirement provided for in paragraph 2 of this Article the tendering security referred to in Article 23(3)(c) shall be forfeited and the sale of the quantities involved shall be cancelled.'

21. Chapter III is deleted;

22. Chapter IV is deleted;

23. Annex I is replaced by the text set out in the Annex to this Regulation.

Article 2

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

It shall apply from 1 March 2009.

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

Done at Brussels, 20 February 2009.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

ANNEX

'ANNEX I

COMPOSITIONAL REQUIREMENTS, QUALITY CHARACTERISTICS AND ANALYTICAL METHODS

Parameters	Content and quality characteristics	Reference method
Protein content	Minimum 34,0 % of the non-fat dry matter	(1)
Fat content	Maximum 1,00 %	(1)
Water content	Maximum 3,5 %	(1)
Titratable acidity in ml of decinormal sodium hydroxide solution	Maximum 19,5 ml	(1)
Lactate content	Maximum 150 mg/100 g	(1)
Additives	None	(1)
Phosphatase test	Negative, i.e., not more than 350 mU of phosphatasic activity per litre of reconstituted milk	(1)
Solubility index	Maximum 0,5 ml (24 °C)	(1)
Burnt-particles index	Maximum 15,0 mg, i.e. disc B minimum	(1)
Micro-organism content	Maximum 40 000 per gram	(1)
Detection of coliforms	Negative in 0,1 g	(1)
Detection of buttermilk (2)	Negative (3)	(1)
Detection of rennet whey (4)	None	(1)
Detection of acid whey (4)	None	Method approved by the competent authority
Taste and smell	Clean	(1)
Appearance	White or slightly yellowish colour, free from impurities and coloured particles	(1)
Antimicrobial substances	Negative (5)	(1)

(1) The reference methods to be applied shall be those laid down in Commission Regulation (EC) No 273/2008 (OJ L 88, 29.3.2008, p. 1).
(2) "Buttermilk" means the by-product of butter manufacture obtained after churning of the cream and separation of the solid fat.
(3) The absence of buttermilk can be established either by an on-the-spot inspection of the production plan carried out without prior notice at least once a week, or by a laboratory analysis of the end product indicating a maximum of 69,31 mg of FEDP per 100 g.
(4) "Whey" means the by-product of cheese or casein manufacture obtained by the action of acids, rennet and/or chemico-physical processes.
(5) Raw milk used for the manufacture of skimmed milk powder must meet the requirements specified in Section IX of Annex III to Regulation (EC) No 853/2004.'

COMMISSION REGULATION (EC) No 150/2009

of 20 February 2009

amending Regulation (EC) No 619/2008 opening a standing invitation to tender for export refunds concerning certain milk products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [1], and in particular Article 161(3), Article 164(2)(b) and Article 170 in conjunction with Article 4 thereof,

Whereas:

(1) Commission Regulation (EC) No 619/2008 [2] lays down rules for the tender procedure concerning export refunds for natural butter in blocks falling under the code ex 0405 10 19 9700, butter oil in containers falling under the code ex 0405 90 10 9000 and skimmed milk powder falling under code ex 0402 10 19 9000.

(2) A standing invitation to tender is opened in order to determine the export refund on those milk products. In accordance with Article 4(2) of Regulation (EC) No 619/2008 each tendering period shall take place once a month. In order to respond better to the deterioration of the dairy market, tender procedures for determining the export refunds should be organised twice a month.

(3) Regulation (EC) No 619/2008 should therefore be amended accordingly.

(4) Due to the urgent need to provide for an effective market support measure, this Regulation should enter into force on the day following its publication.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Article 4(2) of Regulation (EC) No 619/2008 is amended as follows:

1. In the first subparagraph, the introductory words are replaced by the following:

   'Each tendering period shall begin at 13.00 (Brussels time) on the Tuesday preceding the closing date as referred to in the third subparagraph, with the following exceptions:'

2. In the third subparagraph, the introductory words are replaced by the following:

   'Each tendering period shall end at 13.00 (Brussels time) on the first and third Tuesday of the month with the following exceptions:'

Article 2

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

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

Done at Brussels, 20 February 2009.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 168, 28.6.2008. p. 20.

COMMISSION REGULATION (EC) No 151/2009

of 20 February 2009

amending Regulation (EC) No 619/2008 opening a standing invitation to tender for export refunds concerning certain milk products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ([1]), and in particular Article 161(3), Article 164(2)(b) and Article 170, in conjunction with Article 4 thereof,

Whereas:

(1) Commission Regulation (EC) No 619/2008 ([2]) lays down rules for the tender procedure for export refunds concerning certain milk products. Article 2 excludes certain destinations from the granting of an export refund.

(2) Commission Regulation (EC) No 57/2009 of 22 January 2009 fixing the export refunds on milk and milk products ([3]) has excluded from the granting of a refund, as from 23 January 2009, the exports referred to in Article 36(1), Article 44(1) and Article 45(1) of Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products ([4]).

(3) Regulation (EC) No 619/2008 should therefore be amended accordingly.

(4) Due to the need to align as soon as possible the destinations not eligible for export refunds via the tendering procedure to those excluded for the common refunds, this Regulation should enter into force on the day following that of its publication.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 2 of Regulation (EC) No 619/2008 the following text is added as point (d):

'(d) those referred to in Article 36(1), Article 44(1) and Article 45(1) of Commission Regulation (EC) No 800/1999 (*).

(*) OJ L 102, 17.4.1999, p. 11.'

Article 2

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

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

Done at Brussels, 20 February 2009.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

([1]) OJ L 299, 16.11.2007, p. 1.
([2]) OJ L 168, 28.6.2008, p. 20.
([3]) OJ L 19, 23.1.2009, p. 5.
([4]) OJ L 102, 17.4.1999, p. 11.

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COUNCIL

COUNCIL DECISION

of 27 November 2008

on the signing of the Agreement between the European Community and the Republic of Armenia on certain aspects of air services

(2009/149/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) in conjunction with Article 300(2), first sentence of the first subparagraph thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Council authorised the Commission on 5 June 2003 to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with a Community agreement.

(2) The Commission has negotiated on behalf of the Community an Agreement with the Republic of Armenia on certain aspects of air services in accordance with the mechanisms and directives in the Annex to the Council Decision authorising the Commission to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with a Community agreement.

(3) Subject to its possible conclusion at a later date, the Agreement negotiated by the Commission should be signed,

HAS DECIDED AS FOLLOWS:

Article 1

The signing of the Agreement between the European Community and the Republic of Armenia on certain aspects of air services, hereinafter 'the Agreement', is hereby approved on behalf of the Community, subject to the Council Decision concerning the conclusion of the said Agreement.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Community subject to its conclusion.

Article 3

The President of the Council is hereby authorised to make the notification provided for in Article 9(1) of the Agreement.

Done at Brussels, 27 November 2008.

For the Council
The President
L. CHATEL

AGREEMENT

between the European Community and the Republic of Armenia on certain aspects of air services

THE EUROPEAN COMMUNITY,

of the one part, and

THE REPUBLIC OF ARMENIA,

of the other part,

(hereinafter referred to as the Parties)

NOTING that bilateral air service agreements have been concluded between several Member States of the European Community and the Republic of Armenia containing provisions contrary to Community law,

NOTING that the European Community has exclusive competence with respect to several aspects that may be included in bilateral air service agreements between Member States of the European Community and third countries,

NOTING that under European Community law Community air carriers established in a Member State have the right to non-discriminatory access to air routes between the Member States of the European Community and third countries,

HAVING REGARD to the agreements between the European Community and certain third countries providing for the possibility for the nationals of such third countries to acquire ownership in air carriers licensed in accordance with European Community law,

RECOGNISING that certain provisions of the bilateral air service agreements between Member States of the European Community and the Republic of Armenia, which are contrary to European Community law, must be brought into conformity with it in order to establish a sound legal basis for air services between the European Community and the Republic of Armenia and to preserve the continuity of such air services,

NOTING that under European Community law air carriers may not, in principle, conclude agreements which may affect trade between Member States of the European Community and which have as their object or effect the prevention, restriction or distortion of competition,

RECOGNISING that provisions in bilateral air service agreements concluded between Member States of the European Community and the Republic of Armenia which (i) require or favour the adoption of agreements between undertakings, decisions by associations of undertakings or concerted practices that prevent, distort or restrict competition between air carriers on the relevant routes; or (ii) reinforce the effects of any such agreement, decision or concerted practice; or (iii) delegate to air carriers or other private economic operators the responsibility for taking measures that prevent, distort or restrict competition between air carriers on the relevant routes may render ineffective the competition rules applicable to undertakings,

NOTING that it is not a purpose of this Agreement to increase the total volume of air traffic between the European Community and the Republic of Armenia, to affect the balance between Community air carriers and air carriers of the Republic of Armenia, or to make amendments to the provisions of existing bilateral air service agreements concerning traffic rights,

HAVE AGREED AS FOLLOWS:

Article 1

General provisions

1. For the purposes of this Agreement, 'Member States' shall mean Member States of the European Community.

2. References in each of the Agreements listed in Annex I to nationals of the Member State that is a party to that Agreement shall be understood as referring to nationals of the Member States of the European Community.

3. References in each of the Agreements listed in Annex I to air carriers or airlines of the Member State that is a party to that Agreement shall be understood as referring to air carriers or airlines designated by that Member State.

Article 2

Designation by a Member State

1. The provisions in paragraphs 2 and 3 of this Article shall supersede the corresponding provisions in the articles listed in Annex II(a) and (b) respectively, in relation to the designation of an air carrier by the Member State concerned, its authorisations and permissions granted by the Republic of Armenia, and the refusal, revocation, suspension or limitation of the authorisations or permissions of the air carrier, respectively.

2. On receipt of a designation by a Member State, the Republic of Armenia shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:

(i) the air carrier is established, under the Treaty establishing the European Community, in the territory of the designating Member State and has a valid Operating Licence in accordance with European Community law;

(ii) effective regulatory control of the air carrier is exercised and maintained by the Member State responsible for issuing its Air Operators Certificate and the relevant aeronautical authority is clearly identified in the designation; and

(iii) the air carrier is owned, directly or through majority ownership, and it is effectively controlled by Member States and/or nationals of Member States, and/or by other states listed in Annex III and/or nationals of such other states.

3. The Republic of Armenia may refuse, revoke, suspend or limit the authorisations or permissions of an air carrier designated by a Member State where:

(i) the air carrier is not established, under the Treaty establishing the European Community, in the territory of the designating Member State or does not have a valid Operating Licence in accordance with European Community law;

(ii) effective regulatory control of the air carrier is not exercised or not maintained by the Member State responsible for issuing its Air Operators Certificate, or the relevant aeronautical authority is not clearly identified in the designation; or

(iii) the air carrier is not owned, directly or through majority ownership, or it is not effectively controlled by Member States and/or nationals of Member States, and/or by other states listed in Annex III and/or nationals of such other states.

In exercising its right under this paragraph, the Republic of Armenia shall not discriminate between Community air carriers on the grounds of nationality.

Article 3

Safety

1. The provisions in paragraph 2 of this Article shall complement the corresponding provisions in the articles listed in Annex II(c).

2. Where a Member State has designated an air carrier whose regulatory control is exercised and maintained by another Member State, the rights of the Republic of Armenia under the safety provisions of the Agreement between the Member State that has designated the air carrier and the Republic of Armenia shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that other Member State and in respect of the operating authorisation of that air carrier.

Article 4

Taxation of aviation fuel

1. The provisions in paragraph 2 of this Article shall complement the corresponding provisions in the articles listed in Annex II(d).

2. Notwithstanding any other provision to the contrary, nothing in each of the Agreements listed in Annex II(d) shall prevent a Member State from imposing, on a non-discriminatory basis, taxes, levies, duties, fees or charges on fuel supplied in its territory for use in an aircraft of a designated air carrier of the Republic of Armenia that operates between a point in the territory of that Member State and another point in the territory of that Member State or in the territory of another Member State.

Article 5

Tariffs for carriage within the European Community

1. The provisions in paragraph 2 of this Article shall complement the corresponding provisions in the Articles listed in Annex II(e).

2. The tariffs to be charged by the air carrier(s) designated by the Republic of Armenia under an Agreement listed in Annex I containing a provision listed in Annex II(e) for carriage wholly within the European Community shall be subject to European Community law.

Article 6

Compatibility with competition rules

1. Notwithstanding any other provision to the contrary, nothing in each of the Agreements listed in Annex I shall:

(i) require or favour the adoption of agreements between air services undertakings, decisions by associations of undertakings or concerted practices that prevent or distort competition;

(ii) reinforce the effects of any such agreement, decision or concerted practice; or

(iii) delegate to private economic operators the responsibility for taking measures that prevent, distort or restrict competition.

2. The provisions contained in the Agreements listed in Annex I that are incompatible with paragraph 1 of this Article shall not be applied.

Article 7

Annexes to the Agreement

The Annexes to this Agreement shall form an integral part thereof.

Article 8

Revision or amendment

The Parties may, at any time, revise or amend this Agreement by mutual consent. Such amendments shall be made in the form of separate protocols, which, upon their entry into force according to the provisions prescribed in Article 9 of this Agreement, shall constitute an integral part of this Agreement.

Article 9

Entry into force

1. The Parties shall notify each other in writing that their respective internal procedures necessary for its entry into force have been completed. This Agreement shall enter into force on the date of receipt of the last notification.

2. Agreements and other arrangements between Member States and the Republic of Armenia which, at the date of signature of this Agreement, have not yet entered into force and are not being applied are included in Annex I. This Agreement shall apply to all such Agreements and arrangements upon their entry into force.

Article 10

Termination

1. In the event that an Agreement listed in Annex I is terminated, all provisions of this Agreement that relate to the Agreement listed in Annex I concerned shall terminate at the same time.

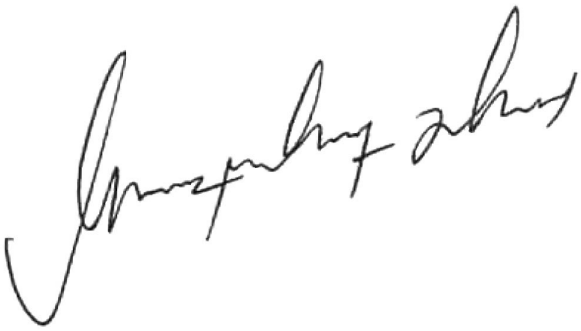
2. In the event that all Agreements listed in Annex I are terminated, this Agreement shall terminate at the same time.

IN WITNESS WHEREOF, the undersigned, being duly authorised, have signed this Agreement.

Done at Brussels in duplicate, on this ninth day of December in the year two thousand and eight in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish, Swedish and Armenian languages.

За Европейската Общност
Por la Comunidad Europea
Za Evropské společenství
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Euroopa Ühenduse nimel
Για την Ευρωπαϊκή Κοινότητα
For the European Community
Pour la Communauté européenne
Per la Comunità europea
Eiropas Kopienas vārdā
Europos bendrijos vardu
Az Európai Közösség részéről
Għall-Komunità Ewropea
Voor de Europese Gemeenschap
W imieniu Wspólnoty Europejskiej
Pela Comunidade Europeia
Pentru Comunitatea Europeană
Za Európske spoločenstvo
Za Evropsko skupnost
Euroopan yhteisön puolesta
För Europeiska gemenskapen
ԵՎՐՈՊԱԿԱՆ ՀԱՄԱՅՆՔԻ ԿՈՂՄԻՑ՝

За Република Армения
Por la República de Armenia
Za Arménskou republiku
For Republikken Armenien
Für die Republik Armenien
Armeenia Vabariigi nimel
Για τη Δημοκρατία της Αρμενίας
For the Republic of Armenia
Pour la République d'Arménie
Per la Repubblica d'Armenia
Armēnijas Republikas vārdā
Armenijos Respublikos vardu
Az Örmény Köztársaság részéről
Għar-Repubblika ta' l-Armenja
Voor de Republiek Armenië
W imieniu Republiki Armenii
Pela República da Arménia
Pentru Republica Armenia
Za Arménsku republiku
Za Republiko Armenijo
Armenian tasavallan puolesta
För Republiken Armenien
ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅԱՆ ԿՈՂՄԻՑ՝



ANNEX I

List of Agreements referred to in Article 1 of this Agreement

Air service Agreements between the Republic of Armenia and Member States of the European Community:

— Agreement between the Government of Austria and the Government of the Republic of Armenia relating to Air Services initialled at Vienna on 25 August 1993, hereinafter referred to as the 'Armenia-Austria Agreement' in Annex II,

— Agreement between the Government of Belgium and the Government of the Republic of Armenia relating to Air Services signed at Brussels on 7 June 2001, hereinafter referred to as the 'Armenia-Belgium Agreement' in Annex II,

— Agreement between the Government of the Republic of Bulgaria and the Government of the Republic of Armenia relating to Air Services signed at Sofia on 10 April 1995, hereinafter referred to as the 'Armenia-Bulgaria Agreement' in Annex II,

— Agreement between the Government of the Republic of Cyprus and the Government of the Republic of Armenia relating to Air Services signed at Yerevan on 11 September 1998, hereinafter referred to as the 'Armenia-Cyprus Agreement' in Annex II,

— Air Transport Agreement between the Government of the Czech Republic and the Government of the Republic of Armenia initialled at Prague on 8 February 2002, hereinafter referred to as the 'Armenia-Czech Republic Agreement' in Annex II,

— Agreement between the Government of the Kingdom of Denmark and the Government of the Republic of Armenia relating to Air Services signed at Stockholm on 25 October 2000, hereinafter referred to as the 'Armenia-Denmark Agreement' in Annex II,

— Agreement between the Government of the Republic of Estonia and the Government of the Republic of Armenia relating to Air Services signed at Tallinn on 17 March 2000, hereinafter referred to as the 'Armenia-Estonia Agreement' in Annex II,

— Agreement between the Government of the French Republic and the Government of the Republic of Armenia relating to Air Services initialled at Paris on 12 February 2002, hereinafter referred to as the 'Armenia-France Agreement' in Annex II,

— Air Transport Agreement between the Government of the Federal Republic of Germany and the Government of the Republic of Armenia signed at Bonn on 4 May 1998, hereinafter referred to as the 'Armenia-Germany Agreement' in Annex II,

— Agreement between the Government of the Hellenic Republic and the Government of the Republic of Armenia relating to Air Services signed at Athens on 16 December 1994, hereinafter referred to as the 'Armenia-Greece Agreement' in Annex II,

— Agreement between the Government of the Italian Republic and the Government of the Republic of Armenia relating to Air Services signed at Yerevan on 18 July 2002, hereinafter referred to as the 'Armenia-Italy Agreement' in Annex II,

— Agreement between the Government of the Grand Duchy of Luxembourg and the Government of the Republic of Armenia relating to Air Services initialled at Luxembourg on 21 November 2000, hereinafter referred to as the 'Armenia-Luxembourg Agreement' in Annex II,

— Agreement between the Government of the Kingdom of the Netherlands and the Government of the Republic of Armenia relating to Air Services signed at Yerevan on 26 November 1999, hereinafter referred to as the 'Armenia-Netherlands Agreement' in Annex II,

— Agreement between the Government of the Republic of Poland and the Government of the Republic of Armenia concerning civil air transport signed at Warsaw on 27 January 1998, hereinafter referred to as the 'Armenia-Poland Agreement' in Annex II,

— Agreement between the Government of Romania and the Government of the Republic of Armenia concerning Air Services signed at Yerevan on 25 March 1996, hereinafter referred to as the 'Armenia-Romania Agreement' in Annex II,

— Agreement between the Government of the Kingdom of Sweden and the Government of the Republic of Armenia relating to Air Services signed at Stockholm on 25 October 2000, hereinafter referred to as the 'Armenia-Sweden Agreement' in Annex II,

— Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Armenia relating to Air Services signed at London on 9 February 1994, hereinafter referred to as the 'Armenia-United Kingdom Agreement' in Annex II,

last modified by Memorandum of Understanding done at Yerevan on 19 June 1998.

ANNEX II

List of Articles in the Agreements listed in Annex I and referred to in Articles 2 to 5 of this Agreement

(a) Designation by a Member State

— Article 3 of the Armenia-Austria Agreement,

— Article 4 of the Armenia-Belgium Agreement,

— Article 3 of the Armenia-Bulgaria Agreement,

— Article 4 of the Armenia-Cyprus Agreement,

— Article 3 of the Armenia-Czech Republic Agreement,

— Article 3 of the Armenia-Denmark Agreement,

— Article 3 of the Armenia-Estonia Agreement,

— Article 3 of the Armenia-France Agreement,

— Article 3 of the Armenia-Germany Agreement,

— Article 3 of the Armenia-Greece Agreement,

— Article 4 of the Armenia-Italy Agreement,

— Article 3 of the Armenia-Luxembourg Agreement,

— Article 4 of the Armenia-Netherlands Agreement,

— Article 3 of the Armenia-Poland Agreement,

— Article 3 of the Armenia-Romania Agreement,

— Article 3 of the Armenia-Sweden Agreement,

— Article 4 of the Armenia-United Kingdom Agreement,

(b) Refusal, revocation, suspension or limitation of authorisations or permissions

— Article 4 of the Armenia-Austria Agreement,

— Article 5 of the Armenia-Belgium Agreement,

— Article 4 of the Armenia-Bulgaria Agreement,

— Article 5 of the Armenia-Cyprus Agreement,

— Article 4 of the Armenia-Czech Republic Agreement,

— Article 4 of the Armenia-Denmark Agreement,

— Article 4 of the Armenia-Estonia Agreement,

— Article 4 of the Armenia-France Agreement,

— Article 4 of the Armenia-Germany Agreement,

— Article 4 of the Armenia-Greece Agreement,

— Article 5 of the Armenia-Italy Agreement,

— Article 4 of the Armenia-Luxembourg Agreement,

— Article 5 of the Armenia-Netherlands Agreement,

— Article 4 of the Armenia-Poland Agreement,

— Article 4 of the Armenia-Romania Agreement,

— Article 4 of the Armenia-Sweden Agreement,

— Article 5 of the Armenia-United Kingdom Agreement,

(c) Safety

— Article 8 of the Armenia-Czech Republic Agreement,

— Article 14 of the Armenia-Denmark Agreement,

— Article 12 of the Armenia-Estonia Agreement,

— Article 8 of the Armenia-France Agreement,

— Article 12 of the Armenia-Germany Agreement,

— Article 10 of the Armenia-Italy Agreement,

— Article 6 of the Armenia-Luxembourg Agreement,

— Article 14 of the Armenia-Sweden Agreement,

— Article 9a of the Armenia-United Kingdom Agreement,

(d) Taxation of aviation fuel

— Article 7 of the Armenia-Austria Agreement,

— Article 10 of the Armenia-Belgium Agreement,

— Article 7 of the Armenia-Bulgaria Agreement,

— Article 7 of the Armenia-Cyprus Agreement,

— Article 9 of the Armenia-Czech Republic Agreement,

— Article 6 of the Armenia-Denmark Agreement,

— Article 6 of the Armenia-Estonia Agreement,

— Article 10 of the Armenia-France Agreement,

— Article 6 of the Armenia-Germany Agreement,

— Article 9 of the Armenia-Greece Agreement,

— Article 6 of the Armenia-Italy Agreement,

— Article 8 of the Armenia-Luxembourg Agreement,

— Article 10 of the Armenia-Netherlands Agreement,

— Article 6 of the Armenia-Poland Agreement,

— Article 9 of the Armenia-Romania Agreement,

— Article 6 of the Armenia-Sweden Agreement,

— Article 8 of the Armenia-United Kingdom Agreement,

(e) Tariffs for carriage within the European Community

— Article 11 of the Armenia-Austria Agreement,

— Article 13 of the Armenia-Belgium Agreement,

— Article 9 of the Armenia-Bulgaria Agreement,

— Article 14 of the Armenia-Cyprus Agreement,

— Article 13 of the Armenia-Czech Republic Agreement,

— Article 10 of the Armenia-Denmark Agreement,

— Article 10 of the Armenia-Estonia Agreement,

— Article 14 of the Armenia-France Agreement,

— Article 10 of the Armenia-Germany Agreement,

— Article 12 of the Armenia-Greece Agreement,

— Article 8 of the Armenia-Italy Agreement,

— Article 10 of the Armenia-Luxembourg Agreement,

— Article 6 of the Armenia-Netherlands Agreement,

— Article 10 of the Armenia-Poland Agreement,

— Article 8 of the Armenia-Romania Agreement,

— Article 10 of the Armenia-Sweden Agreement,

— Article 7 of the Armenia-United Kingdom Agreement.

ANNEX III

List of other States referred to in Article 2 of this Agreement

(a) The Republic of Iceland (under the Agreement on the European Economic Area);

(b) The Principality of Liechtenstein (under the Agreement on the European Economic Area);

(c) The Kingdom of Norway (under the Agreement on the European Economic Area);

(d) The Swiss Confederation (under the Agreement between the European Community and the Swiss Confederation on Air Transport).

COMMISSION

COMMISSION DECISION

of 25 January 2006

on State aid C 54/03 (ex N 194/02) which the Federal Republic of Germany is planning to implement concerning a reimbursement mechanism linked to the introduction of a toll system for heavy goods vehicles on German motorways

(notified under document number C(2006) 89)

(Only the German text is authentic)

(Text with EEA relevance)

(2009/150/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 [1] laying down detailed rules for the application of Article 88 of the Treaty,

Having called on interested parties to submit their comments pursuant to the provision(s) cited above [2] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter dated 6 March 2002, received at the Commission (DG TREN) on 12 March 2002 (A(02)54606), and by letter dated 7 March 2002, registered on 7 March 2002 (A(02)54445), the Federal Ministry of Transport, Building and Housing of the Federal Republic of Germany informed the Commission that the Federal Government intended to introduce a toll reimbursement system accompanied by the introduction of a mileage-based motorway user charge for heavy goods vehicles. By letter dated 21 March 2002 (D(02)1080), the Secretariat-General of the Commission acknowledged receipt of Germany's letter and registered the notification of the draft law under N 194/02.

(2) By letter dated 23 July 2003, registered under C 54/03, the Commission informed the Federal Republic of Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

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

(4) The German authorities replied to the questions raised by the Commission by transmitting two communications both dated 22 August 2003, registered on 1 September 2003 (A(03)/28354).

(5) The Commission further received 12 comments from interested parties. It forwarded them to the Federal Republic of Germany, which was given the opportunity to react; its comments were received by letter dated 7 November 2003, registered on 13 November 2003 (A(03)34681).

[1] OJ L 83, 27.3.1999, p. 1.
[2] OJ C 202, 27.8.2003, p. 5.
[3] OJ C 202, 27.8.2003, p. 5.

(6) The Commission received additional information by the German authorities transmitted on 23 October 2003, registered on 27 October 2003 (A(03)33102), on 23 December 2003, registered on 26 December 2003 (A(03)38579), on 1 July 2004, registered on 6 July 2004 (A(04)24123), 2 December 2004, registered the same date, 25 January 2005, registered on 28 January 2005, 14 July 2005, registered on 28 July 2005 (A(05)19151) and 11 November 2005, registered on 14 November 2005 (A(05)32154).

2. DETAILED DESCRIPTION OF THE AID

2.1. The toll reimbursement system

(7) As from 1 January 2005 the German authorities have introduced a mileage-based motorway toll for heavy goods vehicles and fixed the average toll rate at 12,4 cents/km. They have communicated to the Commission their intention to increase in the near future the rate to 15 cents/km while, at the same time, introducing a toll reimbursement system (hereinafter referred to as TRS) to (partially) compensate road hauliers for the increase of the total charges. The amount of this TRS consists of an annual one-off toll reimbursement of a maximum of 2,6 cents/km. However, the toll reimbursement depends on the payment of a certain amount of excise duties on fuel purchased in Germany, to be proved by presenting appropriate documents. Against proof of payment of 8,6 cents of excise duties on fuel paid within Germany, 2,6 cents/km will be reimbursed.

2.2. The objective of the aid measure

(8) The objective of the measure is to fix the toll rate per kilometre by taking into account appropriately other traffic-specific payments made by road hauliers liable for the toll within the territory of the German law. The measure takes into account that most of the users already contribute to covering infrastructure costs by paying taxes (annual vehicle tax, fuel tax), and aims at reimbursing a part of these contributions to those users who, in addition to the existing charges, pay toll now as well. As from 1 January 2005, the toll has been fixed at a rate of 12,4 cents/km. The presently intended increase by 2,6 cents/km to reach the average amount of 15 cents/km will, in the view of German authorities, fully cover the costs for the construction, development and operation of the relevant infrastructure in the sense of Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures (Eurovignette Directive) ([4]), in particular Article 7(9) and (10) ([5]). Because of the increase of the total infrastructure charge for road hauliers, the German authorities propose at the same time to introduce a reimbursement system as a partial compensation.

2.3. Amount of aid

(9) The 2,6 cents/km toll reimbursement is the result of the following calculation which is based on a decision of the German authorities to compensate EUR 600 million: Considering vehicle mileage totalling 22,7 billion km per year (vehicles of not less than 12 tonnes), a toll of 1 cent/km produces a toll revenue of EUR 227 million per year. Assuming a consumption of 30 litres/100 km and EUR 0,01 excise duties per litre on fuel, 1 cent of excise duties produces excise duty revenue of approximately EUR 68 million per year ([6]). A 1 cent/km toll is therefore equivalent to about 3,3 cents of excise duties ([7]) per litre to produce the same revenue. The decision to reimburse EUR 600 million therefore results in the reimbursement of about 2,6 cents of the toll charge per km ([8]). In order to be eligible for this reimbursement, proof of payment of excise duties amounting to 8,6 cents ([9]) per litre would have to be provided.

(10) Since the overall amount of reduction envisaged by the toll reimbursement system is considered to be EUR 600 million per year, this compensation corresponds to a reduction of approximately 17,6 % of the toll revenue of about EUR 3,4 billion per year.

2.4. Duration

(11) The proposed TRS is not time-limited. However, the German authorities have indicated that, if this would become a condition imposed by the Commission, they can modify the Statutory Order and introducing a system of time-limitation.

2.5. Beneficiaries

(12) Beneficiaries of the TRS will be all road hauliers or owners of lorries using German motorways, regardless of their nationality or residence, with vehicles of not less than 12 tonnes. However, the toll reimbursement depends on the payment of excise duties on fuel purchased in Germany.

([4]) OJ L 187, 20.7.1999, p. 42.

([5]) This has been confirmed by a study carried out by the Österreichisches Institut für Raumplanung, Wien, in which the conclusion has been drawn that the costs of the infrastructure have been determined properly in accordance with Directive 1999/62/EC.

([6]) 227 million per 100 km; 227 × 30 : 100 = 68 million.

([7]) 227 : 68 = 3,3.

([8]) 600 : 227 = 2,6.

([9]) 2,6 × 3,3 = 8,6 (cents).

2.6. **Legal basis**

(13) The TRS is based on Article 1 of the Law on the imposition of mileage-based charges for the use of motorways by heavy goods vehicles adopted by the Government on 22 March 2002 (hereinafter referred to as the Law). The Law was signed on 5 April 2002, published in the Federal Law Gazette (*Bundesgesetzblatt*) on 11 April 2002 ([10]).

(14) Section 3, paragraph 2 of Article 1 of the Law empowers the government to fix the toll rate per kilometre by Statutory Order with the consent of the Bundesrat taking into account the number of axles and the emission class of the vehicles. Section 3, paragraph 3 empowers the German Government to fix the toll rate per kilometre by taking into account appropriately other traffic-specific payments made by parties liable for the toll within the territory of the Law by Statutory Order.

(15) As regards the TRS, the Federal Government of Germany has proposed a new section to be introduced in the existing 'Statutory Order on the fixing of the toll rate for heavy goods vehicles' dated 24 June 2003 ([11]). The proposal is based on Article 1, section 3, paragraph 3 of the Law. The German government has confirmed that the Statutory Order shall only be modified if the Commission takes a positive decision on the TRS.

2.7. **Technical aspects of the proof of payment of excise duties**

(16) The key element for the application of the TRS is the proof of payment of excise duties in Germany. The proof of payment will consist of presenting appropriate filling station receipts or fuel credit card company vouchers from Germany, in each case stating the registration number of the refuelled vehicle liable for the toll. The proof of payment of excise duties on fuel within Germany shall also be in accordance with the current version of the Mineral Oil Tax Law of 21 December 1992 ([12]).

(17) The toll shall be reduced only against the proof that toll payment and excise duties have been paid during the same calendar year. The total toll reimbursement amount accumulated in any one calendar year (toll credit) is generally offset against the toll debt incurred for the vehicle liable for toll in the following year. The party liable for toll must present — by 31 March of the following year at the latest — the request for a toll reimbursement for a particular vehicle to the Federal Office for Goods Transport which is the body entrusted with the application of the Law and responsible for monitoring and dealing with infringements.

(18) If, however, the toll credit cannot be offset against a toll debt in the following year, it will be paid out on request. The request must be presented by 31 March of the following year at the latest to the Federal Office for Goods Transport.

2.8. **Grounds for initiating the procedure**

(19) On 23 July 2003 the Commission opened the formal investigation procedure on the following grounds:

(a) The Commission expressed its doubts as regards the necessity of the intended replacement of the initially fixed toll rate by a system of higher rates combined with reimbursement. Therefore, Germany was asked to provide all the arguments, counterbalancing the higher administrative burden compared to the initial system applied as of the date of its introduction.

(b) The Commission also expressed its doubts whether the measure would not lead to a *de facto* discrimination against foreign road hauliers. German authorities were therefore asked to provide all the necessary information why the measure should be considered non-discriminatory.

(c) In addition, the Commission expressed the need to clarify the environmental impact of the reimbursement system since a negative environmental effect could be against the common interest. The Commission therefore invited Germany to provide further information on this issue.

(d) The Commission also could not yet conclude that the toll system as such fulfils all the conditions of Directive 1999/62/EC and that it complies with Article 28 of the EC Treaty.

([10]) BGBl. G 5702, 2002, Part I No 23, published at Bonn on 11 April 2002, p. 1234, modified by the Law dated 28 June 2003, BGBl. I, p. 1050.
([11]) Statutory Order on the fixing of the toll rate for heavy goods vehicles, 24 June 2003, BGBl. I, p. 1001.
([12]) BGBl. I, pp. 2150, 2185; 1993, p. 169.

(e) Furthermore, the Commission criticised at that time the lack of information as regards the relevant legal basis for the implementation of an eventual toll reimbursement system and therefore asked the German authorities to provide the Commission with e.g. a new draft Statutory Order on the basis of Article 1 section 3 paragraph 3 of the Law.

(f) Finally, the Commission needed further clarification whether the toll reduction system falls under the formal procedure such as laid down in Article 8.4 of Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils ([13]). Hence, German authorities were asked to explain why the aid scheme was not notified following the procedure under the Directive 92/81/EEC.

3. COMMENTS FROM INTERESTED PARTIES

(20) In the framework of the formal opening of the procedure, the Commission received 12 contributions from third parties, 10 of them from national or European associations ([14]) and 2 of them from Member States ([15]). Ten contributions argue against the measure and two contributions develop arguments defending the aid scheme ([16]).

([13]) OJ L 316, 31.10.1992, p. 12. Since 1 January 2004, Directive 92/81/EEC has been replaced by Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ L 283, 31.10.2003, p. 51).

([14]) Belgium: FEBETRA (Fédération Royale Belge des Transporteurs) sent on 11 September 2003 and registered on 15 September 2003 (A/29597); SAV (De Beroepsorganisatie van de Vlaamse Goederentransport Ondernemers en Logistieke Dienstverleners), sent on 15 September 2003 and registered on 19 September 2003 (A/30036); Danmark: DTL (Dansk Transport og Logistik), sent on 26 September 2003 and registered on 30 September 2003 (A/30852); Germany: BGL (Bundesverband Güterverkehr Logistik und Entsorgung), sent on 22 September 2003 and registered on 23 September 2003 (A/30304); Netherlands: TLN (Transport en Logistiek Nederland), sent on 25 September 2003 and registered on 26 September 2003 (A/30535); Spain: ASTIC (Asociación del Transporte Internacional por Carretera), sent on 26 September 2003 and registered on 13 October 2003 (A/31891); ATRADICE (Asociación de Empresas de Transporte de la Región Centro), sent on 25 September 2003 and registered on 26 September 2003 (A/30540); CETM (Confederación Española de Transporte de Mercancías) sent on 26 September and registered on 9 October (A/31648); FENADISMER (Federación Nacional de Asociaciones de Transporte de España) sent on 25 September 2003 and registered on 2003 (A/30502); FROET (Federación Regional de Organizaciones Empresariales de Transporte de Murcia), sent on 22 September 2003 and registered on 23 September 2003 (A/30273).

([15]) United Kingdom: Permanent Representation, sent on 2 October 2003 and registered on 8 October 2003 (A/31558); Spain: Dirección general de Transportes del Ministerio de Fomento, sent on 24 September 2003 and registered on 26 September 2003 (A/30588).

([16]) Contributions defending the reimbursement system: BGL and United Kingdom.

3.1. **Arguments against the reimbursement measure**

3.1.1. *De facto discrimination of foreign road hauliers*

3.1.1.1. Discrimination of foreign road hauliers due to the differences in the level of excise duties in Member States ([17])

(21) A large number of interested parties argue that the reimbursement system will in practice not be given on a fair basis independently of the nationality of road hauliers due to the differences in the level of excise duties in Member States. In particular, the reimbursement system seems to be *de facto* discriminatory, as non-German road hauliers will not fill their tank in Germany due to the high excise duties on fuel in Germany and will therefore not benefit of the TRS.

3.1.1.2. Discrimination of foreign road hauliers since the measure, seen as a reduction of the tax for the use of infrastructure (toll), favours German companies ([18])

(22) It was also argued that the measure, seen as a reduction of the tax for the use of infrastructure, favours German road hauliers since, again, road hauliers from abroad will not fill their tank in Germany due to the high excise duties on fuel. As a consequence, foreign road hauliers will pay a higher infrastructure charge (i.e. the full amount) than German road hauliers benefiting from such a reimbursement system and paying *de facto* a 'reduced' infrastructure charge.

3.1.1.3. Discrimination of foreign road hauliers due to the fact that the measure leads to a partial compensation of the price difference of fuel between Germany and other countries ([19])

(23) Some interested parties specify that, as a consequence of the aid measure, German road hauliers will be able to reduce the price level for the transport of goods. This will create a disadvantage to companies transporting goods on long distance. Hence, the aid measure will indirectly discriminate against non-German road hauliers.

([17]) ASTIC, ATRADICE, CEMT, Dirección general de Transportes del Ministerio de Fomento, DTL, FEBETRA, FROET, SAV, TLN.

([18]) See e.g. ASTIC.

([19]) See e.g. DTL, FROET.

3.1.1.4. Discrimination of foreign road hauliers due to the fact that they have to contribute excessively to the harmonisation of mineral oil tax ([20])

(24) In addition, third parties argue that the increase of the toll from 12,4 cents/km up to 15 cents/km which becomes necessary to finance the compensation measure will be financed by all road hauliers, including by those who will not benefit from the toll reimbursement. Hence, non-German road hauliers will have to accept higher toll rates in order to finance the harmonisation of mineral oil tax intended by German authorities. Since interested parties consider that this is not justified, they conclude that the measure is discriminatory.

3.1.1.5. Discrimination of foreign filling stations, in particular in neighbouring regions of the German territory ([21])

(25) Interested parties argue that the TRS does not give an incentive to improve the transport infrastructure, but gives an incentive to fill the tank in Germany. As a consequence, the reimbursement system will favour German filling stations to the detriment of non-German filling stations. Hence, the reimbursement measure has also a discriminatory effect as regards foreign filling stations.

3.1.1.6. Discrimination of other Member States, due the fact that they will loose tax income ([22])

(26) As a consequence, another argument presented by interested parties is that other Member States, e.g. in neighbouring regions, will loose tax income due to a reduced purchase of fuel on their territories.

3.1.1.7. Discrimination of vehicles of less than 12 tonnes since the reimbursement has *de facto* the effect of a mineral oil tax reduction ([23])

(27) Seen as an indirect reduction of excise duties, some interested parties argue that the measure is considered to be discriminatory against those consumers of fuel using German motorways with vehicles of less than 12 tonnes.

([20]) See e.g. TLN.
([21]) See e.g. ATRADICE, ASTIC, CEMT, FROET.
([22]) See e.g. ATRADICE.
([23]) See e.g. ASTIC, ATRADICE, CEMT.

3.1.1.8. A difference in the tax burden cannot, by itself, justify the granting of State aid ([24])

(28) An additional argument presented by third parties is linked to a Court decision on an Italian aid scheme which consisted in a tax credit scheme for Italian road hauliers and provided for compensatory payments to be made to transport undertakings established in other Member States, on the basis of the estimated consumption of diesel required for the distance covered on Italian territory. The Court confirmed the Commission's decision by which the Italian Republic was obliged to recover the granted aid. Therefore, interested parties argue, in analogy to the Italian case, that a difference in the tax burden for mineral oil cannot by itself justify the granting of State aid ([25]).

3.1.2. *Discrimination of foreign road hauliers due to specific reimbursement mechanisms or administrative burden* ([26])

(29) First, the reimbursement, as it seems, is not linked to the real use of motorways in Germany. As the reimbursement mechanisms will, according to third parties, accept all filling station receipts regardless of the fact whether the vehicle used German motorways or other roads. This will favour mainly German road hauliers with a mixed fleet of vehicles below and above 12 tonnes.

(30) Secondly, third parties argue that the measure creates a discriminatory effect because the total toll reimbursement accumulated in one calendar year can be offset against the toll debt incurred in the following year. This payment mechanism advantages German road hauliers compared to non-German road hauliers which might use German motorways only occasionally.

(31) Thirdly, interested parties argue that the measure is not compatible with Directive 1999/62/EC since the reimbursement system creates linguistic and administrative obstacles and will lead to the fact that many foreign users, in particular occasional users, will not claim a reimbursement.

(32) Finally, interested parties refer to some practical aspects of the toll system (such as the lack of On-Board Units (OBUs), etc.) which in their view also has an indirect impact on the aid measure itself.

([24]) See e.g. ASTIC, CEMT.
([25]) In this context, interested parties refer to Case C-6/97, *Italy v Commission* [1999] ECR I-2981, in particular paragraph 21.
([26]) See e.g. ATRADICE, CEMT, FROET.

3.1.3. *Violation of Directive 92/81/EEC on the harmonisation of the structures of excise duties on mineral oils* ([27])

(33) Several third parties argue that since the reimbursement system leads to an indirect reduction of excise duties, Directive 92/81/EEC is violated if specific procedural rules, such as Article 8(4) on notification procedure, is not respected ([28]).

3.1.4. *Negative effects on the environment* ([29])

(34) It should also be mentioned that one interested party argues that the measure favours the consumption of fuel in view of the fact that the amount of reimbursement depends directly on the amount of fuel consumption. As a consequence, the measure would be against the Community interest.

3.1.5. *Additional arguments related to the toll system*

(35) In addition, all interested parties arguing against the aid measure criticise the toll system as such, without sometimes clearly distinguishing the toll from the TRS. With regard to the toll, the following main arguments were raised by interested parties:

(36) The fact that the increased toll is levied only on vehicles of at least 12 tonnes is discriminatory since it charges mainly international transport of goods and favours indirectly the mainly national transport of goods on vehicles of less than 12 tonnes ([30]). In this respect, interested parties referred to several Court cases ([31]).

(37) According to interested parties, the toll system infringes Directive 1999/62/EC, in particular Article 7(4), since the toll is considered to be discriminatory on the grounds of the nationality of the haulier or the origin or destination of the vehicle ([32]).

(38) The practical difficulties ([33]) of the toll system create a disadvantage for non-German road hauliers. The lack of efficient alternatives to the installation of OBUs also violates Article 7(5) of Directive 1999/62/EC.

(39) Interested parties also expressed their doubts as regards the amount of the toll and its compliance with Article 7(9) of the Eurovignette Directive ([34]). As the costs for the construction of the German motorways seem to be mostly depreciated, the calculation of the costs should mainly be related to the operating and developing costs of the infrastructure network concerned. In addition, it is argued that the toll system is discriminatory due to the fact that the toll will be levied by 100 % upon heavy goods vehicles of not less than 12 tonnes while — according to information provided by German authorities — they cause only 45 % of the costs. The exemption for private vehicles for tourism purposes also seems to be discriminatory. Furthermore, it is stated that the average toll rate of 12,4 cents/km seems to be too high. It appears that Germany uses the higher toll rate to cross-subsidise other transport modes which would violate both the 'users-pay'-principle and Article 9(2) of the Directive 1999/62/EC.

(40) It is further argued that the German toll system, as it seems, contradicts with recital 17 of Directive 1999/62/EC, since it will create artificial barriers, distort competition within Europe and lead away from a harmonised European model of infrastructure charging, guaranteeing interoperability.

(41) The German law introducing the new toll also seems to be discriminatory to the detriment of non-German road hauliers as regards the emission classes of vehicles.

(42) Finally, it is argued that the toll system violates other Treaty provisions such as Article 28, 97, 90 and 92 ([35]).

([27]) See e.g. ASTIC, ATRADICE, CEMT.
([28]) Now Article 19 of the Directive 2003/96/EC.
([29]) See e.g. Dirección general de Transportes del Ministerio de Fomento.
([30]) ASTIC, ATRADICE, CEMT.
([31]) See Case C-205/98, *Commission v Austria* [2000], ECR I-7367, in particular paragraphs 76, 78 and 86; Case C-6/97 *Italy v Commission* [1999], ECR I-2981, in particular paragraphs 15, 21, 23; Case C-200/97 *Ecotrade* [1998]; Case C-90/94, Haar Petroleum [1997], ECR I-4085, in particular paragraphs 34, 35, 37 and 40.
([32]) In this context, it is also referred to *Commission v Austria* in particular paragraphs 76, 78, 85, 86, 101 and 104.
([33]) Such as the lack of authorised workshops for the installation of OBUs, the non-access of road hauliers to the Internet system, the problem of registration and re-routing and the language problem at terminals, insufficient forms of payment (OBU, Internet, Terminal), language problems, etc.
([34]) See also Joined Cases C-430/99 and C-431/99 *Sea-Land Service and Nedlloyd Lijnen* [2002] ECR I-5235, paragraph 43 of the judgment and in particular paragraphs 85, 101 and 120 to 123 of the Opinion of Advocate General Alber, together with the case-law cited there.
([35]) See also *Haar Petroleum* in particular paragraphs 34, 35, 37 and 40.

3.2. **Arguments favouring the reimbursement system**

(43) It is said that the aid is necessary, in the interest of the Community and respects the principle of proportionality by using the following arguments: The Commission's White Paper on transport policy ([36]) as well as Article 7 ter of the new draft of the Eurovignette Directive ([37]), both allow a fiscal compensation for traffic users charged for using the infrastructure in order to avoid an overall increase of taxes. The measure itself does not reduce the mineral oil tax. The excise duty is only serving as a reference to calculate the reimbursement of the toll. In addition, it can be shown that the income of mineral oil tax in Germany is declining due to the lesser purchase of fuel in Germany. The reimbursement system is therefore considered to be a necessary measure to keep the overall increase of charges proportionate, which is also in the interest of the Community.

(44) The aid measure clearly respects the principle of non-discrimination, since German and non-German road hauliers can both benefit from the aid measure. In the view of the interested party, any discrimination which exists stems from the inactivity of the Council, where the harmonisation question is dormant since 1985. Given this lack of harmonisation on excise duties, the TRS would only help to neutralise the disadvantages encountered by German road hauliers. In this connection, it can be shown that the German share of the carried tonnenage of cross-border road haulage has been continuously declining from 39,0 % in 1985 to 21,6 % in 2002. In addition, cross-border road haulage is becoming increasingly dominant: In 2015, more than half of the whole traffic volume on German motorways will be allocated to cross-border trade of goods. It is also said that discrimination would only appear if road hauliers not having their office registered in Germany had to bear higher expenses or were submitted to a higher administrative burden for the reimbursement than German road hauliers, which is not the case.

(45) Third parties also stated that the aid measure does not lead to a distortion of competition in view of the fact that the compensation of EUR 600 million per year only corresponds to 17,6 % of the additional costs of the infrastructure charge.

(46) Finally, it is argued that the measure cannot be considered to be State aid since according to paragraph 13 of the Commission Notice 98/C 384/03 ([38]) tax measures are general measures which do not constitute State aid pursuant to Article 87(1) of the EC Treaty.

([36]) Towards gradual charging for the use of infrastructure, p. 71.
([37]) Proposal for a Directive of the European Parliament and of the Council amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures (COM(2003) 448 final).
([38]) OJ C 384, 10.12.1998, p. 3.

4. **COMMENTS FROM THE FEDERAL REPUBLIC OF GERMANY**

(47) In the view of the German government, the measure does not lead to a direct discrimination as the reimbursement is made available for all road hauliers, regardless of their nationality or residence. Neither does the measure leads to a *de facto* discrimination. First, they argue that there is a direct link between the new charge for the use of German motorways and the fuel consumption which again is directly linked to the amount of excise duties on fuel. In their view, the connection between toll reduction on the one hand and the payment of excise duties on the other hand is reasonably justified as both payments can be considered as a contribution to the cost of infrastructure. In addition, the measure does not foresee any thresholds, e.g. a minimum amount of toll charge or a minimum transport volume. Furthermore, the decision whether to fill the tank within Germany or not is a purely economic decision which will be taken by German road hauliers as well as by non-German road hauliers. All road hauliers will fill their tanks where they can see an economic benefit. In other words, the decision where to fill the tank is mainly influenced by the price of fuel. The German authorities argue in this respect that in Germany both the part of the excise duty on the fuel sale price and the sales price itself are among the highest in EU Member States.

(48) The German authorities also note that the measure is fully in line with the territoriality principle.

(49) The German authorities contradict the argument that the TRS can be seen as a reduction of the tax for the use of infrastructure and that it therefore would discriminate against foreign road hauliers. In the view of German authorities, the reimbursement will be paid out to both German road hauliers and non-German road hauliers. The TRS will lead to a situation where both categories will contribute to the financing of German motorways in proportion of their use of the infrastructure.

(50) As regards the argument of a partial compensation of the price difference of fuel between Germany and other countries, the German authorities cannot see any discrimination against foreign road hauliers. They agree that the filling of tanks outside the German territory may be cheaper than the filling of tanks within Germany, even after having taken into account the amount of the reimbursement. However, this calculation will be done by German and by non-German road hauliers alike. According to the German authorities, over 80 % of the German road hauliers take advantage of lower fuel prices in other countries. However, as German road hauliers in general already suffer from a very high level of excise duties which creates a disadvantage to their competitive position, they will not be able to reduce their price level on the transport of goods, more than any other road haulier availing himself of the measure. The effect of the aid measure would therefore

only consist in a reduced distortion of competition caused by the very high level of excise duties in Germany, but will not create any advantage to German road hauliers allowing them to reduce the price level for the transport of goods.

(51) The German authorities argue that the increase of the toll is justified in spite of the TRS, given that not only German road hauliers will benefit from the compensation measure, but also non-German road hauliers. Hence, non-German road hauliers will have to pay higher toll rates but benefit from the TRS which will prevent an excessive contribution of non-German road hauliers to the harmonisation of mineral oil tax.

(52) Interested parties argue that the reimbursement system will favour German filling stations to the detriment of non-German filling stations. The German authorities, however, argue that the existing differences in the mineral oil tax between Member States have already the effect of creating so-called 'fuel tourism', in particular with neighbouring countries. Measures which help to reduce these differences — such as the TRS — should also help to reduce the so-called 'fuel tourism'. According to the German authorities, it is therefore not the aid measure which will discriminate against foreign filling stations. On the contrary, the aid measure will only lead to the fact that foreign filling stations will be less favoured than they are now.

(53) Third parties argue that as a consequence of the aid measure other Member States, e.g. in neighbouring regions, will loose tax income due to a reduced purchase of fuel. However, the German authorities argue that measures which will lead to a reduction of 'fuel tourism' are justified even if this would lead to a lower tax income in neighbouring regions.

(54) The German authorities also argue that the measure is not discriminatory against those consumers of fuel using German motorways with vehicles of less than 12 tonnes. According to the German authorities, it is clear that the reimbursement is only given under the condition that the toll on lorries exceeding 12 tonnes is paid. Therefore, the reimbursement cannot be seen without the overall effect of a net burden for these lorries. Since, on balance, they will be charged more than they receive in return, it is difficult to argue that the reimbursement itself favours these vehicles above 12 tonnes, or, in other words, discriminates vehicles of less than 12 tonnes due to an alleged *de facto* discriminatory effect of a mineral oil tax reduction. Hence, in the view of German authorities, the reimbursement can not discriminate vehicles of less than 12 tonnes as they are not subject of the new toll system.

(55) As regards the argument that a difference in the tax burden cannot, by itself, justify the granting of aid, German authorities state that the Italian case quoted by third parties in this connection is not relevant for the German case since the general framework and conditions are not the same. They argue that in the past a large proportion of the infrastructure costs in Germany have been funded through excise duties on fuel. Heavy goods vehicles that use federal motorways are now paying a double contribution to infrastructure costs, in the form of both excise duties on fuel and the toll. The TRS takes into account infrastructure costs contributions already paid in Germany and will therefore only compensate hauliers for a double payment in the interest of a fair charging for the costs of infrastructure.

(56) The German authorities also argue that the reimbursement system does not foresee in a mechanism which would allow for the acceptance of all appropriate filling station receipts regardless of the fact of whether the vehicle used German motorways or other roads. On the contrary, Germany reconfirms that receipts are only acceptable if the voucher indicates the registration number of the refuelled vehicle liable for the toll. Hence, German authorities can exclude that the measure would favour German road hauliers with a mixed fleet of vehicles below and above 12 tonnes such as has been argued by interested parties.

(57) Germany also argues that since the payment mechanism is the same for all users of German motorways, it is not clear why the system would discriminate against non-German road hauliers which might use the motorways only occasionally. The total toll reimbursement accumulated in any one calendar year may be offset against the toll debt in the following year.

(58) The German authorities note that the measure does not contradict Directive 1999/62/EC since the administrative obstacles for non-German road hauliers are not considered to be higher than for German road hauliers. According to German authorities, standardised forms will be available in an appropriate number of EU languages and the information requested will be mainly figures, so that foreign hauliers will have an easy access to the reimbursement system. The administrative burden of keeping vouchers up to one year corresponds to other procedures such as the VAT-reimbursement. It can also be shown that in many cases vouchers have to be kept until the end of the year also for other reasons such as company audits of national tax authorities. Therefore, Germany concludes that the reimbursement system does not create administrative obstacles or practical burdens that would lead to a discrimination against non-German road hauliers.

(59) With regard to the criticism of the TRS, such as the insufficient number of OBUs which might have an indirect impact on the aid measure itself, the German authorities argue that the practical aspects of the toll do not have any influence on the TRS.

(60) The German authorities do not consider that Article 8(4) of Directive 92/81/EEC is violated since the measure only reduces the level of the toll rate and is not intended to reduce excise duties on mineral oil as stipulated in this Directive.

(61) As regards the effect of the measure on the environment, Germany contradicts the argument that the aid measure would favour the consumption of fuel and therefore would have negative effects on the environment. According to the German authorities, a simple calculation shows that an increase of fuel consumption with a view to obtaining a higher reimbursement is against all economic logic. Higher consumption would mean that vehicles drive longer than necessary foreseen which would increase time and staff-costs.

(62) As regards the toll measure, the German authorities first of all note that all arguments related to it are not subject to the current State aid procedure and should therefore be kept outside the scope of this decision. In addition, Germany declares that the toll system has been introduced once all the technical problems have been solved in a way that discrimination on the grounds of nationality or inappropriate hindrance of traffic flows has been excluded.

(63) To summarise, the German authorities reply to the main arguments presented by third parties as follows:

— First, the toll is not discriminatory as the decision whether to fill the tank within Germany or not is a purely economic decision which will be taken by German road hauliers as well as by non-German road hauliers. The connection between toll reduction on the one hand and the payment of excise duties on the other hand is reasonably justified as heavy goods vehicles that use federal motorways are now paying a double contribution to infrastructure costs, in the form of excise duties on fuel and the toll. The TRS takes into account infrastructure costs contributions already paid in Germany and will avoid a double payment. The toll respects Article 7(4) of Directive 1999/62/EC since the toll does not discriminate against any road haulier on the grounds of nationality.

— Secondly, the toll is not discriminatory just because it is levied only on vehicles of at least 12 tonnes. The threshold of 12 tonnes is reasonably founded and follows the definition of vehicles stipulated in Article 2(d) of Directive 1999/62/EC. In addition, the toll does not favour German road hauliers since it cannot be shown that German road hauliers for international transport are better off using of mixed fleet of vehicles of below and above 12 tonnes in comparison to non-German road hauliers allowing them to partially compensate the toll burden within the fleet of one company. The toll is calculated in such a way that it respects Article 7(9) of Directive 1999/62/EC since the weighted average toll is related to the costs of constructing, operating and developing the infrastructure network concerned.

— Thirdly, the new toll system will respect Article 7(5) of Directive 1999/62/EC as a sufficient number of OBUs, as well as other payment mechanisms (such as terminals and the Internet) ensure that the toll is collected in such a way that the free flow of traffic is not hindered.

— Fourthly, the toll measure does not violate Article 9(2) of Directive 1999/62/EC, since it does not prevent Member States from contributing to the balanced development of transport networks a percentage of the amount of the toll.

— Fifthly, the German authorities note that the toll system will not lead away from a harmonised European model of infrastructure charging guaranteeing interoperability and does therefore not contradict recital 17 of Directive 1999/62/EC.

— Sixthly, German authorities note that the administrative requirements for the classification of the emission classes of foreign vehicles is not discriminatory because it is limited to the necessary steps needed in order to classify those vehicles.

— Finally, the German authorities also note that the toll system does not violate any Treaty provision such as Articles 28, 90, 92 and 97.

5. **ASSESSMENT OF THE AID**

5.1. **Existence of aid under Article 87(1) of the EC Treaty**

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

(65) The Commission considers that the toll reimbursement, which can be requested from the Federal Office for Goods Transport — part of the national administration — concerns State funds and implies a loss of State resources. The measure by itself provides individual road transport undertakings with a selective advantage over competitors as they get a compensation for the charges for the use of infrastructure they are supposed to bear themselves. The TRS cannot be considered as a general measure as it is only applicable to undertakings using vehicles of not less than 12 tonnes which are liable for the toll and only if and to the extent that they can provide evidence that they have paid excise duties in Germany. Furthermore, since access to the road haulage market has been opened up to Community operators completely ([39]), it can be assumed that public financial aid, which favours certain undertakings performing road transport and, more generally, road transport over other modes, will affect trade between Member States. Any such financial aid therefore distorts or threatens to distort competition and affects trade between Member States.

(66) On the basis of these considerations the Commission finds that the notified TRS constitutes aid pursuant to Article 87(1) of the EC Treaty.

5.2. **Compatibility of the aid**

5.2.1. *Availability of relevant legal basis*

(67) At the moment the Commission initiated the procedure laid down in Article 88(2) of the EC Treaty, it was not in the possession of any legal texts concerning the introduction of the TRS. However, on 22 August 2003, the German authorities provided the relevant legal basis. Therefore this lack of information no longer exists.

5.2.2. *General comments about the toll*

(68) The introduction of a distance-based user charge, recovering the costs of the infrastructure, is one of the key elements of the EC common transport policy:

— First, the proposed introduction of the toll is in line with the Commission's thinking on a more cost-related pricing structure in the European transport policy White Paper ([40]). The White Paper contains a chapter concerning the gradual charging for the use of the infrastructure. The European Union is currently made up of a Europe of tolls, where users have to pay on toll motorways, a Europe of 'eurovignettes' paid by heavy goods vehicles throughout the entire network, and a Europe where no charges are applied at all. This situation can be improved.

— Secondly, the replacement of user charges currently levied on heavy goods vehicles with a toll system could lead to a fairer share of infrastructure costs because a considerable proportion of the cost of motorway construction, maintenance and operation is due to heavy goods vehicles.

— Thirdly, the toll will serve one of the objectives of the Community as mentioned in Article 2 of the EC Treaty, which is to promote a 'high level of protection and improvement of the quality of the environment'.

— Finally, considering the overall measure, it seems that the same applies to the potential advantages to be derived from shifting goods traffic from road to more environmentally friendly modes of transport. The change from a time-based motorway user charge to a mileage-based charge means that short distances become cheaper and long distances more expensive. This result does not only meet the need to make users bear a fairer share of the infrastructure costs, it also takes into account the fact that only on longer routes less polluting modes of transport (rail and waterway) offer an alternative to road transport.

(69) The German Federal Government aims to make users bear a more realistic share of road costs. The stated aim of the toll system is to make the users pay the price of the infrastructure, and the price of 15 cents/km is estimated by Germany as the amount that 'fully covers the costs of construction, development and operation of the relevant infrastructure in the sense of Directive 1999/62/EC (Eurovignette)'. But this goes hand in hand with putting a greater burden on the road haulage industry. Instead of the EUR 460 million collected in Germany under the Eurovignette system (in 2002), the hauliers will have to pay infrastructure costs of approximately EUR 3,4 billion. Although, according to the notified proposal of the German authorities, a compensation of EUR 600 million could be granted, the total charge for road hauliers is still increasing as this compensation would cover only 17 % of the total toll charges of EUR 3,4 billion.

([39]) Council Regulation (EEC) No 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States (OJ L 95, 9.4.1992, p. 1) and Council Regulation (EEC) No 3118/93 of 25 October 1993 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State (OJ L 279, 12.11.1993, p. 1).

([40]) *European transport policy for 2010: time to decide*, European Commission 2001, Table 3, p. 72.

5.2.3. *Non-application of Article 19(1) of Directive 2003/96/EC* ([41])

(70) The Commission notes that the purchase of fuel and the payment of excise duties by qualifying vehicles in Germany offer a mechanism to calculate the reimbursement of the toll.

(71) A clear legal distinction exists between the levy of excise duties and the levy of toll for heavy goods vehicles for the use of infrastructure. The two systems are based on different legal acts like the Directives on excise duties (92/12/EEC ([42]) and 2003/96/EC) and the Directive 1999/62/EC (Eurovignette).

(72) The Court has recognised the difference between toll and other levies for the use of roads on the one hand, and taxes on the other hand. According to the case-law toll is not qualified as a tax, but as a payment for using a service. The same reasoning goes for other levies for the use of roads due to the direct link between the levy and the infrastructure that can be used ([43]). On the basis of this case-law and taking into consideration that the excise duty only serves as a reference to calculate the reimbursement and that there is a clear distinction between the financial flows of excise duties on one side and the toll payment and toll reimbursement on the other, the Commission considers that the current reimbursement of the toll cannot be qualified at the same time as a reimbursement of the excise duties. Such a qualification would lead to the situation in which the reimbursement would fall under two different legal frameworks which would violate the principle of legal certainty.

(73) The fact that the reimbursement is linked to the payments of excise duties cannot change the legal qualification of the reimbursement, especially taking into account that the two financial flows are not linked. If this were to be the case, any new condition that should be added, for example the limitation of the reimbursement to a certain type of truck, would risk changing the legal qualification and, as a consequence, the legal framework, which would violate the principle of legal certainty.

(74) It should also be pointed out that there is no fiscal link between the toll rate and the excise duty on gas oil. They have each one their own source (the use of the motorway on the one hand, the consumption of the mineral oil on the other hand). The revenues of the toll will fully be used to cover the costs of construction, exploitation and improvement of the infrastructure, contrary to the revenues on the excise duty on gas oil. The reimbursement is generally deducted from the amount of toll payment due, or, it is refunded using the resources collected on the basis of the tolls.

(75) In view of the above, the Commission comes to the conclusion that Article 19(1) of Directive 2003/96/EC on the Community Framework for the taxation of energy products and electricity which replaces Article 8(4) of Directive 92/81/EEC is not applicable ([44]). As a consequence, the German authorities do not have to notify the aid measure under the framework of the procedure laid down in Article 19(1) of Directive 2003/96/EC.

5.2.4. *Assessment of the compatibility with the common market*

(76) According to Article 73 of the EC Treaty, aids which meet the needs of coordination of land transport are compatible with the Treaty.

(77) Council Regulation (EEC) No 1107/70 of 4 June 1970 on the granting of aid for transport by rail, road and inland waterway ([45]) implements Article 73 of the Treaty and provides for specific exemptions for aid, which are deemed to meet the needs of coordination of inland transport. In particular, Article 3(1)(b) of Regulation (EEC) No 1107/70 stipulates that Member States may, until the entry into force of common rules on the allocation of infrastructure cost, provide aid to undertakings that have to bear expenditure relating to the infrastructure used by them while other undertakings are not subject to a like burden.

(78) According to the Commission's practice in the handling of State aid cases, three requirements must be fulfilled, so that the aid meets the needs of coordination of transport within the meaning of Article 73 of the EC Treaty ([46]) and the requirements laid down in Article 3(1)(b) of Regulation (EEC) No 1107/70:

(a) the aid is necessary to enable the realisation of the measure in the interest of the Community and respects the principle of proportionality;

([41]) Former Article 8(4) of Directive 92/81/EEC.

([42]) OJ L 76, 23.3.1992, p. 1.

([43]) Case C-276/97 *Commission v France* [2000] ECR I-6251, paragraph 36 of the judgment and the Opinion of Advocate General Alber, together with the case-law cited there. Agreements EU-Bulgaria and Hungary, C-211/01, point 50 (not yet published).

([44]) Article 19(1) stipulates that the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce further exemptions or reductions for specific policy considerations.

([45]) OJ L 130, 15.6.1970, p. 1.

([46]) See Commission Decision of 18 December 2002, N 287/02 — Denmark (OJ C 34, 13.2.2003, p. 7), Commission Decision of 19 September 2001, N 500/01 — United Kingdom, *Network Grants to Licensed Heavy Rail Infrastructure Managers* (OJ C 333, 28.11.2001, p. 7); Commission Decision of 20 June 2001, N 219/01 — Austria (OJ C 224, 1.9.2001, p. 2); Commission Decision of 22 December 1999, N 617/98 — The Netherlands (Utrecht) (OJ C 71, 11.3.2000, p. 7); Commission Decision of 8 December 1999, N 412/98 — Italy (Marche) (OJ C 55, 26.2.2000, p. 11); Commission Decision of 8 July 1999, N 121/99 — Austria (OJ C 245, 28.8.1999, p. 2); Commission Decision of 21 April 1999, N 588/98 — Denmark (OJ C 166, 12.6.1999, p. 6); See also *Commission proposal for a Regulation of the European Parliament and of the Council concerning the granting of aid for the coordination of transport by rail, road and inland waterway* (COM(2000) 5 final) of 26 July 2000).

(b) access to the aid is granted on non-discriminatory terms;

(c) the aid does not give rise to a distortion of competition to an extent contrary to the common interest.

Non-discrimination

(79) Regarding the principle of non-discrimination, the Commission considers that all aid is by definition selective. If a measure is not qualified as selective it is not an aid measure in the sense of Article 87 of the EC Treaty. If the measure has been qualified as an aid, the Commission should assess the compatibility with the common market. Case-law and Commission practice have always clearly distinguished between this selectivity inherent to all aid, which means a disadvantage for some operators in relation to others operating in a Member State, and possible discriminations based directly or indirectly on nationality or on the establishment in the Member State in question ([47]). The latter is not compatible with Community law and cannot be approved under State aid rules.

(80) It is settled case-law that discrimination consists in particular in treating like cases differently, involving a disadvantage for some operators in relation to others, without that difference in treatment being justified by the existence of substantial, objective differences. However, since undertakings not established in a certain territory are in a different position vis-à-vis the authority from undertakings established within that territory, it cannot be said that any mechanism that makes access to aid more difficult to them violates the principle of non-discrimination ([48]).

(81) In the case at hand, the TRS provides for offsetting the toll only on presentation of German refuelling receipts and vouchers in order to proof that excise duties have been paid in Germany. In this condition the Commission doesn't see any violation of the principle of territoriality mentioned in recital 20 of Directive 1999/62/EC. The TRS imposes the same conditions on all hauliers and is accessible for all road hauliers, irrespective of nationality or residence. The measure does not foresee any thresholds, e.g. a minimum amount of toll charge or a minimum transport volume. In addition, there is no obligation to buy fuel in Germany nor is there any restriction to do so. Therefore, the Commission considers that there is no direct discrimination on the basis of nationality.

(82) Though there is no direct discrimination, the question arises whether this link leads to a *de facto*, indirect discrimination on the basis of nationality. A difference in treatment exists between road hauliers who fill their tank in Germany and road hauliers who fill their tank in another Member State. This difference is caused by the link between the toll reimbursement and the payment of excise duties in Germany.

(83) If this difference in treatment produces different effects on German hauliers, on the one hand, and hauliers from other Member States, on the other hand, favouring the former over the latter, and does not reflect an objective difference in the respective situations, it would imply a violation of the principle of non-discrimination. The question is therefore whether the link between the toll reimbursement and the payment of excise duties can be justified by objective differences. In order to answer this question, the Commission will start examining how this link will work out in practise and which hauliers will benefit from it.

(84) Located in the core of Europe, the German motorways are already highly frequented by non-German road hauliers. While in 1998 22,1 % of heavy goods vehicles of German motorways were non-German, this share has risen to an estimated 25,5 % in 2004. EU-25 vehicles represent almost 92 % of the non-German heavy goods vehicles on the German motorways ([49]).

(85) Since fuel prices are currently higher in Germany than in most neighbouring countries, this encourages neither German nor non-German hauliers engaged in international transports to fill their tank in Germany.

([47]) Case C-156/98 *Germany v Commission* [2000] ECR I-6857, paragraphs 86 and 87.

([48]) Case C-351/98 *Spain v Commission* [2002] ECR I-8031, paragraph 57: 'It must first of all be pointed out that the Commission's argument that there is discrimination against undertakings from other Member States, since the mechanism makes access to aid more difficult for them, is without foundation. […]. A measure to support investment adopted by a public authority can by definition apply only in respect of the territory for which it is responsible and the authority cannot be criticised for not extending the benefit of the measure to undertakings not established in its territory, since such undertakings are in a wholly different position vis-à-vis the authority from undertakings established within the territory. That statement does not, however, mean that such a measure of support cannot be classified as "aid within the meaning of Article 92(1) of the Treaty if it fulfils the conditions laid down by that provision."'

([49]) *Source*: Report on the economic effects on road hauliers of the German reimbursement system linked to the toll system for heavy goods vehicles, 21.4.2005, MVV Consultants and Engineers.

(86) The decision whether to fill the tank within Germany or not is an economic decision which will be taken under the same conditions by both German road hauliers as non-German road hauliers. Within the limits of their itinerary, all road hauliers will fill their tank where they can see an economic benefit. After introduction of the TRS, the road hauliers that will fill their tank outside Germany would not benefit from the compensation, but might have an economic advantage to do so. They will use the possibility of benefiting from the TRS if the price per km resulting from German fuel plus a reduced toll rate is lower than the price per km resulting from fuel outside Germany plus the full toll rate.

(87) In practise the benefits of the TRS will mainly concern two groups of hauliers (relative benefits as the toll will increase to an average of 15 cents/km) ([50]):

— Those hauliers engaged only in national transport and economically forced to use the motorways. These hauliers are predominantly of the German nationality, though this market segment is open to all EU-15 Member States (cabotage) and will be open to the new Member States after expiry of transitional regulations.

— All hauliers, German or non-German, who perform international transports from, to or through countries with a relatively high fuel price level. Such a situation would concern, in particular, hauliers established in France, Belgium and the Netherlands, a group of countries, which perform 32 % of all non-German vehicle kilometres on the German motorways.

(88) The German authorities have themselves admitted in their observations that a percentage close to 20 % of German road hauliers, presumably those that perform their activities mainly on the national market and particularly in the central regions of Germany, do not take advantage of lower fuel prices in other countries. On the contrary, hauliers established in other Member States will generally buy fuel not only and not predominantly in Germany, but in other Member States, notably in those with lower fuel prices, even if they perform part of their activity in Germany or even on the German local market, availing themselves of the freedom to perform cabotage transport.

([50]) See also Report on the economic effects on road hauliers of the German reimbursement system linked to the toll system for heavy goods vehicles, 21.4.2005, MVV Consultants and Engineers.

(89) In view of the foregoing, the Commission foresees that, taken into account the current level of fuel prices in the Member States, a very large portion of non-German vehicle kilometres ([51]) on the German motorways will not benefit from the TRS as a result of the link between the TRS and the payment of excise duties in Germany. Such a percentage will obviously be lower in the case of German hauliers. In addition, occasional users of German motorways, particularly from other Member States, may refrain from requesting the TRS because of administrative burdens and would be further penalised in comparison with regular users, particularly German users.

(90) This being the case, the Commission stresses that a road haulier using a German motorway and buying his fuel outside Germany is using the German road infrastructure in exactly the same way as a road haulier who fills up his tank in Germany. It can therefore be concluded that the link between the toll reimbursement and the amount of the excise duties paid in Germany resulting in different levels of toll cannot be justified by differences in the use of German motorways. As a result of this link, some hauliers, which are predominantly non-German as demonstrated in paragraphs 86 and 87, will have to pay more toll than others while transporting the same heavy goods the same distance on the same motorway. In addition, the system in question will favour national transport, largely performed by hauliers that buy fuel in Germany over transport between Member States, performed by hauliers that will more often buy fuel in other Member States, which is another form of discrimination forbidden by Community law ([52]).

(91) Linking the toll reimbursement to the amount of the excise duties paid in Germany may indicate that the system is conceived as a compensation for a high level of excise duties on fuel in Germany. However, the Commission practice and Court jurisprudence are very clear on this point: the difference in the tax burden cannot by itself ([53]) justify the granting of State aid. Granting an aid cannot be justified when the aid is meant to compensate some national operators for their comparative disadvantage resulting from regulatory or fiscal differences compared to other Member States. State aid is not a suitable instrument for levelling out, in favour of certain operators, differences in levels of taxation between the Member States. As a consequence,

([51]) The indicator for the use of the motorway by vehicles is the transport performance measured in vehicle kilometres

([52]) Case C-381/93 *Commission v France* [1994] ECR I-5145, paragraphs 17 to 21, and Case C-92/01 *Stylianakis* [2003] ECR I-1291, paragraph 25.

([53]) See footnote 25. See also Case C-298/00 P *Italy v Commission* [2004] ECR I-4087, paragraphs 61 and 62, Case C-382/99, *Netherlands v Commission* [2002] ECR I-5163, paragraphs 60 to 66, C-6/97 *Italy v Commission* [1999] ECR I-2981, paragraph 22.

the fact that the level of excise duties is high in Germany — and thus diesel prices — in Germany and a need is perceived to alleviate an alleged competitive disadvantage for German hauliers, does not justify the link between the TRS and the payment of excise duties. In addition, petrol prices are also high in other Member States and hauliers from those Member States, that for geographical and operative reasons are less likely to buy fuel in Germany, will not benefit from the compensation to the same extent as German hauliers.

(92) The fact that the German authorities argue that currently 50 % of the revenues of the excise duties is ring-fenced for infrastructure and the TRS is needed to avoid that hauliers will pay twice for the infrastructure does not prejudice to this conclusion. First, the final destination of tax revenues is not relevant in order to assess whether there is discrimination between German hauliers and hauliers from other Member States. The difference in the tax burden cannot justify the granting of aid, irrespective of the destination of tax revenues. Secondly, only 50 % of the revenues are ring-fenced for infrastructure and of this 50 %, a large share will be used to fund the infrastructure costs of the rest of the German road network for which no toll is required. Therefore, it cannot be held that — as the German authorities argue — hauliers that both pay toll and excise duties are paying a double contribution to the costs of infrastructure, as excise duties revenues are only marginally used to fund infrastructure for which toll is required. Consequently, the fact that the revenues of the excise duties are partially being used to fund infrastructure cannot justify the link between the toll reimbursement and the payment of excise duties either.

(93) In addition, it has to be noted that the character of a toll and an excise duty is different. Toll is a payment for the use of a service, and an excise duty is a tax. As already pointed out in Chapter 5.2.3 of this Decision, the events giving rise to a perception are different: the use of highway in the case of a toll, and the consumption of the mineral oil in the case of excise duties.

(94) In view of the above, the Commission does not see an objective justification for linking a reduction in toll fees to the amount of excise duties paid on German territory. As a consequence, there is no objective justification that could support the difference in treatment between hauliers that fill their tank in Germany and hauliers that fill their tank outside Germany will be subjected to since they are objectively in the same situation.

(95) In the light of these arguments, the Commission comes to the conclusion that the aid measure does not respect the principle of non-discrimination as the measure results in a *de facto* discrimination against foreign road hauliers and, for this reason already, must be considered as incompatibile with the common market.

(96) In addition, the aid measure does not respect Article 7(4) of Directive 1999/62/EC either, which stipulates that toll and user charges may not discriminate, directly or indirectly, on the grounds of nationality of the haulier or the origin or destination of the vehicle.

(97) This provision is only a particular expression of a general principle of Community law and, in particular, of transport law, namely the prohibition of any discrimination based on nationality, place of establishment or the starting point or destination the transport. This principle has been consistently applied by the Community judges ([54]), including in the specific case of road tolls ([55]).

(98) In accordance with a well-established case-law, it is clear from the general scheme of the Treaty that a procedure concerning the compatibility of State aid with the common market must never produce a result which is contrary to the specific provisions of the Treaty ([56]). The Court has also held that those aspects of aid which contravene specific provisions of the Treaty other than Articles 87 and 88 may be so indissolubly linked to the object of the aid that it is impossible to evaluate them separately ([57]). For the reasons explained above, the measure at stake would violate the principle of non-discrimination and, in particular, Article 7(4) of Directive 1999/62/EC. This violation is inherent in the mechanism of the TRS and therefore is indissolubly linked to it. This constitutes another reason that must lead the Commission to declare the aid incompatible with the common market.

(99) The Commission reminds the German authorities that, in case they consider the overall charges for road hauliers in Germany too high, they could modify, within the limits of existing harmonisation measures on Community level, the vehicle tax or the level of excise duties. These are horizontal and general measures that would in principle result neither in a direct nor in a *de facto* discrimination.

([54]) Case C-18/93 *Corsica Ferries Italia* [1994] ECR I-1783, paragraph 35; Stylianakis, paragraph 25.
([55]) *Commission v Austria*, paragraphs 74 to 88 and 109 to 115.
([56]) Case 73/79 *Commission v Italy* [1980] ECR 1533, paragraph 11.
([57]) Case 74/76 *Iannelli & Volpi v Meroni* [1977] ECR 557.

Necessity and proportionality

(100) The Commission considers that the necessity of the aid has not been demonstrated. The German authorities argue that the measure has to be seen in the light of the transition actually being undertaken by the German authorities from a tax-based motorway charge to a mileage-based user charge. The Commission understands the wish to introduce transitional measures in view of the increase of the total charges for road hauliers, however notes that the level of the toll has been fixed at a lower level than initially planned, i.e. at 12,6 cents/km instead of 15 cents/km. Refraining from the intended increase of the toll rate would be a more straightforward way of compensating in a transitional period than increasing the toll rate up to 15 cents/km and at the same time, introducing the TRS and reimburse 2,6 cents/km. Moreover, the currently applicable lower rate equally applies to all road hauliers that use German motorways and is therefore non-discriminatory. The intended reimbursement would change this balance, which is not necessary to achieve the intended goal.

(101) In addition, the German authorities have not provided arguments in favour of the TRS which would counterbalance the higher administrative burden, for road hauliers, of the technically complicated introduction of the TRS as compared to simply maintaining the lower toll rate. Road hauliers should present filling station receipts or credit card company vouchers from Germany, each stating the registration number of the concerned vehicle, and request for a toll reimbursement within the deadline each year. Such a burden is likely to be particularly heavy for occasional users of German motorways, particularly from other Member States. The Commission reminds the German authorities that they could increase the level of the toll at any time, provided that the provisions of the Directive 1999/62/EC are taken into account, at the moment they consider it necessary.

(102) In view of these arguments, the Commission concludes that the aid measure does not respect the principle of necessity either, which again constitutes a sufficient ground to declare it incompatible with the common market.

Distortion of competition contrary to the common interest

(103) In view of the foregoing, the Commission considers that the last condition of Article 3(1)(b) of Regulation (EEC) No 1107/70 that the aid should not give rise to a distortion of competition to an extent contrary to the common interest is not fulfilled, either. As explained above, the aid will unduly favour German hauliers over their competitors from other Member States, which goes against the correct functioning of the common transport market and the very principle of freedom to provide transport. For this reason, too, the aid must be declared incompatible with the common market.

(104) Finally, it should be noted that the German authorities have not invoked any compatibility grounds other than Article 73 of the EC Treaty. In any event, the Commission confirms its preliminary assessment in paragraph 57 of the decision to open the formal investigation procedure: the aid cannot be declared compatible in accordance with Article 87(3)(a), (b) and (c), nor indeed by virtue of any other derogation.

6. **CONCLUSION**

(105) The Commission concludes that the TRS is an aid measure which does not fulfil the conditions of Article 73 and Article 3(1)(b) of Regulation (EEC) No 1107/70 and is therefore incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The aid which the Federal Republic of Germany is planning to implement and which is based on Section 3, paragraph 2 of Article 1 of the Law on the imposition of mileage-based charges for the use of motorways by heavy goods vehicles is incompatible with the common market.

Article 2

This decision is addressed to the Federal Republic of Germany.

Done at Brussels, 25 January 2006.

For the Commission

Jacques BARROT

Vice-President

COMMISSION DECISION

of 20 February 2009

amending Annex II to Council Decision 79/542/EEC as regards the entry for Botswana in the list of third countries or parts thereof from which imports into the Community of certain fresh meat are authorised

(notified under document number C(2009) 1031)

(Text with EEA relevance)

(2009/151/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption [1], and in particular the introductory phrase of Article 8, the first subparagraph of Article 8(1) and Article 8(4) thereof,

Whereas:

(1) Council Decision 79/542/EEC of 21 December 1976 drawing up a list of third countries or parts of third countries, and laying down animal and public health and veterinary certification conditions, for importation into the Community of certain live animals and their fresh meat [2] establishes the sanitary conditions for the importation into the Community of live animals excluding equidae, and for the importation of fresh meat of such animals, including equidae, but excluding meat preparations.

(2) Decision 79/542/EEC provides that imports of fresh meat intended for human consumption are only allowed if such meat comes from a territory of a third country or a part thereof listed in Part 1 of Annex II to that Decision, and the fresh meat meets the requirements set out in the appropriate veterinary certificate for that meat in accordance with the models set out in Part 2 of that Annex, taking into account any specific conditions or supplementary guarantees required for the meat.

(3) Botswana is listed in Part 1 of Annex II to Decision 79/542/EEC and has been divided into different territories, mainly according to their animal health status. Those territories are authorised to export to the Community de-boned and matured fresh meat of domestic bovine animals, of domestic sheep and goats, and of certain farmed and wild non-domestic animals (fresh meat).

(4) On 20 October 2008, an outbreak of foot-and-mouth disease was suspected in a farm located in the district of Ghanzi, situated in the veterinary disease control zone 12 of Botswana. As soon as the outbreak was confirmed, the competent authority in Botswana suspended exports of fresh meat to the Community from the whole of the country.

(5) In view of these circumstances, imports into the Community of fresh meat from the veterinary disease control zone 12 of Botswana was no longer authorised by Decision 79/542/EEC, as amended by Commission Decision 2009/4/EC [3].

(6) Considering that the competent authority in Botswana has now provided sufficient guarantees regarding the measures put in place to control the spread of the disease which have been effective in eliminating infection of foot-and-mouth disease it is appropriate to re-instate veterinary disease control zone 12 thereby once again allowing exports of fresh meat into the Community from that zone.

(7) Part 1 of Annex II to Decision 79/542/EEC should therefore be amended accordingly.

(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,

[1] OJ L 18, 23.1.2003, p. 11.
[2] OJ L 146, 14.6.1979, p. 15.
[3] OJ L 2, 6.1.2009, p. 11.

HAS ADOPTED THIS DECISION:

Article 1

Part 1 of Annex II to Decision 79/542/EEC is replaced by the text in the Annex to this Decision.

Article 2

This Decision shall apply from 1 February 2009.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 20 February 2009.

For the Commission
Androulla VASSILIOU
Member of the Commission

ANNEX

'PART 1

List of third countries or parts thereof (*)

Country	Code of Territory	Description of territory	Veterinary certificate		Specific conditions	Closing date (1)	Opening date (2)
			Model(s)	SG			
1	2	3	4	5	6	7	8
AL — Albania	AL-0	Whole country	—				
AR — Argentina	AR-0	Whole country	EQU				
	AR-1	The provinces of: Buenos Aires, Catamarca, Corrientes (except the departments of Berón de Astrada, Capital, Empedrado, General Paz, Itati, Mbucuruyá, San Cosme and San Luís del Palmar), Entre Ríos, La Rioja, Mendoza, Misiones, part of Neuquén (excluding territory included in AR-4), part of Río Negro (excluding territory included in AR-4), San Juan, San Luis, Santa Fe, Tucuman, Cordoba, La Pampa, Santiago del Estero, Chaco Formosa, Jujuy and Salta, excluding the buffer area of 25 km from the border with Bolivia and Paraguay that extends from the Santa Catalina District in the Province of Jujuy, to the Laishi District in the Province of Formosa	BOV	A	1		18 March 2005
			RUF	A	1		1 December 2007
	AR-2	Chubut, Santa Cruz and Tierra del Fuego	BOV, OVI, RUW, RUF				1 March 2002
	AR-3	Corrientes: the departments of Berón de Astrada, Capital, Empedrado, General Paz, Itati, Mbucuruyá, San Cosme and San Luís del Palmar	BOV RUF	A	1		1 December 2007
	AR-4	Part of Río Negro (except: in Avellaneda the zone located north of the Provincial road 7 and east of the Provincial road 250, in Conesa the zone located east of the Provincial road 2, in El Cuy the zone located north of the Provincial road 7 from its intersection with the Provincial road 66 to the border with the Department of Avellaneda, and in San Antonio the zone located east of the Provincial roads 250 and 2), part of Neuquén (except in Confluencia the zone located east of the Provincial road 17, and in Picun Leufú the zone located east of the Provincial road 17)	BOV, OVI, RUW, RUF				1 August 2008
AU — Australia	AU-0	Whole country	BOV, OVI, POR, EQU, RUF, RUW, SUF, SUW				
BA — Bosnia and Herzegovina	BA-0	Whole country	—				
BH — Bahrain	BH-0	Whole country	—				

1	2	3	4	5	6	7	8
BR — Brazil	BR-0	Whole country	EQU				
	BR-1	State of Minas Gerais, State of Espírito Santo, State of Goiás, State of Mato Grosso, State of Rio Grande Do Sul, State of Mato Grosso Do Sul (except for the designated high surveillance zone of 15 km from the external borders in the municipalities of Porto Mutinho, Caracol, Bela Vista, Antônio João, Ponta Porã, Aral Moreira, Coronel Sapucaia, Paranhos, Sete Quedas, Japora', and Mundo Novo and the designated high surveillance zone in the municipalities of Corumbá and Ladário)	BOV	A and H	1		1 December 2008
	BR-2	State of Santa Catarina	BOV	A and H	1		31 January 2008
	BR-3	States of Paraná and São Paulo	BOV	A and H	1		1 August 2008
BW — Botswana	BW-0	Whole country	EQU, EQW				
	BW-1	The veterinary disease control zones 3c, 4b, 5, 6, 8, 9 and 18	BOV, OVI, RUF, RUW	F	1		1 December 2007
	BW-2	The veterinary disease control zones 10, 11, 13 and 14	BOV, OVI, RUF, RUW	F	1		7 March 2002
	BW-3	The veterinary disease control zone 12	BOV, OVI, RUF, RUW	F	1	20 October 2008	20 January 2009
BY — Belarus	BY-0	Whole country	—				
BZ — Belize	BZ-0	Whole country	BOV, EQU				
CA — Canada	CA-0	Whole country	BOV, OVI, POR, EQU, SUF, SUW RUF, RUW	G			
CH — Switzerland	CH-0	Whole country	*				
CL — Chile	CL-0	Whole country	BOV, OVI, POR, EQU, RUF, RUW, SUF				
CN — China	CN-0	Whole country	—				
CO — Colombia	CO-0	Whole country	EQU				
CR — Costa Rica	CR-0	Whole country	BOV, EQU				
CU — Cuba	CU-0	Whole country	BOV, EQU				

1	2	3	4	5	6	7	8
DZ — Algeria	DZ-0	Whole country	—				
ET — Ethiopia	ET-0	Whole country	—				
FK — Falkland Islands	FK-0	Whole country	BOV, OVI, EQU				
GL — Greenland	GL-0	Whole country	BOV, OVI, EQU, RUF, RUW				
GT — Guatemala	GT-0	Whole country	BOV, EQU				
HK — Hong Kong	HK-0	Whole country	—				
HN — Honduras	HN-0	Whole country	BOV, EQU				
HR — Croatia	HR-0	Whole country	BOV, OVI, EQU, RUF, RUW				
IL — Israel	IL-0	Whole country	—				
IN — India	IN-0	Whole country	—				
IS — Iceland	IS-0	Whole country	BOV, OVI, EQU, RUF, RUW				
KE — Kenya	KE-0	Whole country	—				
MA — Morocco	MA-0	Whole country	EQU				
ME — Montenegro	ME-0	Whole country	BOV, OVI, EQU				
MG — Madagascar	MG-0	Whole country	—				
MK — Former Yugoslav Republic of Macedonia [3]	MK-0	Whole country	OVI, EQU				
MU — Mauritius	MU-0	Whole country	—				
MX — Mexico	MX-0	Whole country	BOV, EQU				
NA — Namibia	NA-0	Whole country	EQU, EQW				
	NA-1	South of the cordon fences which extend from Palgrave Point in the west to Gam in the east	BOV, OVI, RUF, RUW	F	1		
NC — New Caledonia	NC-0	Whole country	BOV, RUF, RUW				
NI — Nicaragua	NI-0	Whole country	—				

1	2	3	4	5	6	7	8
NZ — New Zealand	NZ-0	Whole country	BOV, OVI, POR, EQU, RUF, RUW, SUF, SUW				
PA — Panama	PA-0	Whole country	BOV, EQU				
PY — Paraguay	PY-0	Whole country	EQU				
	PY-1	Whole country except for the designated high surveillance zone of 15 km from the external borders	BOV	A	1		1 August 2008
RS — Serbia [4]	RS-0	Whole country	BOV, OVI, EQU				
RU — Russian Federation	RU-0	Whole country	—				
	RU-1	Region of Murmansk, Yamolo-Nenets autonomous area	RUF				
SV — El Salvador	SV-0	Whole country	—				
SZ — Swaziland	SZ-0	Whole country	EQU, EQW				
	SZ-1	Area west of the "red line" fences which extends northwards from the river Usutu to the frontier with South Africa west of Nkalashane	BOV, RUF, RUW	F	1		
	SZ-2	The veterinary foot and mouth surveillance and vaccination control areas as gazetted as a Statutory Instrument under legal notice number 51 of 2001	BOV, RUF, RUW	F	1		4 August 2003
TH — Thailand	TH-0	Whole country	—				
TN — Tunisia	TN-0	Whole country	—				
TR — Turkey	TR-0	Whole country	—				
	TR-1	The provinces of Amasya, Ankara, Aydin, Balikesir, Bursa, Cankiri, Corum, Denizli, Izmir, Kastamonu, Kutahya, Manisa, Usak, Yozgat and Kirikkale	EQU				
UA — Ukraine	UA-0	Whole country	—				
US — United States	US-0	Whole country	BOV, OVI, POR, EQU, SUF, SUW, RUF, RUW	G			
UY — Uruguay	UY-0	Whole country	EQU				
			BOV	A	1		1 November 2001
			OVI	A	1		

1	2	3	4	5	6	7	8
ZA — South Africa	ZA-0	Whole country	EQU, EQW				
	ZA-1	The whole country except: — the part of the foot-and-mouth disease control area situated in the veterinary regions of Mpumalanga and Northern provinces, in the district of Ingwavuma of the veterinary region of Natal and in the border area with Botswana east of longitude 28°, and — the district of Camperdown, in the Province of KwaZuluNatal	BOV, OVI, RUF, RUW	F	1		
ZW — Zimbabwe	ZW-0	Whole country	—				

(*) Without prejudice to specific certification requirements provided for in Community agreements with third countries.

([1]) Meat from animals slaughtered on or before the date indicated in column 7 can be imported into the Community for 90 days from that date. Consignments on the high seas can be imported into the Community if certified before the date indicated in column 7 for 40 days from that date (NB: no date in column 7 means that there are no time restrictions).

([2]) Only meat from animals slaughtered on or after the date indicated in column 8 can be imported into the Community (no date in column 8 means that there are no time restrictions).

([3]) The former Yugoslav Republic of Macedonia; provisional code that does not prejudge in any way the definitive nomenclature for this country, which will be agreed following the conclusion of negotiations currently taking place on this subject in the United Nations.

([4]) Not including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999.

* = Certificates in accordance with the agreement between the European Community and the Swiss Confederation on trade in agricultural products (OJ L 114, 30.4.2002, p. 132).

— = No certificate laid down and fresh meat imports are prohibited (except for those species where indicated in the line for the whole country).

1 = Category restrictions:
No offal authorised (except, in the case of bovine species, diaphragm and masseter muscles).'

NOTE TO THE READER

The institutions have decided no longer to quote in their texts the last amendment to cited acts.

Unless otherwise indicated, references to acts in the texts published here are to the version of those acts currently in force.