ISSN 0378-6978

Official Journal

of the European Communities

L 63

Volume 42

12 March 1999

English edition

Legislation

Contents

Price: EUR 19,50

(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.

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[1] Text with EEA relevance

(Continued on inside back cover)

Contents (continued)

EN

[1] Text with EEA relevance

(Acts adopted pursuant to Title V of the Treaty on European Union)

JOINT ACTION

of 9 March 1999

adopted by the Council on the basis of Article J.3 of the Treaty on European Union concerning a contribution by the European Union to the re-establishment of a viable police force in Albania

(1999/189/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles J.3 and J.11(2) thereof,

Having regard to the general guidelines of the European Council of 16 and 17 June 1997,

Whereas the Council adopted on 2 June 1997 a common position on Albania with a view, in particular, to promoting the democratic process and the return to political stability and internal security in Albania;

Whereas in this common position the Union already declared its readiness to contribute to the establishment of a viable police force in Albania within the framework of the Western European Union (WEU) Multinational Advisory Police Element;

Whereas the European Community is providing support to the Albanian police, namely in terms of equipment and rehabilitation of police buildings, in cooperation with the WEU;

Whereas the European Community is also providing assistance to the Albanian authorities in the field of the judiciary, including the prison system, in cooperation with the Council of Europe;

Whereas an additional assistance to the Albanian Government in its tasks to maintain public order needs to be provided,

HAS ADOPTED THE FOLLOWING JOINT ACTION:

Article 1

1. The European Union shall contribute to the re-establishment of a viable police force in Albania by ensuring that:

— training and advice to the police, including direct assistance through advisory teams,

— relevant advice to the Ministry of Public Order and other ministries as appropriate

are provided.

The training activity mentioned in the first indent of the previous subparagraph, shall be carried out by up to 160 trainers and shall entail the participation of up to 3 000 Albanian police officers.

2. The European Union will continue to keep other possibilities under review, with a view to fulfilling the objective defined in paragraph 1 to the greatest extent.

Article 2

1. An amount of up to EUR 2,1 million to cover the operational expenditure to which the implementation of this joint action gives rise shall be charged to the general budget of the European Communities.

2. The expenditure financed by the amount stipulated in paragraph 1 shall be managed in compliance with the European Community procedures and rules applicable to the general budget.

Article 3

1. In order to maximise the effectiveness of the overall assistance, the Presidency shall ensure the coherence of the assistance provided by the European Union on the basis of this joint action with the assistance provided by Member States on the basis of bilateral programmes, aiming at the re-establishment of a viable police force in Albania.

2. The Council notes that the Commission will continue to direct its action towards achieving the objectives of this joint action, where appropriate, by pertinent Community measures.

Article 4

This joint action shall enter into force on the date of its adoption.

Article 5

This joint action shall be published in the Official Journal.

Done at Brussels, 9 March 1999.

For the Council
The President
W. RIESTER

COUNCIL DECISION

of 9 March 1999

adopted on the basis of Article J.4(2) of the Treaty on European Union on the implementation of the joint action concerning a contribution by the European Union to the re-establishment of a viable police force in Albania

(1999/190/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article J.4(2) thereof,

Having regard to the Declaration on Western European Union (WEU) included in the Final Act signed upon the adoption of the Treaty,

Whereas the Council adopted today on the basis of Article J.3 of the Treaty on European Union a joint action concerning a contribution by the European Union to the re-establishment of a viable police force in Albania;

Whereas such an action would require staff having a specific expertise in police operations; whereas the WEU has already undertaken a mission consisting in providing assistance and advice to the Albanian police;

Whereas under these conditions the European Union should have recourse to the WEU;

Whereas, following a request by the European Union on the basis of Article J.4(2), the WEU Military Staff completed a Feasibility Study on possible options for an International Police Operation in Albania (Revision 1) and the supplement thereto, hereinafter referred to as the WEU Feasibility Study;

Whereas the WEU Permanent Council adopted on 2 February 1999 the contingency plan for an international police operation in Albania based on one of the options identified in the WEU Feasibility Study;

Whereas the option developed in the WEU Contingency Plan would contribute to the objective defined in the joint action title;

Whereas the institutions of the WEU have given their agreement to the practical arrangements set out in the Annex hereto,

HAS ADOPTED THIS DECISION:

Article 1

1. The European Union requests the WEU to implement its Joint Action 1999/189/CFSP of 9 March 1999 concerning a contribution by the European Union to the re-establishment of a viable police force in Albania [1], by carrying out 'option 2 augmented' of the WEU feasibility study under the objective defined in Article 1(1) of the joint action.

2. The implementation of the joint action referred to in paragraph 1 shall be conducted in accordance with the practical arrangements set out in the Annex hereto.

Article 2

This Decision and Joint Action 1999/189/CFSP shall be notified to the WEU in accordance with the conclusions adopted by the Council on 14 May 1996 on the transmission to the WEU of documents of the European Union.

Article 3

This Decision shall enter into force on the date of its adoption.

Article 4

This Decision shall be published in the Official Journal.

Done at Brussels, 9 March 1999.

For the Council

The President

W. RIESTER

[1] See page 1 of this Official Journal.

ANNEX

PRACTICAL ARRANGEMENTS

1. The WEU mission will carry out its task under the responsibility of the WEU.

2. During the course of the operation it is expected that:

   — full monthly reports on the WEU mission will be transmitted to the European Union; reports will include an update on training and advice activities as well as assessments on the impact of these activities,

   — the WEU mission will carry out a general review after each six-month period, or earlier if necessary, assessing the operation and suggesting, as required, possible adjustments to the modalities of the operation,

   — should an emergency occur, a report will immediately be submitted to the WEU which will transmit it to the European Union. The situation will be assessed and the need for submitting it to the European Union and WEU bodies considered.

3. On completion of the operation, the WEU will produce a 'lessons learned' paper, which will be transmitted to the European Union.

4. The principal channels of communication will be:

   — the existing points of contact between the European Union and WEU Secretariats and between the Commission and the WEU Secretariat,

   — the points of contact designated by the two Presidencies.

5. The possibility of coordinated meetings of working groups should be kept in mind.

6. The diplomatic representation of the Presidency of the European Union will provide the WEU mission, if required, with political and diplomatic support.

7. Close cooperation, including cooperation on the ground, will be maintained between the European Union and the WEU *inter alia* in the context of liaison and coordination with wider international efforts in Albania both bilateral and multilateral.

8. Public information on this operation will be coordinated.

9. Disbursements for the payment of the operation will be made according to the financial arrangements to be established between the Commission and the WEU. Such arrangements will comply with the European Community procedures and rules applicable to the budget, taking into account the operational requirements of the WEU mission.

   In order to support the Presidency of the European Union in its tasks under Article 3(1) of Joint Action 1999/189/CFSP, the WEU mission will establish a coordination and monitoring mechanism as regards the modalities of granting financial support for Albanian trainees financed from the general budget of the European Communities. The reports of the WEU mission will contain regular information on this mechanism.

The abovementioned practical arrangements do not affect in any way the internal procedures of each organisation or the further contacts that may be necessary between them.

COUNCIL DECISION

of 9 March 1999

supplementing Joint Action 95/545/CFSP adopted by the Council on the basis of Article J.3 of the Treaty on European Union with regard to the participation of the Union in the implementing structures of the peace plan for Bosnia and Herzegovina

(1999/191/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article J.11 thereof,

Whereas on 11 December 1995 the Council adopted Joint Action 95/545/CFSP with regard to the participation of the Union in the implementing structures of the peace plan for Bosnia and Herzegovina [1], which was extended by Decision 96/745/CFSP [2] on 20 December 1996 until 31 December 1998 and by Decision 98/737/CFSP [3] on 22 December 1998 until 31 December 1999, and supplemented by Decision 97/476/CFSP [4] on 22 July 1997 and by Decision 98/607/CFSP [5] on 26 October 1998;

Whereas in its conclusions of 25 January 1999, the Council welcomed the outcome of the Madrid Peace Implementation Conference and supported its conclusions, which map the way forward for further Dayton implementation, and reiterated its full support for the High Representative;

Whereas on 1 February 1999 the Peace Implementation Council Steering Board approved the budget of the Office of the High Representative for 1999,

HAS DECIDED AS FOLLOWS:

Article 1

1. In order to cover the European Union's contribution to the operational expenses involved in the High Representative's mission in 1999, an amount of up to EUR 16 153 544 shall be charged to the general budget of the European Communities for 1999.

2. The management of the expenditure financed by the amount specified in paragraph 1 shall be subject to the procedures and rules of the Community applying to budget matters.

Article 2

This Decision shall enter into force on the day of its adoption and shall apply until 31 December 1999.

Article 3

This Decision shall be published in the Official Journal.

Done at Brussels, 9 March 1999.

For the Council

The President

W. RIESTER

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[1] OJ L 309, 21. 12. 1995, p. 2.
[2] OJ L 340, 30. 12. 1996, p. 3.
[3] OJ L 354, 30. 12. 1998, p. 4.
[4] OJ L 205, 31. 7. 1997, p. 2.
[5] OJ L 290, 29. 10. 1998, p. 3.

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 530/1999
of 9 March 1999
concerning structural statistics on earnings and on labour costs

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 213 thereof,

Having regard to the draft Regulation submitted by the Commission,

Whereas, in order to carry out the tasks assigned to it, the Commission should be kept informed of the level and composition of labour costs and of the structure and distribution of earnings in the Member States;

Whereas the development of the Community and the operation of the internal market increase the need for comparable data on the level and composition of labour costs and on the structure and distribution of earnings, particularly as a means of analysing the progress of economic and social cohesion and for establishing reliable and relevant comparisons between the Member States and the regions of the Community;

Whereas the best method of assessing the situation as regards labour costs and earnings is to compile Community statistics using harmonised methods and definitions as has been done on earlier occasions, most recently for 1996 in the case of the level and composition of labour costs pursuant to Regulation (EC) No 23/97 [1] and for 1995 in the case of the structure and distribution of earnings pursuant to Regulation (EC) No 2744/95 [2];

Whereas, to reflect changes taking place in the structure of the labour force, in the distribution of earnings, and in the composition of expenditure by enterprises on wages and related employers' contributions, the statistics need to be regularly updated;

Whereas, pursuant to Regulation (EC) No 2223/96 [3] the European System of National and Regional Accounts in the European Community (ESA-95) is the term of reference for standards, definitions and accounting practices in the Member States in order to meet the Community needs; whereas this necessitates the establishment of complete, reliable and comparable statistical sources at national and regional level; whereas the levels of breakdown to be applied to the variables are limited to what is necessary to ensure comparability with previous statistics and compatibility with national accounts requirements;

Whereas the European Central Bank (ECB) needs information on the level and composition of labour costs and on the structure and distribution of earnings in order to assess the economic development in the Member States in the context of a single European monetary policy;

Whereas statistical information in this field is available only in certain Member States and valid comparisons cannot therefore be made; whereas Community statistics should consequently be produced and the results processed on the basis of common definitions and harmonised methodologies, taking into account the standards approved by relevant international organisations;

Whereas presently not all Member States collect complete data in sections M (Education), N (Health and social work) and O (Other Community, social and personal service activities); whereas it is therefore appropriate to decide on their possible inclusion in the scope of this Regulation in the light of a report to be submitted by the Commission on the basis of pilot studies on the feasibility of collecting complete data in these sectors;

Whereas although the importance of complete data of all segments of the economy should be fully recognised, it should be carefully weighed against the reporting possibilities and the response burden in specific areas, in particular in relation to small and medium-sized enterprises (SMEs); whereas it is therefore appropriate for the Commission to carry out pilot studies on the feasibility of collecting complete data from statistical units with less than ten employees and that the Council decides on this matter in the light of a report to be submitted by the Commission, within four years of the entry into force of this Regulation; whereas the use of administrative records may be helpful in the meanwhile and should be encouraged;

[1] OJ L 6, 10. 1. 1997, p. 1.
[2] OJ L 287, 30. 11. 1995, p. 3.
[3] OJ L 310, 30. 11. 1996, p. 1. Regulation as amended by Regulation (EC) No 448/98 (OJ L 58, 27. 2. 1998, p. 1).

Whereas, in accordance with the principle of subsidiarity, the creation of common statistical standards enabling harmonised information to be produced is a proposed action the objectives of which can, by reason of its scale or effects be better achieved by the Community; whereas these standards will be implemented in each Member State on the authority of the agencies and institutions appointed to compile Community statistics;

Whereas it seems appropriate to make provisions for exceptions for certain Member States, in order to take account of particular technical difficulties encountered by such States in the collection of certain types of information, provided that the quality of the statistical information is not seriously affected;

Whereas the production of specific Community statistics is governed by the rules set out in Council Regulation (EC) No 322/97 of 17 February 1997 on Community Statistics ([1]);

Whereas the Statistical Programme Committee established by Decision 89/382/EEC, Euratom ([2]) has been consulted in accordance with Article 3 of the aforesaid Decision,

HAS ADOPTED THIS REGULATION:

Article 1

General provisions

The national authorities and Eurostat shall produce Community statistics on the level and composition of labour costs and on the structure and distribution of employees' earnings, in the economic activities defined in Article 3.

Article 2

Reference period

1. The statistics on the level and composition of labour costs shall be produced for the calendar year 2000 and at four-yearly intervals thereafter.

2. The statistics on the structure and distribution of earnings shall be produced for the calendar year 2002 and for a representative month in that year, and at four-yearly intervals thereafter.

Article 3

Scope

1. The statistics shall cover all economic activities defined in sections C (Mining and quarrying), D (Manufacturing), E (Electricity, gas and water supply), F (Construction), G (Wholesale and retail trade; repair of motor vehicles, motorcycles and personal and household goods), H (Hotels and restaurants), I (Transport, storage and communications), J (Financial intermediation), K (Real estate, renting and business activities), M (Education), N (Health and social work) and section O (Other community, social and personal service activities) of the general industrial classification of economic activities in the European Community, hereinafter referred to as 'NACE Rev. 1' established by Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community ([3]).

2. The inclusion of economic activities defined in sections M (Education), N (Health and social work) and O (Other Community, social and personal service activities) of NACE Rev. 1 in the scope of this Regulation shall be optional for the reference years 2000 and 2002. They may also be made optional for the subsequent years in accordance with the procedure set out in Article 12, taking into account the results of pilot studies in this area, in particular those under Council Regulation (EC, Euratom) No 58/97 of 20 December 1996 concerning structural business statistics ([4]).

Article 4

Taking into account the views of the Statistical Programme Committee, the Commission shall, within four years of the date of entry into force of this Regulation, compile a report taking into account the results of pilot studies, in particular, on the basis of existing sources in the area of statistical units with less than ten employees, and submit it to the Council. The report shall assess the application of the provisions of this Regulation relating to units with less than ten employees. The report shall weigh the importance of complete data against the reporting possibilities and the response burden. Following this report the Commission may, if necessary, submit appropriate initiatives to the Council for the amendment of this Regulation.

Article 5

Statistical units

The compilation of the statistics shall be based on local units and enterprises as defined in Council Regulation (EEC) No 696/93 of 15 March 1993 on the statistical units for the observation and analysis of the production system in the Community ([5]).

([1]) OJ L 52, 22. 2. 1997, p. 1.
([2]) OJ L 181, 28. 6. 1989, p. 47.
([3]) OJ L 293, 24. 10. 1990, p. 1. Regulation as amended by Regulation (EEC) No 761/93 (OJ L 83, 3. 4. 1993, p. 1).
([4]) OJ L 14, 17. 1. 1997, p. 1.
([5]) OJ L 76, 30. 3. 1993, p. 1.

Article 6

Characteristics of the required information

1. In the case of statistics on the level and composition of labour costs, information shall be provided at least on:

(a) the following characteristics relating to the local unit:

— the region (at NUTS 1 level),

— the size of the enterprise to which the local unit belongs (classified as one of the following: 10-49, 50-249, 250-499, 500-999, 1 000 or more employees),

— the economic activity (at the division level of NACE Rev. 1);

(b) the following variables:

— total annual labour costs, distinguishing wages and salaries (broken down into direct remuneration and bonuses, payments to employees' savings schemes, payment for days not worked and wages and salaries in kind), the employer's social contributions, (broken down into actual and imputed social contributions), vocational training costs, other expenditure and taxes, and also subsidies directly related to labour costs,

— the average annual number of employees, distinguishing full-time employees, part-time employees, and apprentices,

— the annual number of hours worked and the annual number of hours paid, in each case distinguishing full-time employees, part-time employees, and apprentices.

2. In the case of statistics on the structure and distribution of earnings, information shall be provided at least on:

(a) the following characteristics relating to the local unit to which the sampled employees are attached:

— the region (at NUTS 1 level),

— the size of the enterprise to which the local unit belongs (classified as one of the following: 10-49, 50-249, 250-499, 500-999, 1 000 or more employees),

— the economic activity (at the devision level of NACE Rev. 1),

— the form of economic and financial control within the meaning of Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings [1],

— the type of collective pay agreement in force;

(b) the following characteristics relating to each employee in the sample:

— sex,

— age,

— occupation classified according to the International Standard Classification of Occupations,

— highest completed level of education and training,

— length of service in the enterprise,

— whether full time or part time,

— type of employment contract,

(c) the following details of earnings:

— gross earnings for a representative month (distinguishing separately earnings related to overtime and special payments for shift work),

— gross annual earnings in the reference year (distinguishing separately bonuses paid irregularly),

— working-time (the number of hours paid in a standard working month, the number of overtime hours paid in the month and the annual leave entitlement).

Article 7

Data collection

1. Surveys shall be carried out through the appropriate national authorities, which shall draw up the appropriate methods for collecting the information, taking into account the response burdens, notably on SMEs.

2. Employers and other persons required to supply information shall reply to the questions completely and within the time limits set. The Member States shall take appropriate measures to avoid infringement of the obligation to supply the information referred to in Article 6.

3. In order to reduce the burden on enterprises, particularly on SMEs, surveys need not be carried out if the national authorities have information from other appropriate sources or are able to produce estimates of necessary data using statistical estimation procedures where some or all of the characteristics have not been observed for all the units for which the statistics are to be compiled.

[1] OJ L 195, 29. 7. 180, p. 35. Directive as last amended by Directive 93/84/EEC (OJ L 254, 12. 10. 1993, p. 16).

Article 8

Processing of results

The national authorities shall process the replies to the questions referred to in Article 7(2) or the information from other sources, as referred to in Article 7(3), so as to obtain comparable results.

Article 9

Forwarding of results

The results shall be forwarded to Eurostat within a period of 18 months from the end of the reference year.

Article 10

Quality

1. The national authorities shall ensure that the results reflect the true situation of the total population of units with a sufficient degree of representativity.

2. The national authorities shall forward to Eurostat at its request after each reference period a report containing all relevant information relating to the implementation of the Regulation in the Member State concerned, to enable the quality of the statistics to be evaluated.

Article 11

Implementation measures

The measures necessary for the implementation of this Regulation, including measures to take account of economic and technical changes, and in particular:

(i) the treatment of economic activities defined in sections M, N and O of NACE Rev. 1 (Article 3(2));

(ii) the definition and breakdown of the information to be provided (Article 6);

(iii) the appropriate technical format for the transmission of the results (Article 9);

(iv) quality evaluation criteria (Article 10);

(v) derogations, in duly justified cases, for periods 2004 and 2006, respectively (Article 13(2)),

shall be laid down for each reference period at least nine months before the beginning of the reference period, in accordance with the procedure set out in Article 12.

Article 12

Procedure

1. The Commission shall be assisted by the Statistical Programme Committee, hereinafter referred to as 'the Committee'.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. (a) The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

(b) If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 13

Derogations

1. Derogations from the provisions of Articles 2, 3 and 6 for the reference years 2000 and 2002 are set out in the Annex.

2. For the years 2004 and 2006, respectively, derogations from Articles 3 and 6 may be decided insofar as the national statistical system requires major adaptations, in accordance with the procedure set out in Article 12.

Article 14

Entry into force

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

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

Done at Brussels, 9 March 1999.

For the Council
The President
W. RIESTER

ANNEX

DEROGATIONS

I. Derogations from Article 2

1. Germany: the first statistics on the structure and distribution of earnings under this Regulation shall be produced for the reference year 2001 instead of 2002. Subsequent statistics on the structure and distribution of earnings shall be produced for the reference year 2006 and at four-yearly intervals thereafter.

2. France, Germany, Ireland, Sweden, and the United Kingdom: the statistics for the reference years 2000 and 2002 may refer to the financial year most closely corresponding to these calendar years, but this will not affect the deadlines for forwarding the data referred to in Article 9.

II. Derogations from Article 3

1. Germany: the economic activities defined in sections H (Hotels and restaurants), I (Transport, storage and communications) and K (Real estate, renting and business activities) of NACE Rev. 1 shall be optional for the reference years 2000 and 2001.

2. Ireland: the economic activities defined in section H (Hotels and restaurants) shall be optional for the reference year 2000.

3. Ireland: the economic activities defined in sections I (Transport, storage and communications), division 67 of section J and section K (Real estate, renting and business activities) of NACE Rev. 1 shall be optional for the reference year 2002.

III. Derogations from Article 6

1. Austria, Belgium, Italy and the Netherlands: for the reference years 2000 and 2002, the characteristics referred to in Article 6 may refer to the enterprise instead of the local unit.

2. Italy: for the reference year 2000 the characteristics referred to in Article 6(1)(b): payments to employees' savings schemes, other expenditures and taxes paid and also subsidies received by the employer shall be optional.

COMMISSION REGULATION (EC) No 531/1999

of 11 March 1999

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables [1], as last amended by Regulation (EC) No 1498/98 [2], and in particular Article 4 (1) thereof,

Whereas Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto;

Whereas, in compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 12 March 1999.

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

Done at Brussels, 11 March 1999.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 337, 24. 12. 1994, p. 66.
[2] OJ L 198, 15. 7. 1998, p. 4.

ANNEX

to the Commission Regulation of 11 March 1999 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	052	72,5
	204	38,0
	624	174,5
	999	95,0
0707 00 05	068	160,7
	999	160,7
0709 10 00	220	276,6
	999	276,6
0709 90 70	052	113,9
	204	154,8
	999	134,4
0805 10 10, 0805 10 30, 0805 10 50	052	60,4
	204	47,9
	212	46,5
	600	50,0
	624	48,7
	999	50,7
0805 30 10	052	46,6
	600	86,1
	999	66,3
0808 10 20, 0808 10 50, 0808 10 90	388	102,8
	400	82,1
	404	72,4
	508	89,0
	512	92,7
	528	91,8
	720	95,2
	728	95,7
	999	90,2
0808 20 50	052	122,9
	388	70,4
	400	79,8
	512	64,4
	528	70,8
	624	71,0
	999	79,9

(1) Country nomenclature as fixed by Commission Regulation (EC) No 2317/97 (OJ L 321, 22. 11. 1997, p. 19). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 532/1999
of 11 March 1999
fixing the export refunds on milk and milk products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products [1], as last amended by Regulation (EC) No 1587/96 [2], and in particular Article 17(3) thereof,

Whereas Article 17 of Regulation (EEC) No 804/68 provides that the difference between prices in international trade for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund within the limits resulting from agreements concluded in accordance with Article 228 of the Treaty;

Whereas Regulation (EEC) No 804/68 provides that when the refunds on the products listed in Article 1 of the abovementioned Regulation, exported in the natural state, are being fixed account must be taken of:

— the existing situation and the future trend with regard to prices and availabilities of milk and milk products on the Community market and prices for milk and milk products in international trade,

— marketing costs and the most favourable transport charges from Community markets to ports or other points of export in the Community, as well as costs incurred in placing the goods on the market of the country of destination,

— the aims of the common organisation of the market in milk and milk products which are to ensure equilibrium and the natural development of prices and trade on this market,

— the limits resulting from agreements concluded in accordance with Article 228 of the Treaty, and

— the need to avoid disturbances on the Community market, and

— the economic aspect of the proposed exports;

Whereas Article 17(5) of Regulation (EEC) No 804/68 provides that when prices within the Community are being determined account should be taken of the ruling prices which are most favourable for exportation, and that when prices in international trade are being determined particular account should be taken of:

(a) prices ruling on third country markets;

(b) the most favourable prices in third countries of destination for third country imports;

(c) producer prices recorded in exporting third countries, account being taken, where appropriate, of subsidies granted by those countries; and

(d) free-at-Community-frontier offer prices;

Whereas Article 17(3) of Regulation (EEC) No 804/68 provides that the world market situation or the specific requirements of certain markets may make it necessary to vary the refund on the products listed in Article 1 of the abovementioned Regulation according to destination;

Whereas Article 17(3) of Regulation (EEC) No 804/68 provides that the list of products on which export refunds are granted and the amount of such refunds should be fixed at least once every four weeks; whereas the amount of the refund may, however, remain at the same level for more than four weeks;

Whereas, in accordance with Article 16 of Commission Regulation (EC) No 174/1999 of 26 January 1999 on specific detailed rules for the application of Council Regulation (EEC) No 804/68 as regards export licences and export refunds on milk and milk products [3], the refund granted for milk products containing added sugar is equal to the sum of the two components; whereas one is intended to take account of the quantity of milk products and is calculated by multiplying the basic amount by the milk products content in the product concerned; whereas the other is intended to take account of the quantity of added sucrose and is calculated by multiplying the sucrose content of the entire product by the basic amount of the refund valid on the day of exportation for the products listed in Article 1(1)(d) of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector [4], as last amended by Commission Regulation (EC) No 1148/98 [5]; whereas, however, this second component is applied only if the added sucrose has been produced using sugar beet or cane harvested in the Community;

[1] OJ L 148, 28. 6. 1968, p. 13.
[2] OJ L 206, 16. 8. 1996, p. 21.
[3] OJ L 20, 27. 1. 1999, p. 8.
[4] OJ L 177, 1. 7. 1981, p. 4.
[5] OJ L 159, 3. 6. 1998, p. 38.

Whereas the level of refund for cheeses is calculated for products intended for direct consumption; whereas the cheese rinds and cheese wastes are not products intended for this purpose; whereas, to avoid any confusion in interpretation, it should be specified that there will be no refund for cheeses of a free-at-frontier value less than EUR 230,00 per 100 kilograms;

Whereas Commission Regulation (EEC) No 896/84 [1], as last amended by Regulation (EEC) No 222/88 [2], laid down additional provisions concerning the granting of refunds on the change from one milk year to another; whereas those provisions provide for the possibility of varying refunds according to the date of manufacture of the products;

Whereas for the calculation of the refund for processed cheese provision must be made where casein or caseinates are added for that quantity not to be taken into account;

Whereas it follows from applying the rules set out above to the present situation on the market in milk and in particular to quotations or prices for milk products within the Community and on the world market that the refund should be as set out in the Annex to this Regulation;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

1. The export refunds referred to in Article 17 of Regulation (EEC) No 804/68 on products exported in the natural state shall be as set out in the Annex.

2. There shall be no refunds for exports to destination No 400 for products falling within CN codes 0401, 0402, 0403, 0404, 0405 and 2309.

3. There shall be no refunds for exports to destinations No 022, 024, 028, 043, 044, 045, 046, 052, 404, 600, 800 and 804 for products falling within CN code 0406.

Article 2

This Regulation shall enter into force on 12 March 1999.

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

Done at Brussels, 11 March 1999.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 91, 1. 4. 1984, p. 71.
[2] OJ L 28, 1. 2. 1988, p. 1.

ANNEX

to the Commission Regulation of 11 March 1999 fixing the export refunds on milk and milk products

(in EUR/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0401 10 10 9000	970	2,327
	* * *	—
0401 10 90 9000	970	2,327
	* * *	—
0401 20 11 9100	970	2,327
	* * *	—
0401 20 11 9500	970	3,597
	* * *	—
0401 20 19 9100	970	2,327
	* * *	—
0401 20 19 9500	970	3,597
	* * *	—
0401 20 91 9100	970	4,551
	* * *	—
0401 20 91 9500	+	—
0401 20 99 9100	970	4,551
	* * *	—
0401 20 99 9500	+	—
0401 30 11 9100	+	—
0401 30 11 9400	970	10,50
	* * *	—
0401 30 11 9700	970	15,77
	* * *	—
0401 30 19 9100	+	—
0401 30 19 9400	+	—
0401 30 19 9700	970	15,77
	* * *	—
0401 30 31 9100	+	38,32
0401 30 31 9400	+	59,85
0401 30 31 9700	+	66,00
0401 30 39 9100	+	38,32
0401 30 39 9400	+	59,85
0401 30 39 9700	+	66,00
0401 30 91 9100	+	75,22
0401 30 91 9400	+	110,55
0401 30 91 9700	+	129,01
0401 30 99 9100	+	75,22
0401 30 99 9400	+	110,55
0401 30 99 9700	+	129,01
0402 10 11 9000	+	90,00
0402 10 19 9000	+	90,00
0402 10 91 9000	+	0,9000
0402 10 99 9000	+	0,9000
0402 21 11 9200	+	90,00
0402 21 11 9300	+	105,89
0402 21 11 9500	+	111,56
0402 21 11 9900	+	120,00
0402 21 17 9000	+	90,00
0402 21 19 9300	+	105,89
0402 21 19 9500	+	111,56
0402 21 19 9900	+	120,00
0402 21 91 9100	+	120,86
0402 21 91 9200	+	121,69
0402 21 91 9300	+	123,20
0402 21 91 9400	+	131,67
0402 21 91 9500	+	134,61
0402 21 91 9600	+	145,88
0402 21 91 9700	+	152,49
0402 21 91 9900	+	159,96
0402 21 99 9100	+	120,86
0402 21 99 9200	+	121,69
0402 21 99 9300	+	123,20
0402 21 99 9400	+	131,67
0402 21 99 9500	+	134,61
0402 21 99 9600	+	145,88
0402 21 99 9700	+	152,49
0402 21 99 9900	+	159,96
0402 29 15 9200	+	0,9000
0402 29 15 9300	+	1,0589
0402 29 15 9500	+	1,1156
0402 29 15 9900	+	1,2002
0402 29 19 9200	+	0,9000
0402 29 19 9300	+	1,0589
0402 29 19 9500	+	1,1156
0402 29 19 9900	+	1,2002
0402 29 91 9100	+	1,2086
0402 29 91 9500	+	1,3167
0402 29 99 9100	+	1,2086
0402 29 99 9500	+	1,3167
0402 91 11 9110	+	—
0402 91 11 9120	+	—
0402 91 11 9310	+	11,31
0402 91 11 9350	+	13,85
0402 91 11 9370	+	16,84
0402 91 19 9110	+	—
0402 91 19 9120	+	—
0402 91 19 9310	+	11,31
0402 91 19 9350	+	13,85
0402 91 19 9370	+	16,84
0402 91 31 9100	+	—
0402 91 31 9300	+	19,91
0402 91 39 9100	+	—
0402 91 39 9300	+	19,91
0402 91 51 9000	+	—
0402 91 59 9000	+	—
0402 91 91 9000	+	63,94
0402 91 99 9000	+	63,94
0402 99 11 9110	+	—
0402 99 11 9130	+	—
0402 99 11 9150	+	—
0402 99 11 9310	+	0,2689
0402 99 11 9330	+	0,3228
0402 99 11 9350	+	0,4291
0402 99 19 9110	+	—
0402 99 19 9130	+	—
0402 99 19 9150	+	—
0402 99 19 9310	+	0,2689
0402 99 19 9330	+	0,3228
0402 99 19 9350	+	0,4291
0402 99 31 9110	+	—
0402 99 31 9150	+	0,4467
0402 99 31 9300	+	0,3832
0402 99 31 9500	+	0,6600
0402 99 39 9110	+	—
0402 99 39 9150	+	0,4467
0402 99 39 9300	+	0,3832

Product code	Destination (*)	Amount of refund
0402 99 39 9500	+	0,6600
0402 99 91 9000	+	0,7522
0402 99 99 9000	+	0,7522
0403 10 11 9400	+	—
0403 10 11 9800	+	—
0403 10 13 9800	+	—
0403 10 19 9800	+	—
0403 10 31 9400	+	—
0403 10 31 9800	+	—
0403 10 33 9800	+	—
0403 10 39 9800	+	—
0403 90 11 9000	+	88,48
0403 90 13 9200	+	88,48
0403 90 13 9300	+	104,95
0403 90 13 9500	+	110,56
0403 90 13 9900	+	118,93
0403 90 19 9000	+	119,81
0403 90 31 9000	+	0,8848
0403 90 33 9200	+	0,8848
0403 90 33 9300	+	1,0495
0403 90 33 9500	+	1,1056
0403 90 33 9900	+	1,1893
0403 90 39 9000	+	1,1981
0403 90 51 9100	970	2,327
	* * *	—
0403 90 51 9300	+	—
0403 90 53 9000	+	—
0403 90 59 9110	+	—
0403 90 59 9140	+	—
0403 90 59 9170	970	15,77
	* * *	—
0403 90 59 9310	+	38,32
0403 90 59 9340	+	59,85
0403 90 59 9370	+	66,00
0403 90 59 9510	+	75,22
0403 90 59 9540	+	110,55
0403 90 59 9570	+	129,01
0403 90 61 9100	+	—
0403 90 61 9300	+	—
0403 90 63 9000	+	—
0403 90 69 9000	+	—
0404 90 21 9100	+	90,00
0404 90 21 9910	+	—
0404 90 21 9950	+	11,31
0404 90 23 9120	+	90,00
0404 90 23 9130	+	105,89
0404 90 23 9140	+	111,56
0404 90 23 9150	+	120,00
0404 90 23 9911	+	—
0404 90 23 9913	+	—
0404 90 23 9915	+	—
0404 90 23 9917	+	—
0404 90 23 9919	+	—
0404 90 23 9931	+	11,31
0404 90 23 9933	+	13,85
0404 90 23 9935	+	16,84
0404 90 23 9937	+	19,91
0404 90 23 9939	+	20,81
0404 90 29 9110	+	120,86
0404 90 29 9115	+	121,69
0404 90 29 9120	+	123,20
0404 90 29 9130	+	131,67
0404 90 29 9135	+	134,61
0404 90 29 9150	+	145,88
0404 90 29 9160	+	152,49
0404 90 29 9180	+	159,96
0404 90 81 9100	+	0,9000
0404 90 81 9910	+	—
0404 90 81 9950	+	0,2689
0404 90 83 9110	+	0,9000
0404 90 83 9130	+	1,0589
0404 90 83 9150	+	1,1156
0404 90 83 9170	+	1,2002
0404 90 83 9911	+	—
0404 90 83 9913	+	—
0404 90 83 9915	+	—
0404 90 83 9917	+	—
0404 90 83 9919	+	—
0404 90 83 9931	+	0,2689
0404 90 83 9933	+	0,3228
0404 90 83 9935	+	0,4291
0404 90 83 9937	+	0,4467
0404 90 89 9130	+	1,2086
0404 90 89 9150	+	1,3167
0404 90 89 9930	+	0,4601
0404 90 89 9950	+	0,6600
0404 90 89 9990	+	0,7522
0405 10 11 9500	+	165,85
0405 10 11 9700	+	170,00
0405 10 19 9500	+	165,85
0405 10 19 9700	+	170,00
0405 10 30 9100	+	165,85
0405 10 30 9300	+	170,00
0405 10 30 9500	+	165,85
0405 10 30 9700	+	170,00
0405 10 50 9100	+	165,85
0405 10 50 9300	+	170,00
0405 10 50 9500	+	165,85
0405 10 50 9700	+	170,00
0405 10 90 9000	+	176,22
0405 20 90 9500	+	155,49
0405 20 90 9700	+	161,71
0405 90 10 9000	+	216,00
0405 90 90 9000	+	170,00
0406 10 20 9100	+	—
0406 10 20 9230	037	—
	039	—
	099	37,68
	400	22,83
	* * *	37,68
0406 10 20 9290	037	—
	039	—
	099	35,05
	400	15,29
	* * *	35,05
0406 10 20 9300	037	—
	039	—
	099	15,39
	400	7,834
	* * *	15,39

Product code	Destination (*)	Amount of refund
0406 10 20 9610	037	—
	039	—
	099	51,11
	400	30,98
	* * *	51,11
0406 10 20 9620	037	—
	039	—
	099	51,83
	400	31,42
	* * *	51,83
0406 10 20 9630	037	—
	039	—
	099	57,86
	400	35,06
	* * *	57,86
0406 10 20 9640	037	—
	039	—
	099	85,03
	400	48,35
	* * *	85,03
0406 10 20 9650	037	—
	039	—
	099	70,86
	400	25,44
	* * *	70,86
0406 10 20 9660	+	—
0406 10 20 9830	037	—
	039	—
	099	26,28
	400	13,38
	* * *	26,28
0406 10 20 9850	037	—
	039	—
	099	31,87
	400	16,22
	* * *	31,87
0406 10 20 9870	+	—
0406 10 20 9900	+	—
0406 20 90 9100	+	—
0406 20 90 9913	037	—
	039	—
	099	58,77
	400	31,59
	* * *	58,77
0406 20 90 9915	037	—
	039	—
	099	77,56
	400	42,12
	* * *	77,56
0406 20 90 9917	037	—
	039	—
	099	82,41
	400	44,75
	* * *	82,41
0406 20 90 9919	037	—
	039	—
	099	92,10
	400	50,02
	* * *	92,10
0406 20 90 9990	+	—
0406 30 31 9710	037	—
	039	—
	099	9,536
	400	8,346
	* * *	17,88
0406 30 31 9730	037	—
	039	—
	099	13,99
	400	12,25
	* * *	26,24
0406 30 31 9910	037	—
	039	—
	099	9,536
	400	8,346
	* * *	17,88
0406 30 31 9930	037	—
	039	—
	099	13,99
	400	12,25
	* * *	26,24
0406 30 31 9950	037	—
	039	—
	099	20,36
	400	17,81
	* * *	38,17
0406 30 39 9500	037	—
	039	—
	099	13,99
	400	12,25
	* * *	26,24
0406 30 39 9700	037	—
	039	—
	099	20,36
	400	17,81
	* * *	38,17
0406 30 39 9930	037	—
	039	—
	099	20,36
	400	17,81
	* * *	38,17
0406 30 39 9950	037	—
	039	—
	099	23,02
	400	21,14
	* * *	43,16
0406 30 90 9000	037	—
	039	—
	099	24,15
	400	21,14
	* * *	45,28
0406 40 50 9000	037	—
	039	—
	099	90,00
	400	32,98
	* * *	90,00

Product code	Destination (*)	Amount of refund
0406 40 90 9000	037	—
	039	—
	099	92,42
	400	32,98
	* * *	92,42
0406 90 13 9000	037	—
	039	—
	099	101,62
	400	60,16
	* * *	101,62
0406 90 15 9100	037	—
	039	—
	099	105,01
	400	62,17
	* * *	105,01
0406 90 17 9100	037	—
	039	—
	099	105,01
	400	62,17
	* * *	105,01
0406 90 21 9900	037	—
	039	—
	099	102,90
	400	44,53
	* * *	102,90
0406 90 23 9900	037	—
	039	—
	099	90,36
	400	18,57
	* * *	90,36
0406 90 25 9900	037	—
	039	—
	099	89,77
	400	21,16
	* * *	89,77
0406 90 27 9900	037	—
	039	—
	099	81,30
	400	18,57
	* * *	81,30
0406 90 31 9119	037	—
	039	—
	099	74,72
	400	25,56
	* * *	74,72
0406 90 33 9119	037	—
	039	—
	099	74,72
	400	25,56
	* * *	74,72
0406 90 33 9919	037	—
	039	—
	099	68,29
	400	20,33
	* * *	68,29
0406 90 33 9951	037	—
	039	—
	099	68,98
	400	20,01
	* * *	68,98
0406 90 35 9190	037	28,95
	039	28,95
	099	105,71
	400	61,40
	* * *	105,71
0406 90 35 9990	037	—
	039	—
	099	105,71
	400	40,19
	* * *	105,71
0406 90 37 9000	037	—
	039	—
	099	101,62
	400	60,16
	* * *	101,62
0406 90 61 9000	037	40,61
	039	40,61
	099	112,00
	400	57,27
	* * *	112,00
0406 90 63 9100	037	37,12
	039	37,12
	099	111,41
	400	63,89
	* * *	111,41
0406 90 63 9900	037	29,52
	039	29,52
	099	107,11
	400	48,93
	* * *	107,11
0406 90 69 9100	+	—
0406 90 69 9910	037	—
	039	—
	099	107,11
	400	48,93
	* * *	107,11
0406 90 73 9900	037	—
	039	—
	099	93,28
	400	52,63
	* * *	93,28
0406 90 75 9900	037	—
	039	—
	099	93,90
	400	22,27
	* * *	93,90
0406 90 76 9300	037	—
	039	—
	099	84,68
	400	20,12
	* * *	84,68

Product code	Destination (*)	Amount of refund
0406 90 76 9400	037	—
	039	—
	099	94,85
	400	23,22
	* * *	94,85
0406 90 76 9500	037	—
	039	—
	099	90,24
	400	23,22
	* * *	90,24
0406 90 78 9100	037	—
	039	—
	099	87,50
	400	18,14
	* * *	87,50
0406 90 78 9300	037	—
	039	—
	099	92,78
	400	20,12
	* * *	92,78
0406 90 78 9500	037	—
	039	—
	099	91,91
	400	23,22
	* * *	91,91
0406 90 79 9900	037	—
	039	—
	099	75,02
	400	19,23
	* * *	75,02
0406 90 81 9900	037	—
	039	—
	099	94,85
	400	47,61
	* * *	94,85
0406 90 85 9910	037	28,95
	039	28,95
	099	102,43
	400	59,27
	* * *	102,43
0406 90 85 9991	037	—
	039	—
	099	102,43
	400	40,19
	* * *	102,43
0406 90 85 9995	037	—
	039	—
	099	93,90
	400	21,16
	* * *	93,90
0406 90 85 9999	+	—
0406 90 86 9100	+	—
0406 90 86 9200	037	—
	039	—
	099	86,17
	400	27,65
	* * *	86,17
0406 90 86 9300	037	—
	039	—
	099	87,41
	400	30,30
	* * *	87,41
0406 90 86 9400	037	—
	039	—
	099	92,87
	400	34,28
	* * *	92,87
0406 90 86 9900	037	—
	039	—
	099	102,43
	400	40,24
	* * *	102,43
0406 90 87 9100	+	—
0406 90 87 9200	037	—
	039	—
	099	71,81
	400	24,78
	* * *	71,81
0406 90 87 9300	037	—
	039	—
	099	80,27
	400	28,02
	* * *	80,27
0406 90 87 9400	037	—
	039	—
	099	82,36
	400	30,66
	* * *	82,36
0406 90 87 9951	037	—
	039	—
	099	93,15
	400	42,19
	* * *	93,15
0406 90 87 9971	037	—
	039	—
	099	93,15
	400	34,41
	* * *	93,15
0406 90 87 9972	099	39,68
	400	13,67
	* * *	39,68

Product code	Destination (*)	Amount of refund
0406 90 87 9973	037	—
	039	—
	099	91,46
	400	24,08
	***	91,46
0406 90 87 9974	037	—
	039	—
	099	99,26
	400	24,08
	***	99,26
0406 90 87 9975	037	—
	039	—
	099	101,25
	400	31,87
	***	101,25
0406 90 87 9979	037	—
	039	—
	099	90,36
	400	24,08
	***	90,36
0406 90 88 9100	+	—
0406 90 88 9300	037	—
	039	—
	099	70,90
	400	30,30
	***	70,90
2309 10 15 9010	+	—
2309 10 15 9100	+	—
2309 10 15 9200	+	—
2309 10 15 9300	+	—
2309 10 15 9400	+	—
2309 10 15 9500	+	—
2309 10 15 9700	+	—
2309 10 19 9010	+	—
2309 10 19 9100	+	—
2309 10 19 9200	+	—
2309 10 19 9300	+	—
2309 10 19 9400	+	—
2309 10 19 9500	+	—
2309 10 19 9600	+	—
2309 10 19 9700	+	—
2309 10 19 9800	+	—
2309 10 70 9010	+	—
2309 10 70 9100	+	13,85
2309 10 70 9200	+	18,47
2309 10 70 9300	+	23,09
2309 10 70 9500	+	27,70
2309 10 70 9600	+	32,32
2309 10 70 9700	+	36,94
2309 10 70 9800	+	40,63
2309 90 35 9010	+	—
2309 90 35 9100	+	—
2309 90 35 9200	+	—
2309 90 35 9300	+	—
2309 90 35 9400	+	—
2309 90 35 9500	+	—
2309 90 35 9700	+	—
2309 90 39 9010	+	—
2309 90 39 9100	+	—
2309 90 39 9200	+	—
2309 90 39 9300	+	—
2309 90 39 9400	+	—
2309 90 39 9500	+	—
2309 90 39 9600	+	—
2309 90 39 9700	+	—
2309 90 39 9800	+	—
2309 90 70 9010	+	—
2309 90 70 9100	+	13,85
2309 90 70 9200	+	18,47
2309 90 70 9300	+	23,09
2309 90 70 9500	+	27,70
2309 90 70 9600	+	32,32
2309 90 70 9700	+	36,94
2309 90 70 9800	+	40,63

(*) The code numbers for the destinations are those set out in the Annex to Commission Regulation (EC) No 2645/98 (OJ L 335, 10.12.1998, p. 22). However:

— '099' covers all destination codes from 053 to 096 inclusive,

— '970' covers the exports referred to in Articles 34(1)(a) and (c) and 42(1)(a) and (b) of Commission Regulation (EEC) No 3665/87 (OJ L 351, 14.12.1987, p. 1).

For destinations other than those indicated for each 'product code', the amount of the refund applying is indicated by ***.

Where no destination ('+') is indicated, the amount of the refund is applicable for exports to any destination other than those referred to in Article 1(2) and (3).

NB: The product codes and the footnotes are defined in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1), as amended.

COMMISSION REGULATION (EC) No 533/1999

of 11 March 1999

on the issuing of a standing invitation to tender for the sale of common wheat of breadmaking quality held by the German intervention agency for export to certain ACP countries in the 1998/1999 marketing year

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals [1], as last amended by Commission Regulation (EC) No 923/96 [2], and in particular Article 5 thereof,

Whereas Commission Regulation (EEC) No 2131/93 [3], as last amended by Regulation (EC) No 39/1999 [4], lays down the procedure and conditions for the disposal of cereals held by intervention agencies;

Whereas, with a view to supplying the markets of the ACP countries, favoured partners of the Community, significant quantities of common wheat are required; whereas these markets are usually supplied on the basis of regular contracts to ensure stable prices for the ACP countries over a certain period; whereas it is therefore necessary to issue a specific invitation to tender to ensure that users in these countries have access to common wheat of breadmaking quality under conditions appropriate to the highly competitive situation on the world market;

Whereas the German intervention agency holds stocks of common wheat of breadmaking quality; whereas part of the wheat coming from the intervention stocks held by the aforementioned agency should therefore be resold to the ACP countries to meet their quantitative and qualitative needs; whereas the common wheat successfully tendered for must be exported to the countries of destination by 31 August 1999 at the latest;

Whereas the specific nature of the operation and the accounting position of the common wheat in question require greater flexibility in the mechanisms and obligations governing the resale of intervention stocks and also require exclusion of any refund, tax or monthly increase; whereas special procedures must be laid down to ensure that the operations and their monitoring are properly effected; whereas to that end provision should be made for a security lodgment scheme which ensures that the aims are met while avoiding excessive costs for the operators; whereas derogations should accordingly be made to certain rules, in particular those laid down in Regulation (EEC) No 2131/93;

Whereas, in addition to the conditions laid down in Article 30 of Commission Regulation (EEC) No 3719/88 [5], as last amended by Regulation (EC) No 168/1999 [6], provision should be made for the release for consumption in the ACP State(s) laid down in the Regulation;

Whereas, where removal of the wheat is delayed by more than five days, or the release of one of the securities required is delayed, for reasons imputable to the intervention agency the Member State concerned will have to pay compensation;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

1. A standing invitation to tender is hereby issued for the export of 200 000 tonnes of common wheat of breadmaking quality, held by the German intervention agency.

2. The common wheat must be exported to an ACP State or to several States within one of the groups of ACP States listed in Annex I.

3. The regions in which the 200 000 tonnes of German common wheat of breadmaking quality are stored are listed in Annex II.

4. The intervention agency concerned shall prepare a notice of invitation to tender indicating for each lot or, where appropriate, each part lot:

[1] OJ L 181, 1. 7. 1992, p. 21.
[2] OJ L 126, 24. 5. 1996, p. 37.
[3] OJ L 191, 31. 7. 1993, p. 76.
[4] OJ L 5, 9. 1. 1999, p. 64.
[5] OJ L 331, 2. 12. 1988, p. 1.
[6] OJ L 19, 26. 1. 1999, p. 4.

— the location,

— and at least the following features:

  — specific weight,

  — moisture content,

  — Hagberg falling number,

  — impurity contents and sprouted grains,

  — protein content.

5. It shall publish the notice of invitation to tender at least two days before the date set for the first partial invitation to tender.

Article 2

Subject to the provisions of this Regulation, the sales of common wheat of breadmaking quality referred to in Article 1 shall take place in accordance with the procedure and conditions laid down by Regulation (EEC) No 2131/93.

Article 3

1. The time limit for submitting tenders for the first partial invitation to tender shall be 9 a.m. (Brussels time) on Thursday 18 March 1999.

2. The time limit for submitting tenders for the second partial invitation to tender shall be 9 a.m. (Brussels time) on the following Thursday.

The time limit for the last partial invitation to tender shall be 30 April 1999.

3. Tenders must be submitted to the German intervention agency.

Article 4

1. Tenders shall only be admissible if:

— the tenderer provides written proof from an official body in the ACP country of destination or a company having its overseas subsidiary in the said country, that he has concluded for the quantity in question a commercial supply contract for common wheat for export to an ACP State or to several States within one of the groups of ACP States listed in Annex I. That contract may cover only those deliveries to be made during the period April to August 1999 for quantities traditionally supplied; such proof shall be lodged with the competent authorities at least two working days before the date of the partial invitation to tender against which the tender is to be submitted,

— they are accompanied by an application for an export licence for the destination in question.

The proof provided for in the first indent shall also indicate the quality provided for in the contract, the time limit for delivery and the price terms.

The Member State shall send the Commission a copy of the said proof forthwith, for information.

2. Tenders may not exceed the quantity laid down in the commercial contract submitted.

Article 5

1. No export refund or export tax or monthly increase shall be applied for exports carried out pursuant to this Regulation.

2. The validity of the export licences issued in accordance with this Regulation shall expire on 31 July 1999.

3. The licence obliges the operator to export to the ACP State or States for which the licence application was submitted. However, up to a limit of 30 % of the quantity for which the licence was issued, the operator may effect his contract at another destination on condition that it belongs to the same group of countries listed in Annex I.

4. The export licences shall be issued as soon as the successful tenderers have been selected.

5. Article 9 of Regulation (EEC) No 3719/88 notwithstanding, the rights deriving from the licence referred to in this Article shall not be transferable.

Article 6

1. The intervention agency, the storer and the successful tenderer, if he so wishes, shall, by common agreement, either before or at the moment of removal from storage, as the successful tenderer chooses, take reference samples at the rate of at least one sample for every 500 tonnes, and shall analyse the samples. The intervention agency may be represented by a proxy, provided this is not the storer.

The Commission must be informed of the findings of the analyses in the event of a dispute.

Reference samples shall be taken and analysed within seven working days of the date of the successful tenderer's request or within three working days if the samples were taken on removal from storage. If the final result of the sample analyses indicates a quality:

(a) greater than that specified in the notice of invitation to tender, the successful tenderer must accept the lot as established;

(b) greater than the minimum characteristics required for intervention but below the quality described in the notice of invitation to tender, with the difference remaining within a limit of up to:

— 2 kg/hl for the specific weight, which must not, however, be less than 72 kg/hl,

— one percentage point for the mositure content,

— 20 percentage points for the Hagberg falling index,

— one percentage point for the protein content,

— half a percentage point for the impurities referred to in B.2 and B.4 of the Annex to Commission Regulation (EEC) No 689/92 [1],

and

— half a percentage point for the impurities referred to in point B.5 of the Annex to Regulation (EEC) No 689/92, the percentages admissible for noxious grains and ergot, however, remaining unchanged,

the successful tenderer must accept the lot as established;

(c) greater than the minimum characteristics required for intervention but below the quality described in the notice of invitation to tender with the difference surpassing the limit referred to in point (b), the successful tenderer may:

— either accept the lot as established,

— or refuse to take over the lot in question. The successful tenderer shall be released from all his obligations relating to the lot in question, including the securities, only once he has informed the Commission and the intervention agency forthwith, in accordance with Annex V; however, if he requests the intervention agency to supply him with another lot of intervention breadmaking wheat of the quality laid down, and that without additional charges, the security shall not be released. The lot must be replaced within a maximum of three days from the date of the successful tenderer's request. The successful tenderer shall immediately inform the Commission thereof in accordance with Annex V;

(d) below the minimum characteristics required for intervention, the successful tenderer may not remove the lot in question. He shall be released from all his obligations relating to the lot in question, including the securities, only once he has informed the Commission and the intervention agency forthwith, in accordance with Annex V; however, he may request the intervention agency to supply him with another lot of intervention breadmaking wheat of the quality laid down, without additional charges. In this case, the security shall not be released. The lot must be replaced within a maximum of three days from the date of the successful tenderer's request. The successful tenderer shall immediately inform the Commission thereof in accordance with Annex V.

2. However, if the breadmaking wheat is removed before the results of the analysis are known, all risks shall be borne by the successful tenderer from the time of removal of the lot, without prejudice to the forms of recourse the successful tenderer may have against the storer.

3. If, after successive replacements, the successful tenderer has not received a replacement lot of the quality laid down within one month of the date of his request for replacement, he shall be released from all his obligations, including the securities once he has informed the Commission and the intervention agency forthwith in accordance with Annex V.

4. The costs of the taking of samples and the analyses referred to in paragraph 1, except those where the final result of the analyses produces a quality inferior to the minimum characteristics required for intervention, shall be borne by the EAGGF up to a maximum of one analysis per 500 tonnes with the exception of the transsilage costs.

The cost of transsilage and of any additional analyses requested by the successful tenderer shall be borne by him.

Article 7

The successful tenderer shall pay for the common wheat before removing it at the price indicated in the tender. The final date for removal is 31 July 1999. The payment due for each of the lots to be removed shall be indivisible.

Article 8

1. The security lodged pursuant to Article 13(4) of Regulation (EEC) No 2131/93 must be released once the export licences have been issued to the successful tenderers.

2. The obligation to export and import into one of the countries of destination listed in Annex I shall be covered by a security amounting to EUR 50 per tonne of which EUR 15 per tonne shall be lodged upon issue of the export licence, with the balance of EUR 35 being lodged before removal of the cereals.

Article 15(2) of Commission Regulation (EEC) No 3002/92 [2] notwithstanding:

— the amount of EUR 15 per tonne must be released within 20 working days of the date on which the successful tenderer supplies proof that the wheat removed has left the customs territory of the Community,

— the amount of EUR 35 per tonne must be released within 15 working days of the date on which the successful tenderer supplies proof of entry for consumption into the ACP State or States referred to in Article 5(3). This proof shall be supplied in accordance with Articles 18 and 47 of Commission Regulation (EEC) No 3665/87 [3].

[1] OJ L 74, 20. 3. 1992, p. 18.

[2] OJ L 301, 17. 10. 1992, p. 17.

[3] OJ L 351, 14. 12. 1987, p. 1.

3. Except in duly substantiated exceptional cases, in particular the opening of an administrative enquiry, any release of the securities provided for in this Article after the limits specified in this same Article shall confer an entitlement to compensation from the Member State amounting to EUR 0,015/10 tonnes for each day's delay.

This compensation shall not be charged to the EAGGF.

Article 9

Article 12 of Regulation (EEC) No 3002/92 notwithstanding, the documents relating to the sale of common wheat in accordance with this Regulation and in particular the export licence, the removal order referred to in Article 3(1)(b) of Regulation (EEC) No 3002/92, the export declaration and, where appropriate, the T5 control copy must bear the words:

— Trigo blando panificable de intervención sin aplicación de restitución ni gravamen, destinado a (nombre del Estado o de los Estados ACP), Reglamento (CE) nº 533/1999

— Bageegnet blød hvede fra intervention uden restitutionsydelse eller -afgift bestemt for (navnet på det eller de pågældende AVS-lande), forordning (EF) nr. 533/1999

— Interventions-Brotweichweizen ohne Anwendung von Ausfuhrerstattungen oder Ausfuhrabgaben, Bestimmung (Name des AKP-Staates oder der AKP-Staaten), Verordnung (EG) Nr. 533/1999

— Μαλακός αρτοποιήσιμος σίτος παρέμβασης, χωρίς εφαρμογή επιστροφής ή φόρου προοριζόμενος για (όνομα της χώρας ΑΚΕ ή των χωρών ΑΚΕ), κανονισμός (ΕΚ) αριθ. 533/1999

— Intervention common wheat of breadmaking quality without application of refund or tax, bound for (name of the ACP State or States), Regulation (EC) No 533/1999

— Blé tendre d'intervention panifiable ne donnant pas lieu à restitution ni à taxe, destiné à (nom de l'État ACP ou des États ACP), règlement (CE) nº 533/1999

— Frumento tenero d'intervento panificabile senza applicazione di restituzione o di tassa, destinato al (nome del paese o dei paesi ACP), regolamento (CE) n. 533/1999

— Zachte tarwe van bakkwaliteit uit interventie, zonder toepassing van restitutie of belasting, bestemd voor (naam van de ACS-Staat of de ACS-Staten), Verordening (EG) nr. 533/1999

— Trigo mole panificável de intervenção sem aplicação de uma restituição, ou imposição destinado a (nome do Estado ou dos Estados ACP), Regulamento (CE) n.º 533/1999

— Interventioleipävehnää, jolle ei makseta vientitukea eikä vientimaksua ja jonka määräpaikka on (AKT-maan nimi tai AKT-maiden nimet), asetus (EY) N:o 533/1999

— Interventionsvete av brödkvalitet, ej utan bidrag eller avgift avsett för (AVS-statens eller AVS-staternas namn), förordning (EG) nr 533/1999.

Article 10

1. The German intervention agency shall inform the Commission of the tenders received within three hours of the expiry of the time limit for submitting tenders. The information must be sent in the form laid down in Annex III to one of the telex or fax numbers listed in Annex IV.

2. It shall inform the Commission on a monthly basis of the quantities of common wheat removed pursuant to this Regulation.

Article 11

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

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

Done at Brussels, 11 March 1999.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

Groups of ACP States signatories to the Lomé Convention

Group I	Group II	Group III
Mauritania	Chad	Seychelles
Mali	Central African Republic	Comoros
Niger	Benin	Madagascar
Senegal	Cameroon	Mauritius
Gambia	Equatorial Guinea	Angola
Guinea-Bissau	São Tomé and Príncipe	Zambia
Guinea	Gabon	Malawi
Cape Verde	Congo	Mozambique
Sierra Leone	Democratic Republic of Congo	Namibia
Liberia	Rwanda	Botswana
Côte d'Ivoire	Burundi	Zimbabwe
Ghana	Burkina Faso	Lesotho
Togo		Swaziland
		Djibouti
		Ethiopia
		Eritrea

ANNEX II

(tonnes)

Region of storage	Quantities
Schleswig-Holstein/Hamburg/ Niedersachsen/Bremen/ Nordrhein-Westfalen	120 000
Hessen/Rheinland-Pfalz/ Baden-Württemberg/Saarland/Bayern	25 000
Berlin/Brandenburg/ Mecklenburg-Vorpommern	17 000
Sachsen/Sachsen-Anhalt/Thüringen	38 000

ANNEX III

Standing invitation to tender for the export of 200 000 tonnes of common wheat of bread-making quality held by the German intervention agency

(Regulation (EC) No 533/1999)

1	2	3	4	5	6	7
Registration number of the tenderer	Lot number	Quantity in tonnes	Offer price (EUR/tonne) (1)	Increases (+) Reductions (−) (EUR/tonne) p.m.	Commercial costs (EUR/tonne)	Destination
1						
2						
3						
etc.						

(1) This price includes the increases and reductions relating to the lot for which the tender is submitted.

ANNEX IV

The only telex and fax numbers in Brussels to be used are:

DG VI/C/1:

— telex: 22037 AGREC B,
22070 AGREC B (Greek characters),

— fax: 296 49 56,
295 25 15.

ANNEX V

Communication of refusal of lots under the standing invitation to tender for the export of 200 000 tonnes of breadmaking common wheat held by the German intervention agency

(Article 6 of Regulation (EC) No 533/1999)

— Name of successful tenderer:

— Date of award of contract:

— Date of refusal of lot by successful tenderer:

Lot No	Quantity in tonnes	Address of silo	Reason for refusal to take over
			— Specific weight (kg/hl) — % sprouted grains — % miscellaneous impurities (Schwarzbesatz) — % of matter which is not wheat of unimpaired quality — Other

COMMISSION REGULATION (EC) No 534/1999

of 11 March 1999

fixing the ceilings on financing for measures to improve the quality of olive-oil production in the 1999/2000 production cycle

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats [1], as last amended by Regulation (EC) No 1638/98 [2],

Having regard to Commission Regulation (EC) No 528/1999 of 10 March 1999 laying down measures to improve the quality of olive-oil production [3], and in particular Article 3(2) thereof,

Whereas Article 3(2) of Commission Regulation (EC) No 528/1999 provides that ceilings be fixed, for each 12-month production cycle, on financing for measures to improve the quality of olive-oil production and its environmental impact in each producer Member State;

Whereas, for the first year of application of Regulation (EC) No 528/1999 and in view of the date of its entry into force, a later deadline for drawing up the action programme for the 1999/2000 production cycle should be provided for;

Whereas Commission Regulation (EC) No 2095/98 of 30 September 1998 fixing the estimated production of olive oil and the amount of the unit production aid that may be paid in advance for the 1997/98 marketing year [4] estimates production at 2 290 600 tonnes; whereas this corresponds to 1 157 000 tonnes for Spain, 422 000 tonnes for Greece, 670 000 tonnes for Italy, 39 000 tonnes for Portugal and 2 600 tonnes for France; whereas the amount withheld from production aid for this olive-oil marketing year serves as a basis for financing measures to improve the quality of the oil during the production cycle commencing on 1 May 1999;

Whereas the measures have relatively fixed minimum costs; whereas the ceilings on total financing for some Member States may therefore prove to be too low; whereas, as a result, appropriate limits should be established for these cases;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Oils and Fats,

HAS ADOPTED THIS REGULATION:

Article 1

For the production cycle from 1 May 1999 to 30 April 2000, the ceiling on financing for the measures laid down in the first subparagraph of Article 3(2) of Regulation (EC) 528/1999 shall be:

— Spain: EUR 14 039 000
— Greece: EUR 5 846 000
— France: EUR 49 000
— Italy: EUR 9 081 000
— Portugal: EUR 632 000.

Article 2

Notwithstanding Article 2(1) of Regulation (EC) No 528/1999, the deadline for drawing up the action programme for the 1999/2000 production cycle shall be 30 April 1999.

Article 3

Notwithstanding Article 3(3) of Regulation (EC) No 528/1999, the additional national contribution from Member States whose maximum financing laid down in Article 1 is EUR 100 000 or less shall be no more than EUR 250 000.

Article 4

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

[1] OJ 172, 30. 9. 1966, p. 3025/66.
[2] OJ L 210, 28. 7. 1998, p. 32.
[3] OJ L 62, 11. 3. 1999, p. 8.
[4] OJ L 266, 1. 10. 1998, p. 62.

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

Done at Brussels, 11 March 1999.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION REGULATION (EC) No 535/1999

of 11 March 1999

fixing the export refunds on cereals and on wheat or rye flour, groats and meal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals [1], as last amended by Commission Regulation (EC) No 923/96 [2], and in particular Article 13 (2) thereof,

Whereas Article 13 of Regulation (EEC) No 1766/92 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products in the Community may be covered by an export refund;

Whereas the refunds must be fixed taking into account the factors referred to in Article 1 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals [3], as last amended by Regulation (EC) No 2513/98 [4];

Whereas, as far as wheat and rye flour, groats and meal are concerned, when the refund on these products is being calculated, account must be taken of the quantities of cereals required for their manufacture; whereas these quantities were fixed in Regulation (EC) No 1501/95;

Whereas the world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination;

Whereas the refund must be fixed once a month; whereas it may be altered in the intervening period;

Whereas it follows from applying the detailed rules set out above to the present situation on the market in cereals, and in particular to quotations or prices for these products within the Community and on the world market, that the refunds should be as set out in the Annex hereto;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 1766/92, excluding malt, exported in the natural state, shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 12 March 1999.

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

Done at Brussels, 11 March 1999.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 181, 1. 7. 1992, p. 21.
[2] OJ L 126, 24. 5. 1996, p. 37.
[3] OJ L 147, 30. 6. 1995, p. 7.
[4] OJ L 313, 21. 11. 1998, p. 16.

ANNEX

to the Commission Regulation of 11 March 1999 fixing the export refunds on cereals and on wheat or rye flour, groats and meal

(EUR/tonne)

Product code	Destination (1)	Amount of refund
1001 10 00 9200	—	—
1001 10 00 9400	01	0
1001 90 91 9000	—	—
1001 90 99 9000	03	23,00
	02	0
1002 00 00 9000	03	64,00
	02	0
1003 00 10 9000	—	—
1003 00 90 9000	03	43,00
	02	0
1004 00 00 9200	—	—
1004 00 00 9400	—	—
1005 10 90 9000	—	—
1005 90 00 9000	03	35,00
	02	0
1007 00 90 9000	—	—
1008 20 00 9000	—	—

(EUR/tonne)

Product code	Destination (1)	Amount of refund
1101 00 11 9000	—	—
1101 00 15 9100	01	45,00
1101 00 15 9130	01	42,25
1101 00 15 9150	01	39,00
1101 00 15 9170	01	36,00
1101 00 15 9180	01	33,50
1101 00 15 9190	—	—
1101 00 90 9000	—	—
1102 10 00 9500	01	82,00
1102 10 00 9700	—	—
1102 10 00 9900	—	—
1103 11 10 9200	01	30,00 (2)
1103 11 10 9400	01	27,00 (2)
1103 11 10 9900	—	—
1103 11 90 9200	01	30,00 (2)
1103 11 90 9800	—	—

(1) The destinations are identified as follows:
01 All third countries,
02 Other third countries,
03 Switzerland, Liechtenstein.

(2) No refund is granted when this product contains compressed meal.

NB: The zones are those defined in amended Commission Regulation (EEC) No 2145/92 (OJ L 214, 30. 7. 1992, p. 20).

COMMISSION REGULATION (EC) No 536/1999

of 11 March 1999

concerning tenders notified in response to the invitation to tender for the export of rye issued in Regulation (EC) No 1746/98

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals [1], as last amended by Regulation (EC) No 923/96 [2],

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals [3], as last amended by Regulation (EC) No 2513/98 [4], and in particular Article 7 thereof,

Whereas an invitation to tender for the refund and/or the tax for the export of rye to all third countries was opened pursuant to Commission Regulation (EC) No 1746/98 [5];

Whereas Article 7 of Regulation (EC) No 1501/95 allows the Commission to decide, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92 and on the basis of the tenders notified, to make no award;

Whereas on the basis of the criteria laid down in Article 1 of Regulation (EC) No 1501/95 a maximum refund or minimum tax should not be fixed;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 5 to 11 March 1999 in response to the invitation to tender for the refund or the tax for the export of rye issued in Regulation (EC) No 1746/98.

Article 2

This Regulation shall enter into force on 12 March 1999.

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

Done at Brussels, 11 March 1999.

For the Commission
Franz FISCHLER
Member of the Commission

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[1] OJ L 181, 1. 7. 1992, p. 21.
[2] OJ L 126, 24. 5. 1996, p. 37.
[3] OJ L 147, 30. 6. 1995, p. 7.
[4] OJ L 313, 21. 11. 1998, p. 16.
[5] OJ L 219, 7. 8. 1998, p. 3.

COMMISSION REGULATION (EC) No 537/1999

of 11 March 1999

fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 1079/98

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ([1]), as last amended by Regulation (EC) No 923/96 ([2]),

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ([3]), as last amended by Regulation (EC) No 2513/98 ([4]), and in particular Article 4 thereof,

Whereas an invitation to tender for the refund and/or the tax for the export of common wheat to all third countries with the exception of certain ACP States was opened pursuant to Commission Regulation (EC) No 1079/98 ([5]), as amended by Regulation (EC) No 2005/98 ([6]);

Whereas Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No 1501/95; whereas in that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund, as well as to any tenderer whose bid relates to an export tax;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 5 to 11 March 1999, pursuant to the invitation to tender issued in Regulation (EC) No 1079/98, the maximum refund on exportation of common wheat shall be EUR 32,98/t.

Article 2

This Regulation shall enter into force on 12 March 1999.

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

Done at Brussels, 11 March 1999.

For the Commission
Franz FISCHLER
Member of the Commission

([1]) OJ L 181, 1. 7. 1992, p. 21.
([2]) OJ L 126, 24. 5. 1996, p. 37.
([3]) OJ L 147, 30. 6. 1995, p. 7.
([4]) OJ L 313, 21. 11. 1998, p. 16.
([5]) OJ L 154, 28. 5. 1998, p. 24.
([6]) OJ L 258, 22. 9. 1998, p. 8.

COMMISSION REGULATION (EC) No 538/1999

of 11 March 1999

fixing the maximum export refund on oats in connection with the invitation to tender issued in Regulation (EC) No 2007/98

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals [1], as last amended by Regulation (EC) No 923/96 [2],

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals [3], as last amended by Regulation (EC) No 2513/98 [4],

Having regard to Commission Regulation (EC) No 2007/98 of 21 September 1998 on a special intervention measure for cereals in Finland and Sweden [5], as last amended by Regulation (EC) No 244/1999 [6], and in particular Article 8 thereof,

Whereas an invitation to tender for the refund for the export of oats produced in Finland and Sweden for export from Finland or Sweden to all third countries was opened pursuant to Regulation (EC) No 2007/98;

Whereas Article 8 of Regulation (EC) No 2007/98 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No 1501/95; whereas in that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 5 to 11 March 1999, pursuant to the invitation to tender issued in Regulation (EC) No 2007/98, the maximum refund on exportation of oats shall be EUR 60,90/t.

Article 2

This Regulation shall enter into force on 12 March 1999.

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

Done at Brussels, 11 March 1999.

For the Commission
Franz FISCHLER
Member of the Commission

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[1] OJ L 181, 1. 7. 1992, p. 21.
[2] OJ L 126, 24. 5. 1996, p. 37.
[3] OJ L 147, 30. 6. 1995, p. 7.
[4] OJ L 313, 21. 11. 1998, p. 16.
[5] OJ L 258, 22. 9. 1998, p. 13.
[6] OJ L 27, 2. 2. 1999, p. 10.

COMMISSION REGULATION (EC) No 539/1999

of 11 March 1999

fixing the maximum reduction in the duty on maize imported in connection with the invitation to tender issued in Regulation (EC) No 2850/98

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals [1], as last amended by Commission Regulation (EC) No 923/96 [2], and in particular Article 12(1) thereof,

Whereas an invitation to tender for the maximum reduction in the duty on maize imported into Portugal was opened pursuant to Commission Regulation (EC) No 2850/98 [3];

Whereas, pursuant to Article 5 of Commission Regulation (EC) No 1839/95 [4], as amended by Regulation (EC) No 1963/95 [5], the Commission, acting under the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, may decide to fix maximum reduction in the import duty; whereas in fixing this maximum the criteria provided for in Articles 6 and 7 of Regulation (EC) No 1839/95 must be taken into account; whereas a contract is awarded to any tenderer whose tender is equal to or less than the maximum reduction in the duty;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum reduction in the import duty being fixed at the amount specified in Article 1;

Whereas the Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 5 to 11 March 1999, pursuant to the invitation to tender issued in Regulation (EC) No 2850/98, the maximum reduction in the duty on maize imported shall be EUR 63,98/t and be valid for a total maximum quantity of 69 000 t.

Article 2

This Regulation shall enter into force on 12 March 1999.

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

Done at Brussels, 11 March 1999.

For the Commission
Franz FISCHLER
Member of the Commission

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[1] OJ L 181, 1. 7. 1992, p. 21.
[2] OJ L 126, 24. 5. 1996, p. 37.
[3] OJ L 358, 31. 12. 1998, p. 44.
[4] OJ L 177, 28. 7. 1995, p. 4.
[5] OJ L 189, 10. 8. 1995, p. 22.

COMMISSION REGULATION (EC) No 540/1999

of 11 March 1999

fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 2004/98

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ([1]), as last amended by Regulation (EC) No 923/96 ([2]),

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ([3]), as last amended by Regulation (EC) No 2513/98 ([4]), and in particular Article 7 thereof,

Whereas an invitation to tender for the refund and/or the tax for the export of common wheat to certain ACP States was opened pursuant to Commission Regulation (EC) No 2004/98 ([5]), as amended by Regulation (EC) No 456/1999 ([6]);

Whereas Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No 1501/95; whereas in that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund, as well as to any tenderer whose bid relates to an export tax;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1;

Whereas the Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 5 to 11 March 1999, pursuant to the invitation to tender issued in Regulation (EC) No 2004/98, the maximum refund on exportation of common wheat shall be EUR 39,97/t.

Article 2

This Regulation shall enter into force on 12 March 1999.

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

Done at Brussels, 11 March 1999.

For the Commission
Franz FISCHLER
Member of the Commission

([1]) OJ L 181, 1. 7. 1992, p. 21.
([2]) OJ L 126, 24. 5. 1996, p. 37.
([3]) OJ L 147, 30. 6. 1995, p. 7.
([4]) OJ L 313, 21. 11. 1998, p. 16.
([5]) OJ L 258, 22. 9. 1998, p. 4.
([6]) OJ L 55, 3. 3. 1999, p. 5.

COMMISSION REGULATION (EC) No 541/1999

of 11 March 1999

fixing the maximum export refund on barley in connection with the invitation to tender issued in Regulation (EC) No 1078/98

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals [1], as last amended by Regulation (EC) No 923/96 [2],

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals [3], as last amended by Regulation (EC) No 2513/98 [4], and in particular Article 4 thereof,

Whereas an invitation to tender for the refund and/or the tax for the export of barley to all third countries was opened pursuant to Commission Regulation (EC) No 1078/98 [5];

Whereas Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No 1501/95; whereas in that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund, as well as to any tenderer whose bid relates to an export tax;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 5 to 11 March 1999, pursuant to the invitation to tender issued in Regulation (EC) No 1078/98, the maximum refund on exportation of barley shall be EUR 52,90/t.

Article 2

This Regulation shall enter into force on 12 March 1999.

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

Done at Brussels, 11 March 1999.

For the Commission
Franz FISCHLER
Member of the Commission

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[1] OJ L 181, 1. 7. 1992, p. 21.
[2] OJ L 126, 24. 5. 1996, p. 37.
[3] OJ L 147, 30. 6. 1995, p. 7.
[4] OJ L 313, 21. 11. 1998, p. 16.
[5] OJ L 154, 28. 5. 1998, p. 20.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 22 February 1999

concerning the conclusion of a framework Cooperation Agreement between the European Economic Community and the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama

(1999/194/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 113 and 130y, in conjunction with Article 228(2), first sentence and (3), first paragraph thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Parliament [2],

Whereas the Community, for the attainment of its aims in the sphere of external economic relations, should approve the framework Cooperation Agreement with the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama,

HAS DECIDED AS FOLLOWS:

Article 1

The framework Cooperation Agreement between the European Economic Community and the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall give the notification provided for in Article 37 of the Agreement.

Article 3

The Commission of the European Communities, assisted by representatives of the Member States, shall represent the Community in the Joint Committee set up by Article 33 of the Agreement.

Article 4

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

Done at Luxembourg, 22 February 1999.

For the Council

The President

H.-F. von PLOETZ

[1] OJ C 77, 18. 3. 1993, p. 30.
[2] OJ C 255, 20. 9. 1993, p. 167.

FRAMEWORK COOPERATION AGREEMENT

between the European Economic Community and the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

of the one part,

THE GOVERNMENTS OF COSTA RICA, EL SALVADOR, GUATEMALA, HONDURAS, NICARAGUA AND PANAMA,

of the other part,

CONSIDERING the traditional links of friendship between the Member States of the European Economic Community (hereinafter referred to as 'the Community') and the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama (hereinafter referred to as 'Central America'), which over the past nine years have benefited from the institution of a productive political dialogue and economic cooperation that it is important to consolidate,

RECALLING the significant contribution made to Central America by the implementation of the Cooperation Agreement signed in Luxembourg on 12 November 1985 and of the final communiqués issued at ministerial meetings between the Community and Central America,

REAFFIRMING their commitment to the principles of the United Nations Charter, the precepts of international law, democratic values and respect for human rights, and stressing the importance of the Resolution adopted by the Council and the Member States of the Community on 28 November 1991 on human rights, democracy and development,

HIGHLIGHTING the progress made as regards peace and democracy in the Central American countries through the process of dialogue and national reconciliation instigated in the region, and emphasizing also the significant efforts made as regards respect for human rights,

RECOGNIZING that development is a fundamental condition for the consolidation of peace and democracy, and a basic requirement for the promotion of the economic and social rights of the Central American peoples,

RECOGNIZING the importance attached by the Community to the development of trade and economic cooperation with developing countries, and mindful of its guidelines and resolutions concerning cooperation with Asian and Latin American developing countries,

MINDFUL of the positive effects of the process of modernization, economic reform and trade liberalization introduced by the Central American governments, and of the need to accompany these reforms with the promotion of social rights in the most disadvantaged sectors of the population, and convinced that Community cooperation has a significant part to play in the eradication of the problems of extreme poverty afflicting the region,

AWARE of the importance of helping Central America become more fully integrated into the world economy,

CONVINCED of the importance of free international trade, the principles of the multilateral trade system, greater investment and respect for intellectual property rights,

EMPHASIZING the particular importance the parties attach to greater protection of the environment and to the objective of sustainable development,

MINDFUL of the urgent need to strengthen international cooperation in the struggle to confront the problems caused by, and related to, drugs,

AWARE of the need to reaffirm the importance of the role of women as a key element in the development process,

HIGHLIGHTING the progress made by the Sistema de la Integración Centroamericana (SICA — Central American Integration System) owing to the changes in the Charter of the Organización de Estados Centroamericanos (ODECA — Organization of Central American States) introduced by the Tegucigalpa Protocol, and recognizing that Central America is a region made up of developing countries,

CONVINCED of the need to institute a new phase of co-operation between the two regions, in line with the conclusions of the San José VIII Ministerial Conference, and recognizing that the fundamental objective of the Agreement is to consolidate, deepen and diversify relations between the two parties,

HAVE DECIDED to conclude this Agreement and to this end have designated as their plenipotentiaries:

THE COUNCIL OF THE EUROPEAN COMMUNITIES:

Niels Helveg PETERSEN,
Minister for Foreign Affairs of Denmark,
President-in-Office of the Council of the European Communities;

Manuel MARIN,
Member of the Commission of the European Communities;

FOR THE GOVERNMENT OF THE REPUBLIC OF COSTA RICA:

Bernd H. NIEHAUS QUESADA,
Foreign Secretary;

FOR THE GOVERNMENT OF THE REPUBLIC OF EL SALVADOR:

Dr José M. PACAS CASTRO,
Foreign Secretary;

FOR THE GOVERNMENT OF THE REPUBLIC OF GUATEMALA:

Gonzalo MENENDEZ PARK,
Foreign Secretary;

FOR THE GOVERNMENT OF THE REPUBLIC OF HONDURAS:

Mario CARIAS ZAPATA,
Foreign Secretary;

FOR THE GOVERNMENT OF THE REPUBLIC OF NICARAGUA:

Ernesto LEAL,
Foreign Secretary;

FOR THE GOVERNMENT OF THE REPUBLIC OF PANAMA:

Julio LINARES,
Foreign Secretary;

WHO, having exchanged their full powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

Article 1

Democratic basis for cooperation

Cooperation ties between the Community and Central America and this Agreement in its entirety shall be based on respect for democratic principles and human rights, which inspire the domestic and external policies of both the Community and Central America and which constitute an essential component of this Agreement.

Article 2

Strengthening of cooperation

The Contracting Parties undertake to strengthen and diversify their cooperation in all areas of common interest, particularly the economic, financial, commercial, social, science and technology and environmental sectors, bearing in mind the lesser degree of development of the Central American countries. They also undertake to promote the intensification and consolidation of the Central American Integration System.

In view of the special status of the Central American countries as developing countries, the Community shall implement this cooperation in the manner most favourable to those countries.

Article 3

Economic cooperation

1. The Contracting Parties, taking into account their mutual interest and medium- and long-term economic objectives, undertake to establish economic cooperation of the widest possible scope, from which no field of activity is excluded in principle. The aims of such cooperation shall be in particular to:

(a) strengthen and diversify generally their economic links;

(b) contribute to the sustainable development of their economies and raising their respective standards of living, with due regard for the protection of the environment;

(c) encourage the expansion of trade with a view to promoting diversification, opening up new markets and improving access to them;

(d) encourage the flow of investment and reinforce protection of investment;

(e) encourage transfers of technology and co-operation among firms, particularly small businesses, consolidating the scientific base and stimulating the innovatory skills of both parties;

(f) establish conditions conducive to job creation and improved productivity;

(g) encourage measures promoting rural development and the improvement of urban living conditions;

(h) support the efforts of the Central American countries to set in train policies designed to modernise and develop the agricultural and industrial sectors;

(i) support the Central American integration process;

(j) exchange information on statistics and methodology.

2. Without excluding any area of activity from the outset, the Contracting Parties shall, in their mutual interest and with regard to their respective competences and capacities, determine by common agreement the spheres to be covered by economic cooperation. Cooperation shall centre particularly on the following:

(a) modernisation of the productive sectors (industry, agro-industry, agriculture, livestock farming, fisheries, fish farming, mining, forestry);

(b) energy planning and efficient use of energy;

(c) management and protection of natural resources and the environment;

(d) technology transfers;

(e) science and technology;

(f) intellectual property, including industrial property;

(g) standards and quality criteria;

(h) services, including financial services, tourism, transport, telecommunications, telematics and information technology;

(i) exchanges of information on monetary matters and the harmonisation of macro-economic policies with a view to strengthening regional integration;

(j) technical regulations on health, plant health and animal health;

(k) consolidation of regional economic cooperation organizations and agencies;

(l) regional development and frontier integration.

3. In the interests of attaining the objectives of economic cooperation, the Contracting Parties shall, each in accordance with its laws, endeavour to promote activities including the following:

(a) provision of technical assistance, notably by seconding consultants and carrying out specific studies in the designated fields of cooperation;

(b) creation of joint ventures, licensing agreements, technological know-how transfers, subcontracting, and other such activities;

(c) increased contacts between the two Parties' businessmen through conferences, seminars, trade and industry missions designed to boost trade and investment flows, trade talks and general and specialised trade fairs;

(d) joint participation of Community firms in fairs and exhibitions held in Central American countries, and *vice-versa*;

(e) technical and scientific research projects and exchanges of experts;

(f) exchanges of information concerning the areas of cooperation covered by this Agreement, notably as regards access to existing or future databases;

(g) setting up of business networks, particularly in the industrial sector.

Article 4

Most-favoured-nation treatment

The Contracting Parties shall grant each other most-favoured-nation treatment in trade, in accordance with the General Agreement on Tariffs and Trade (GATT).

Article 5

Development of trade cooperation

1. The Contracting Parties undertake to develop and broaden trade to the highest possible degree, taking into account the economic situation of each of the Parties and facilitating trade transactions between them as far as possible.

2. To that end, the Parties shall endeavour to find methods of reducing and eliminating the obstacles hindering the development of trade, notably non-tariff barriers, taking account of work already accomplished in this field by international organisations.

3. The Contracting Parties shall, where appropriate, assess the possibility of setting up mutual consultation procedures.

Article 6

Means of achieving cooperation in trade

In the interests of bringing about more active cooperation in trade, the Contracting Parties shall take measures aimed at:

— promoting meetings, exchanges and contacts between business people from each of the Parties, with the aim of identifying goods suitable for sale on the market of the other Party,

— facilitating cooperation between their customs services, in particular as regards vocational training, the simplification of procedures and the detection of customs offences,

— encouraging and supporting trade promotion activities such as seminars, symposia, trade and industrial fairs and exhibitions, trade and other visits, business weeks, market studies and other activities,

— providing support for their own organisations and firms, to enable them to engage in activities which are of benefit to both sides,

— making allowance for each other's interests with regard to market access for commodities, semi-finished and manufactured goods and with regard to the stabilisation of world commodity markets, in accordance with the aims agreed within the appropriate international organisations,

— examining ways and means of facilitating trade and eliminating barriers to trade, taking into consideration the work of international organisations.

Article 7

Industrial cooperation

1. The Contracting Parties shall promote the expansion and diversification of the Central American countries' production base in the industrial and service sectors, particularly encouraging cooperation activities involving the small and medium-sized enterprises of both parties designed to facilitate the access of such enterprises to sources of capital, markets and appropriate technology, and also fostering joint ventures.

2. To that end, within the limits of their responsibilities, the Parties shall encourage projects and operations promoting:

— the consolidation and extension of the networks established for the purposes of cooperation;

— the broad use of Community promotional instruments such as 'European Community Investment Partners' (ECIP), *inter alia*, through greater use of Central American financial institutions;

— cooperation between firms, such as joint ventures, subcontracting, transfers of technology, licensing, applied research and franchising.

Article 8

Investment

1. The Contracting Parties agree:

— to promote, so far as their powers, rules and regulations and policies permit, an increase in mutually beneficial investment,

— to endeavour to improve the climate for such investment by encouraging investment promotion and protection agreements between the Community's Member States and the Central American countries.

2. In pursuit of these objectives, the Contracting parties agree to take measures to help promote and attract investment, with a view to identifying new opportunities for such investment and encouraging the implementation thereof.

These measures shall include:

(a) seminars, exhibitions and business missions;

(b) training businessmen with a view to setting up investment projects;

(c) technical assistance for joint investment;

(d) measures under the European Community Investment Partners (ECIP) programme.

3. Cooperation in this field may involve public, private, national or multilateral bodies, including regional financial institutions, from both Central America and the Community.

Article 9

Cooperation between financial institutions

The Contracting Parties shall endeavour to foster, according to their needs and within the framework of their respective programmes and legislation, cooperation between financial institutions in the form of:

— exchanges of information and experience in fields of mutual interest (*inter alia*, by means of seminars, conferences and workshops),

— exchanges of consultants,

— technical assistance,

— exchanges of information in the fields of statistics and methodology.

Article 10

Cooperation in science and technology

1. In accordance with their mutual interest and the aims of their policies on science, the Contracting Parties undertake to promote cooperation in science and technology aimed in particular at:

— encouraging exchanges of Community and Central American scientists,

— establishing closer links between their scientific and technological communities, with particular reference to existing research centres on both sides,

— promoting mutually beneficial transfers of technology,

— implementing measures with a view to achieving the goals of research programmes that are of interest to both regions,

— building up the research capacity of the Central American countries, promoting projects involving scientific and technical research centres and stimulating technical and applied research,

— creating opportunities for economic, industrial and trade cooperation.

2. Without excluding any sector from the outset, the Parties agree that they shall jointly identify the areas for developing their scientific and technological cooperation, taking into account the development needs of the Central American productive sectors.

These areas shall include:

— development and management of science and technology policies,

— protection and improvement of the environment, particularly the protection and renewal of rainforest and borderline agricultural areas,

— renewable energy and rational use of natural resources,

— tropical agriculture, agro-industry and fisheries,

— health, nutrition and social welfare in general, and tropical diseases in particular,

— areas such as housing, urban development, planning and development, transport and communications,

— regional integration and cooperation in science and technology,

— biotechnology applied to medicine and agriculture,

— taxonomic studies of indigenous flora and fauna, leading to the creation of a biological index with applications in medicine, agriculture and other sectors.

3. In order to achieve their chosen objectives, the Contracting Parties shall encourage and foster measures including:

— joint scientific and technological research projects involving private and public sector research centres and other qualified institutions on both sides,

— training at the appropriate level for Central American research and development professionals, notably through seminars, courses and conferences in European centres, exchanges of experts and technicians, awards for specialist studies and in-house training.

— exchanges of scientific information, through the joint organisation of seminars, workshops, working meetings and conferences attended by top-level scientists from both Contracting Parties,

— distribution of scientific and technological information and know-how.

Article 11

Cooperation in standards

Without prejudice to their international obligations, within the scope of their responsibilities, and in accordance with their laws, the Contracting Parties shall take steps to reduce differences in respect of weights and measures, standardisation and certification by promoting the use of compatible systems of standards and certification. To that end, they shall encourage the following in particular:

— links between experts and technical assistance to facilitate exchanges of information and studies on weights and measures, standards, quality control, promotion and certification, and to promote the development of technical assistance in this field,

— exchanges and contacts between bodies and institutions specializing in these fields,

— measures aimed at achieving mutual recognition of systems and quality certification,

— consultations in the fields concerned.

Article 12

Intellectual and industrial property

1. The Contracting Parties undertake, in line with their respective legislation, regulations and policies to provide suitable and effective protection for intellectual and industrial property rights, including geographical designations and marks of origin, and upgrading that protection where appropriate.

2. The Central American countries shall, insofar as they are able, subscribe to the international conventions on intellectual and industrial property.

Article 13

Mining cooperation

The Contracting Parties agree to promote cooperation to develop the mining sector, with due regard for the environmental issues involved.

This cooperation shall primarily take the form of action designed to:

— enourage the involvement of enterprises of both Parties in the exploration, mining and marketing of their mineral resources,

— set up activities to encourage small and medium-sized enterprises operating in the mining sector,

— exchange experience and technology relating to mining prospecting, exploration and exploitation, and undertake joint research in order to increase the opportunities for technological development.

Article 14

Energy cooperation

The Contracting Parties recognise the importance of the energy sector for economic and social development, and are prepared to step up their cooperation in this field, notably as regards planning, conservation, the efficient use of energy, and the search for new sources of energy. This improved cooperation will also take environmental implications into consideration.

To these ends, the Parties agree to promote:

— joint studies and research,

— assessment of the potential of alternative energy sources and the use of energy-saving technology in manufacturing processes,

— ongoing contacts between energy planners,

— the execution of joint programmes and projects in this field.

Article 15

Transport cooperation

Recognizing the importance of transport for economic development and the intensification of trade, the Contracting Parties shall adopt the necessary measures to implement cooperation in respect of all types of transport.

Cooperation shall centre on the following:

— exchanges of information on the Parties' respective transport policies and on subjects of common interest,

— economic, legal and technical training programmes aimed at economic operators and those in charge of public-sector departments,

— assistance, particularly in connection with infrastructure modernisation programmes.

Article 16

Cooperation in the field of information technology and telecommunications

1. The Contracting Parties recognise that information technology and telecommunications are vital to the development of the economy and society and declare themselves prepared to promote co-operation in fields of common interest, chiefly in respect of the following:

— promotion of investment and joint investment,

— standardisation, testing and certification,

— rural and mobile telephone systems, earth and space-based telecommunications such as transport networks, satellites, fibre optics, Integrated Service Digital Networks (ISDN) and data transmission,

— electronics and microelectronics,

— computerisation and automation,

— research and development in new information technologies and telecommunications.

2. This cooperation shall take place in particular through:

— promotion of joint projects relating to research and development, the establishment of information networks and databanks, facilitation of access to existing databanks and information networks,

— collaboration between experts,

— expert assessments, studies and exchanges of information,

— training of scientists and technicians,

— formulation and implementation of specific projects of mutual benefit.

Article 17

Tourism cooperation

Within the bounds of their laws, the Contracting Parties shall contribute to cooperation on tourism in the Central American countries, which is to be achieved through specific measures including:

— exchanges of information and studies on opportunities for tourist development,

— assistance in statistics and data processing,

— training,

— the organization of events and participation in fairs promoting the Central American region,

— the promotion of investment and joint investment in order to expand tourist travel.

Article 18

Environment cooperation

The Contracting Parties affirm that they wish to cooperate closely in the protection, conservation, improvement and management of the environment, focusing on water, soil and air pollution, erosion, desertification, deforestation, over-exploitation of natural resources, urban concentration and the productive conservation of wild and aquatic flora and fauna, protecting them from non-rational exploitation and commercialisation, particularly where protected species are concerned.

To these ends, the Parties shall endeavour to work together on measures targeting:

— the creation and improvement of public and private sector environmental bodies in Central America,

— the promotion of environmental education at all levels and the widespread dissemination of information concerning, and solutions to, environmental problems with a view to increasing public awareness,

— the implementation of studies, projects and technical assistance,

— the organisation of meetings, seminars, workshops, conferences, exchanges of technicians and officials specialized in this field,

— exchanges of information and experience,

— research and studies paving the way for joint programmes and projects aimed at disaster control and prevention,

— the promotion of the development and alternative economic use of protected areas, with due regard for the specific features of the areas concerned.

Article 19

Biological diversity cooperation

The Contracting Parties shall endeavour to establish cooperation aimed at preserving biological diversity. Such cooperation should be based on three criteria, namely: socio-economic utility, ecological conservation and the interests of indigenous peoples.

Article 20

Development cooperation

With a view to increasing the effectiveness of cooperation in the areas referred to below, the Parties shall seek to establish a multiannual programme.

Furthermore, the Parties recognise that the desire to contribute to better managed and sustainable development involves giving priority to development projects designed to meet the vital needs of the poorest of the Central American people, and to the role of women in the development process. The Parties also recognise that development and environmental problems are closely linked.

Cooperation in this field shall involve measures designed to act against extreme poverty, soften the impact of the structural adjustment programmes and encourage job creation. Priority shall be given to measures having an impact on the restructuring of the economy and taking into account macro-economic and sectoral problems, and problems linked to the institutional development process.

This cooperation shall be undertaken on the greatest scale possible, in close cooperation with the Member States.

Article 21

Cooperation in agriculture, forestry and rural areas

The Contracting Parties agree to establish cooperation in the areas of crop and livestock farming, forestry, agro-industry, agri-foodstuffs and tropical products, with a view to raising development levels.

To these ends, in a spirit of cooperation and goodwill and taking into account the laws of both Parties on such issues, the Contracting Parties shall examine:

— opportunities for developing trade in crop, livestock, forestry, agro-industrial and tropical products,

— health, plant health, animal health and environmental measures, with a view to eliminating any obstacles there might be to trade in this field.

Similarly, and with due respect for the principles of sustainable development, the Contracting Parties shall endeavour to promote cooperation concerning:

— the development of agriculture,

— the protection and sustainable development of the following resources: soil, water, woodland, flora and fauna,

— the agricultural and rural environments,

— training in fields such as new techniques in crop and livestock farming and forestry and business management,

— exchanges between technicians, producers and institutions from both sides, with a view to promoting and facilitating trade and investment projects,

— agricultural research,

— the upgrading and interfacing of agricultural and forestry databanks and statistics.

Article 22

Fisheries cooperation

The Contracting Parties agree to intensify and develop cooperation in the field of fisheries, particularly as regards the evaluation of resources, artisanal fishing and aquaculture, *inter alia*, by:

— drawing up and undertaking special programmes and projects of an economic, commercial, scientific or technical nature;

— encouraging the private sector to participate in developing this sector.

Article 23

Health cooperation

The Contracting Parties agree to cooperate to improve public health, concentrating on the needs of the most disadvantaged sections of the population, focusing primarily on the groups at risk.

To these ends they shall seek to develop joint research, technology transfers, exchanges of experience and technical assistance, in particular with regard to:

— health service management and administration, particularly in respect of primary healthcare,

— the development of vocational training and education programmes in the health sector,

— programmes and projects for the improvement of sanitary conditions (with particular regard to the prevention of endemic diseases and infections) and social welfare in urban and rural areas,

— training for basic health workers,

— the treatment and prevention of acquired immune deficiency syndrome (AIDS),

— mother-and-child healthcare and family planning,

— prevention and treatment of cholera.

Article 24

Social development cooperation

1. The Contracting Parties shall, to the extent of their powers, and in line with their respective legislation, establish wide-ranging cooperation to further social development, particularly by improving the living conditions of the poorest sections of the populations in the Central American countries.

2. The measures and operations to be undertaken with these aims in mind include support, essentially in the form of technical assistance, in the following fields:

— protection of children,

— promotion of the role of women,

— support for the process of bringing the informal economy into the official economy,

— education and assistance programmes for young people in particularly difficult circumstances,

— measures to soften the social impact of structural adjustment programmes, notably through projects capable of stimulating job creation,

— social services administration,

— the improvement of living conditions and hygiene in urban and rural areas.

Article 25

Cooperation in combating drug abuse

Within the scope of their powers, the Contracting Parties undertake to coordinate and step up their efforts to prevent, reduce and eradicate the illegal production, distribution and consumption of drugs, narcotics and psychotropic substances, taking account of the work carried out in this field by regional and international bodies.

This cooperation, with the support of agencies specialized in this field, shall include:

— training, education, treatment, detoxification and rehabilitation projects for addicts,

— illicit drug use prevention programmes,

— research programmes,

— measures designed to encourage alternative development, including alternative crops,

— exchanges of relevant information, including information concerning measures relating to money laundering,

— programmes to monitor trade in precursors, chemical products and psychotropic substances.

The Contracting Parties may by mutual agreement extend their cooperation to other areas.

Article 26

Cooperation in assistance for refugees, displaced persons and returnees

The Parties reiterate their wish to continue cooperating on a broad scale to facilitate the reintegration of Central American refugees, displaced persons and returnees into productive society. This cooperation shall focus on:

— support for the preparation of cooperation activity in collaboration with the recipient countries and the International Conference on Central American Refugees (Cirefca);

— implementation of specific projects with partners specialised in this field: UNHCR, government bodies in the recipient countries and NGOs of recognised experience from both sides.

Article 27

Cooperation in the consolidation of the democratic process in Central America

The Contracting Parties agree to support democratic institutions and the democratic process in Central America, particularly with regard to the organisation and monitoring of free and transparent elections, the consolidation of the rule of law, respect for human rights and the participation of the entire population without discrimination in political and social life.

To achieve these ends, the Parties shall undertake the following:

— implementation of the multiannual programme for the promotion of human rights approved in Lisbon in February 1992,

— preparation and implementation of other specific projects designed to support democratic institutions in Central America.

Article 28

Regional integration and cooperation

The Contracting Parties shall take steps to encourage the regional integration of the Central American countries.

Priority shall be given to:

— technical assistance with the technical and practical aspects of integration,

— promotion of subregional and intraregional trade,

— development of regional environmental cooperation,

— upgrading regional institutions and supporting the pursuit of joint policies and activities,

— encouraging the development of regional communications.

Article 29

Government cooperation

The Contracting Parties agree to cooperate in matters of administration and institutional organisation, including the organisation of the legal system.

To this end, they shall take steps aimed at encouraging exchanges of information and training courses for national government officials and employees with a view to increasing government efficiency.

Cooperation in this field shall make use of existing institutions in both regions.

Article 30

Information, communication and culture cooperation

The Contracting Parties agree to act jointly in the fields of information and communication in order to promote understanding of the nature and aims of the European

Community and of Central America and to encourage the Community Member States and Central American countries to strengthen their cultural ties.

In particular, these measures shall take the form of:

— exchanges of information on issues of common interest in the fields of culture and information,

— organisation of cultural events and exchanges, particularly exchanges at university level,

— preparatory studies and technical assistance for the preservation of the cultural heritage.

Article 31

Training cooperation

With a view to improving training in Central America, the Parties shall strengthen their cooperation in areas of mutual interest, taking account of new technologies in the field.

Such cooperation could take the form of:

— steps to improve the training of executives, technicians, professionals and skilled workers,

— measures with a significant knock-on effect, training for instructors and technical executives who are already in positions of responsibility in public and private-sector enterprises, government, the public service sector and economic administration,

— specific programmes for exchanges of consultants, know-how and technology between training institutions in the European and Central American countries, with particular emphasis on the technical, scientific and vocational sectors,

— literacy programmes linked to health and social development projects.

Article 32

Resources for undertaking cooperation

1. The Contracting Parties undertake to make available, within the limits of their abilities and through their own channels, the requisite resources, including financial resources, for achieving the objectives of the cooperation provided for in this Agreement. In this connection, wherever possible multiannual programming will be carried out and priorities determined, taking account of needs and of the Central American countries' level of development.

2. In order to facilitate the implementation of the cooperation measures specified in this Agreement, the Central American countries shall grant Community experts the guarantees and facilities they require to carry out their tasks.

Article 33

Joint Committee

1. The Contracting parties agree to retain the Joint Committee established pursuant to the 1985 Cooperation Agreement. The Joint Committee shall be made up of representatives of the Community and of the Central American countries, assisted by representatives of the Central American integration bodies.

2. The Joint Committee shall:

— see to the proper functioning of the Agreement,

— coordinate and assign priority to activities, projects and specific operations in relation to the aims of this Agreement and propose means of implementing them,

— study and follow up the development of trade and cooperation between the Parties,

— make any recommendations required to promote the expansion of trade and intensify and diversify cooperation,

— seek appropriate methods of forestalling problems which might arise in the interpretation and application of this Agreement.

3. The agendas for Joint Committee meetings shall be set by mutual agreement. The Committee shall itself establish provisions concerning the frequency and location of its meetings, chairmanship, and other issues that may arise, and shall, where necessary, set up subcommittees.

Article 34

Other agreements

1. Without prejudice to the provisions of the Treaties establishing the European Communities, neither this Agreement nor any action taken under it shall in any way affect the powers of the Member States of the Communities to undertake bilateral activities with the Central American countries in the field of economic cooperation or where appropriate to conclude new economic cooperation agreements with Central American countries.

2. Subject to the provisions of paragraph 1 concerning economic cooperation, the provisions of this Agreement shall replace the provisions of the agreements concluded between the Member States of the Communities and the Central American countries where such provisions are either incompatible with or identical to the provisions of this Agreement.

Article 35

Territorial application clause of the Agreement

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Economic Community is applied and under the conditions laid down in that Treaty and, on the other, to the territory of the six Central American countries party to this Agreement.

Article 36

Annexes

The Annexes shall form an integral part of this Agreement.

Article 37

Entry into force and tacit renewal

This Agreement shall enter into force on the first day of the month following the date on which the Contracting Parties have notified each other of the completion of the procedures necessary for this purpose. It shall remain in force for a period of five years. It shall be renewed tacitly for successive one-year periods unless one of the Contracting Parties denounces it to the other Party in writing six months before the date of expiry.

Denouncement by one of the Central American countries shall not affect the validity of the Agreement in respect of the other Central American countries.

Article 38

Authentic texts

This Agreement is drawn up in duplicate in the Danish, Dutch, English, French, German, Greek, Italian, Portuguese and Spanish languages, each text being equally authentic.

Article 39

Future developments

1. The Contracting Parties may by mutual consent develop and improve this Agreement with a view to enhancing the levels of co-operation and supplementing them by means of agreements on specific sectors or activities.

2. With regard to the implementation of this Agreement, either of the Contracting Parties may put forward suggestions for widening the scope of cooperation, taking into account the experience gained in its application.

Por el Consejo de las Comunidades Europeas

For Rådet for De Europæiske Fællesskaber

Für den Rat der Europäischen Gemeinschaften

Για το Συμβούλιο των Ευρωπαϊκών Κοινοτήτων

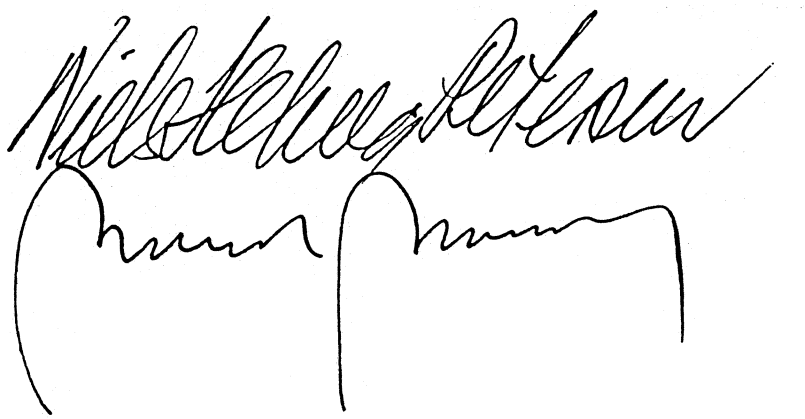
For the Council of the European Communities

Pour le Conseil des Communautés européennes

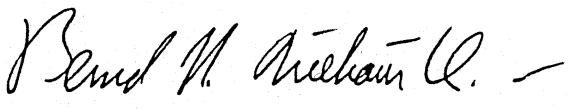
Per il Consiglio delle Comunità europee

Voor de Raad van de Europese Gemeenschappen

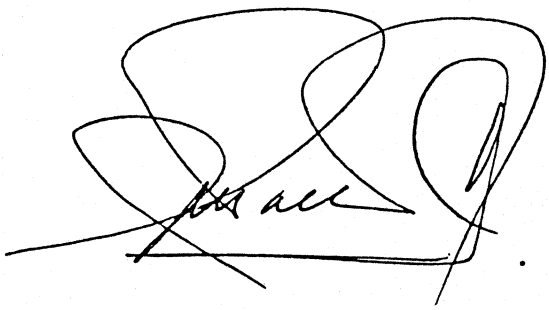
Pelo Conselho das Comunidades Europeias



Por el Gobierno de la República de Costa Rica



Por el Gobierno de la República de El Salvador



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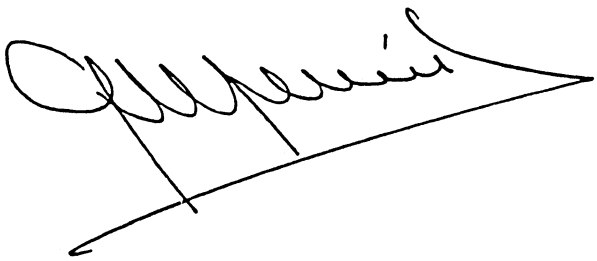

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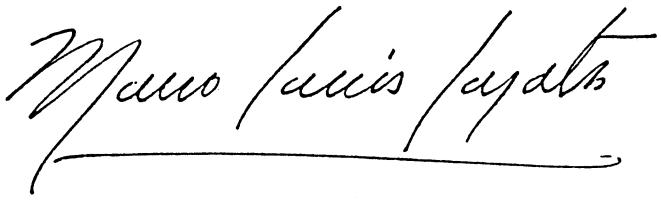
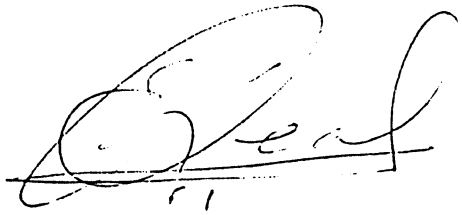
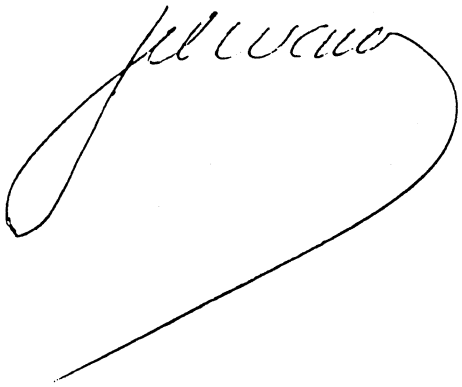


Por el Gobierno de la República de Nicaragua



Por el Gobierno de la República de Panamá



ANNEX

EXCHANGE OF LETTERS ON MARITIME TRANSPORT

Letter No 1

Sir,

We should be obliged if you would confirm the following:

When the Framework Cooperation Agreement between the European Community and the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama was signed, the Parties undertook to address in the appropriate manner issues relating to the operation of shipping, particularly where the development of trade might be hindered. Mutually satisfactory solutions on shipping will be sought, while the principle of free and fair competition on a commercial basis is observed.

It has likewise been agreed that such issues should also be discussed by the Joint Committee.

Please accept, Sir, the assurance of my highest consideration.

On behalf of the Council of the European Communities

Letter No 2

Sir,

I have the honour to acknowledge receipt of your letter and confirm the following:

'When the Framework Cooperation Agreement between the European Community and the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama was signed, the Parties undertook to address in the appropriate manner issues relating to the operation of shipping, particularly where the development of trade might be hindered. Mutually satisfactory solutions on shipping will be sought, while the principle of free and fair competition on a commercial basis is observed.

It has likewise been agreed that such issues should also be discussed by the Joint Committee.'

Please accept, Sir, the assurance of my highest consideration.

For Central America

UNILATERAL DECLARATION BY CENTRAL AMERICA CONCERNING ARTICLE 8

The Central American countries hereby declare that they are prepared to initiate talks, at the request of any Member State of the European Economic Community aimed at the conclusion of bilateral agreements on the protection and promotion of investment.

UNILATERAL DECLARATION BY THE COMMUNITY CONCERNING ARTICLE 32

The Community confirms that it intends to give priority to supporting projects of a regional nature and declares that it is prepared to intensify this cooperation in both quality and quantity terms. The financial resources to be made available for this purpose will reflect both the greater scope of this Agreement and the significant increase in the resources allocated in the guidelines for cooperation with the developing countries of Asia and Latin America in the 1990s. These contributions will form part of the budget allocation.

UNILATERAL DECLARATION BY THE COMMUNITY CONCERNING THE SPECIAL CONCESSIONS GRANTED TO CENTRAL AMERICA UNDER COUNCIL REGULATION (EEC) No 3900/91 OF 16 DECEMBER 1991

The Community hereby declares that it is prepared to:

(a) study the impact on the Central American countries and other developing countries of the special concessions granted in the context of the generalised system of preferences;

(b) continue the dialogue on this issue with the Central American countries;

(c) mandate the Commission to assess the situation when the period of validity laid down for the granting of the preferences concerned expires (1994), particularly in the light of developments as regards the conditions that were taken into account in granting the said preferences.

UNILATERAL DECLARATION BY CENTRAL AMERICA CONCERNING THE SPECIAL CONCESSIONS GRANTED TO CENTRAL AMERICA UNDER COUNCIL REGULATION (EEC) No 3900/91 OF 16 DECEMBER 1991

Central America stresses the priority it attaches to the preferential treatment accorded it by the European Community in the context of the generalised system of preferences.

This treatment is of special importance to Central America in supporting the peace process, the consolidation of democracy and national reconstruction in the region, and also the efforts being made to ensure that the Central American countries' fragile economies, their societies and democratic institutions remain unaffected by drug-related problems.

Information concerning the date of entry into force of the Framework Cooperation Agreement between the European Economic Community and the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama

The exchange of instruments of notification of completion of the procedures necessary for the entry into force of the above Agreement, signed in San Salvador on 22 February 1993, was completed on 24 February 1999, and the Agreement will consequently enter into force, in accordance with Article 37 thereof, on 1 March 1999.

COMMISSION

COMMISSION DECISION

of 1 July 1998

on aid granted and to be granted by Italy to Keller SpA and Keller Meccanica SpA

(notified under document number C(1998) 2047)

(Only the Italian text is authentic)

(Text with EEA relevance)

(1999/195/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93(2) thereof,

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

Having given notice to the parties concerned, in accordance with the above Articles, to submit their comments,

Whereas:

I

By letters dated 12 April 1996 and 2 May 1996, the Italian Government notified the Commission of its intention to grant State guarantees under Article 2a of Law 95/1979 to Keller SpA and Keller Meccanica SpA, both declared insolvent and under extraordinary administrative arrangements since 1994.

Both companies were part of Gruppo Keller, which manufactures rolling stock. Keller SpA, which was the parent company, is based in Sicily and employs 294 people. Keller Meccanica SpA, which is controlled by Keller SpA, is based in Sardinia and employs 319 people.

In accordance with Law 95/1979, an extraordinary administrator was appointed to draw up recovery programmes for both companies; the programmes were approved by ministerial decree on 22 December 1994 and envisaged, among other measures, completion of existing orders as a means of returning both companies to viability with a view to finding a purchaser; alternatively, the companies were to be wound up. Implementation of those measures was delayed because of difficulties in finding the required financing.

Of the financing obtained by the companies, Keller SpA received an ITL 33 839 million soft loan from Irfis-Mediocredito della Sicilia while Keller Meccanica SpA obtained a ITL 6 500 million soft loan from Società Finanziaria Industriale Rinascita Sardegna-Sfirs SpA. Both loans were granted at an interest rate lower than the corresponding reference rate for Italy (11,35 % for 1995).

II

On 10 February 1997, in view of the unsatisfactory information provided by the Italian authorities and the serious doubts it had regarding the measures notified, the Commission decided to initiate proceedings under Article 93(2) in respect of:

— the ITL 33 839 million soft loan granted by Irfis-Mediocredito della Sicilia SpA to Keller SpA at an annual interest rate of 4 %,

— the ITL 6 500 million soft loan granted by Società Finanziaria Industriale Rinascita Sardegna-Sfirs SpA to Keller Meccanica SpA at an annual interest rate of 5 %,

— the proposed State guarantees to be given to Keller SpA and Keller Meccanica SpA under Article 2a of Law 95/1979 covering 50 % of the above loans.

At the time, the Commission could not consider the measures included in the recovery programmes as restructuring measures, since the conditions laid down in the Community guidelines on State aid for rescuing and restructuring firms in difficulty ([1]) were not met, in particular because of the absence of a feasible, coherent and far-reaching plan to restore the firms' long-term viability. Moreover, both soft loans seemed to have been granted in breach of the obligation, laid down in Article 93(3) of the EC Treaty, to inform the Commission of any plans to grant or alter aid.

III

By letter dated 5 March 1997, the Italian authorities were informed of the Commission's decision to initiate proceedings under Article 93(2) in respect of the above measures. A copy of the letter was published in the *Official Journal of the European Communities* ([2]). The Commission has not received any observations from third parties in the course of the proceedings.

On 19 May 1997 the Italian authorities replied to the initiation of proceedings, stating that:

— with regard to the aid granted to Keller SpA, the Region of Sicily replied that the ITL 33 839 million soft loan granted on 22 April 1996 was covered by Regional law 25/1993, which concerned an aid scheme approved by the Commission. That law, which was notified to the Commission on 14 March 1995, was subsequently modified by Regional Law 20/1995, which extended the benefits of the 1993 scheme to companies under extraordinary administrative arrangements. Contrary to what the Commission had indicated when initiating proceedings, the loan had not therefore been granted under Regional Law 20/1995, but under Regional Law 25/1993. The Sicilian authorities also communicated their intention not to grant a State guarantee to Keller SpA,

— with regard to the aid granted to Keller Meccanica SpA, the Region of Sardinia maintained that the ITL 6 500 million soft loan was covered by Regional Law 66/1976, which concerned another aid scheme approved by the Commission and adapted subsequently in order to update the criteria, laid down in 1976, so as to bring them into line with current economic conditions. The Sardinian authorities made no reference to the proposed State guarantee for Keller Meccanica SpA,

— the Italian and Sardinian authorities explained that the restructuring plans covered only the four-year period allowed for the continuation of business under Law 95/1979. Therefore, the plans were aimed solely at securing completion of existing orders and the sale of the companies to a third party on expiry of that period, or their liquidation.

On 23 June 1997 a meeting was held with the Sardinian authorities, who stressed that there were no *de facto* links between Keller Meccanica SpA and Keller SpA. With regard to the soft loan granted under Regional Law 66/1976 to Keller Meccanica SpA, the Sardinian authorities reiterated that the conditions under which the Commission in 1985 authorised the 1976 aid scheme had been updated in line with the definition or SMEs given by the Commission itself in the Community Guidelines on State aid for SMEs ([3]).

At that meeting, the Sardinian authorities undertook to notify the amendments made to Regional Law 66/1976 and to submit a restructuring plan for Keller Meccanica SpA. They mentioned the possibility of not granting the State guarantee to Keller Meccanica SpA.

On 27 January 1998, after several reminders from the Commission, the Italian authorities sent additional information regarding the two companies. In particular, they confirmed that the State guarantees notified under Law 95/1979 would not be granted, that both companies were implementing the recovery plans approved in 1994 and that, since their sale to a third party had to be completed by June 1998, the relevant procedure had already been started. They thus took the view that it was no longer necessary to send new restructuring plans to the Commission and announced the withdrawal of the notification concerning the State guarantees under Article 2a of Law 95/1979.

The Italian authorities enclosed a document from the Region of Sardinia stating that the amendments to the 1976 aid scheme, which covered the loan granted to Keller Meccanica SpA, would be notified jointly with a new amendment which had not yet been approved for political reasons. Nevertheless, they repeated that the sole aim of the amendments had been to update the criteria laid down for the original 1976 scheme. There has so far been no notification pursuant to Article 93(3) of the EC Treaty; the Commission was simply 'informed' of the amendments in question by letter dated 27 January 1998.

([1]) OJ C 368, 23. 12. 1994, p. 12.
([2]) OJ C 140, 7. 5. 1997, p. 12.
([3]) OJ C 213, 19. 8. 1992, p. 2.

IV

A. **State guarantee pursuant to Law 95/1979**

The proposed guarantees to be given by the Italian Treasury to Keller SpA and Keller Meccanica SpA under Law 95/1979 have been notified to the Commission pursuant to Article 93(3) of the EC Treaty. The Commission considers that the Italian authorities have complied with the obligation laid down in that Article.

By letter dated 27 January 1998, the Italian authorities confirmed to the Commission that the State guarantees would not be granted and they therefore withdrew the notification. Accordingly, the Commission has terminated the proceedings under Article 93(2) in respect of those guarantees.

B. **ITL 33 839 million soft loan granted to Keller SpA**

When initiating proceedings, the Commission stated that the Italian authorities themselves had previously confirmed that the loan had been granted on 22 April 1996 under Regional Law 20/1995, by which the Region of Sicily extended the benefits of Articles 30 and 31 of Regional Law 25/1993 to companies under extraordinary administrative arrangements. The measures under Articles 30 and 31 of Regional Law 25/1993 were approved by the Commission in 1994 (State aid C 12/92, ex-NN 113/A/93 — Italy). As Regional Law 20/1995 amended Regional Law 25/1993, the Commission had considered it as part of the original scheme still under examination (State aid NN 113/A/93 — Italy).

As stated above, in their comments on the initiation of proceedings the Italian authorities claimed that the ITL 33 839 million soft loan granted to Keller SpA had not been granted under Regional Law 20/1995 but under Regional Law 25/1993. In fact, the agreement between Irfis-Mediocredito della Sicilia and Keller SpA, already under extraordinary administrative arrangements, was signed on 30 December 1994, i.e. one day before the deadline fixed by the Commission in its 1994 decision on the regional aid scheme provided for in Regional Law 25/1993 (itself amending Regional Law 119/1983).

According to the Italian authorities, in order to verify whether the measure complies with the scheme, the date to be taken into consideration is the date of legal completion of the act allowing payment and not the date of actual payment of the soft loan. This interpretation was confirmed by the Commission by letter dated 19 January 1995. Therefore, as only the former date has to be taken into consideration, the soft loan cannot have been granted under Regional Law 20/1995, which had not even been adopted by the Region at the time.

As regards Regional Law 20/1995, the Italian authorities consider that it does not provide for the granting of additional State aid but simply confirms expressly that companies under extraordinary administrative arrangements may also benefit from the measures laid down in Regional Law 25/1993. In other words, Regional Law 20/1995 simply clarifies the interpretation of Regional Law 25/1993. The authorities add that Italian law does not preclude companies under extraordinary administrative arrangements from obtaining new financing for their current operations. In particular, neither Regional Law 119/1983 nor Regional Law 25/1993 prohibits soft loans for companies under extraordinary administrative arrangements.

The Commission takes the view that the arguments put forward by the Italian authorities contradict information previously sent. By letter dated 20 September 1996 (forwarded to the Commission by letter of the Italian Permanent Representative's Office dated 12 December 1996), the Region of Sicily stated that Regional Law 20/1995 extended the benefits of Regional Law 25/1993 to companies under extraordinary administrative arrangements. Moreover, in a letter dated 21 April 1997 (forwarded to the Commission by letter of the Italian Permanent Representative's Office dated 19 May 1997), the Region of Sicily stated that Regional Law 20/1995 was designed to permit implementation of a previously agreed operation.

Accordingly, Regional Law 25/1993 was not applicable to companies under extraordinary administrative arrangements pursuant to Article 2a of Law 95/1979. This is also borne out by the fact that the Italian authorities decided on 14 March 1995 to notify the Commission pursuant to Article 93(3) of the EC Treaty of the amendments provided for in Regional Law 25/1993.

In any case, the Commission considers that Regional Law 20/1995 could not have applied retroactively. The Commission's position was communicated to the Italian authorities by letter of 2 May 1996, which confirmed that 'the amendment introduced by Article 1 of Regional Law 20/1995, which provides for the extension of this scheme to companies under extraordinary administrative arrangements pursuant to Law 95/1979, constitutes alteration of an existing scheme which, pursuant to Article 93(3) of the EC Treaty, has to be notified to, and approved by the Commission. For the time being, therefore, the company Keller SpA cannot benefit from the aid scheme in question (Regional Law 20/1995)'.

In conclusion, the soft loan was granted to Keller SpA, already under extraordinary administrative arrangements, as part of a scheme that did not allow it to receive such aid. The scheme in question authorised aid in the form of soft loans covering up to 30 % of the total contract price of orders already obtained by companies operating in Sicily. Since this constituted operating aid, the Commission decided to limit its approval to the ITL 50 000 million budget available at the time and to loans to be made before 31 December 1994.

In addition, the soft loan was granted before adoption of the amendments authorising it and before the Commission could take up a position on those amendments. The aid element involved in the soft loan has thus to be considered illegal, as it was granted outside the scope of an approved scheme and in breach of the obligation imposed on Member States under Article 93(3) of the EC Treaty to inform the Commission of any plan to grant or to alter aid in sufficient time to enable it to submit its comments. The Commission has therefore to consider the aid in question as a new individual measure not covered by the approved scheme. As the company is clearly in difficulty and as the Italian authorities defined the proposed State guarantee for part of this loan as restructuring aid, the loan must be assessed in the light of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty.

C. **ITL 6 500 million soft loan granted to Keller Meccanica SpA**

Similar conclusions as under point B apply to the ITL 6 500 million soft loan granted by Società Finanziaria Industriale Rinascita Sardegna-Sfirs SpA to Keller Meccanica SpA.

When initiating proceedings, the Commission noted that the soft loan did not meet the conditions on which the Commission had based its approval of the aid scheme (State aid C 4/85 — Italy), in particular the size of possible beneficiaries. The aid scheme, as approved by the Commission, stipulated that beneficiaries would be limited to firms with up to ITL 7 000 million in fixed assets and a maximum of 100 employees. According to the information provided by the Italian authorities before the proceedings were initiated, Keller Meccanica SpA had 319 employees and a total of ITL 53 466 million in fixed assets.

In their comments on the initiation of proceedings, the Italian authorities pointed out that the Commission was wrong in identifying the maximum number of employees as a dimensional criterion. In their view, the Commission, when approving the measures provided for in Regional Law 66/1976, had first fixed the maximum aid per person (ECU 14 000 or ECU 18 000) and then took a basis of 100 employees, in order to determine the maximum aid per firm, whatever the actual number of employees. In addition, a strict limit of 100 employees, as fixed by the Commission, would not be consistent with the Commission's own definition of an SME (250 employees), with the result that a large number of SMEs would not qualify for the measure in question.

The Italian authorities also claimed that what the Commission considered as subsequent amendments to the scheme, whereby Keller Meccanica SpA became eligible to receive aid under the scheme were simply an updating of those criteria (fixed assets and aid per person). As things stand, the original dimensional criterion of ITL 7 000 million in fixed assets is insufficient for even an average-sized craft enterprise to qualify. Therefore, on account of the steady loss of purchasing power of the lira, the criteria have been cautiously revised upwards. It should be noted that the extent of this revision falls short of the decline in the value of the lira over the period 1980 to 1992 (calculated by ISTAT at 130,6 %).

As regards the soft loan to Keller Meccanica SpA, the Commission considers that the eligibility criteria were clearly set out in its 1985 decision (State aid C 4/85 — Italy). The letter sent to the Italian authorities informing them of the Commission's decision explicitly states that 'the Commission has taken note of the limits set on the size of the beneficiary companies (maximum 100 employees and ITL 7 000 million in fixed assets)'. The limit of 100 employees has thus to be understood as a dimensional criterion and a maximum limit. Even if the Italian authorities thought that the Commission's decision did not reflect the meaning of the notified scheme, they did not challenge it before the Court of Justice of the European Communities within the prescribed time limit. The decision is therefore final and irrevocable.

Since the approved scheme did not provide for a mechanism to adjust the aid criteria and the eligibility of beneficiaries, the subsequent amendments were substantial and should have been notified to the Commission pursuant to Article 93(3) of the EC Treaty. As there was no such notification, the soft loan already granted to Keller Meccanica cannot be deemed to be covered by the

Commission's approval of the original scheme. The information provided by the Italian authorities does not justify any change in the position the Commission took when initiating proceedings. The loan does not meet the conditions on which the Commission based its approval of the aid scheme, in particular the size of possible beneficiaries.

As the ITL 6 500 million soft loan to Keller Meccanica SpA was granted outside the scope of an approved scheme, the Commission has to consider it as a new individual measure not covered by the approved scheme. Furthermore, as the company is clearly in difficulty, the loan must be assessed in the light of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty.

V

The interest rebate on the soft loans to Keller SpA and Keller Meccanica SpA must be considered State aid within the meaning of Article 92(1) of the EC Treaty.

It should be added that in the course of the proceedings the Italian authorities have never contested that in both cases the interest rebate constitutes aid. They did not request any specific derogations but simply observed that both soft loans were granted under regional aid schemes approved by the Commission.

The Community Guidelines on State aid for rescuing and restructuring firms in difficulty stipulate that, by its very nature, such aid distorts competition and affects trade between Member States, as is also confirmed by the situation in the sector in which the two companies operate.

The rolling stock sector includes the manufacture of railway and urban rail transport equipment [1]. After a period of stagnation in the mid to late 1980s, there was a rapid growth in demand from 1991 until 1994. After a slight decline in both production and consumption in 1994 (4,7 % and 1,7 % respectively), production plummeted by 16,5 % and consumption by 13,9 %, both falling below their 1992 levels.

Demand in the sector is concentrated among a small number of customers: national and regional railway companies, urban transport companies, private rental and leasing companies and industries with their own rolling stock. The demand for rolling stock is dependent on long-term transport and infrastructure policies, which are in turn influenced by the political and economic climate.

As the market comprises a rather small number of customers with large projects which arise infrequently and generally last several years, competition between suppliers remains fierce. For rolling stock manufacturers these time lags make each contract crucial. The experience acquired and the economies of scale obtained by winning several contracts is critical in determining the strength of the manufacturer's next bid for a contract.

Decades of cross-reliance between railways and suppliers have created excess production capacity which has been only partially absorbed by exports to non-EU countries. In the past, there have been few cross-border orders from countries with indigenous rolling stock manufacturers, with the exception of the Netherlands, Spain and, more recently, the United Kingdom. Access by individual suppliers to new national markets tends to have been achieved through the process of acquisition or part-ownership or via a consortium.

Implementation of Council Directive 90/531/EEC on public procurement in previously excluded markets, including transports [2], as last amended by Directive 94/22/EC [3], has created new business opportunities for European suppliers after years of restricted access to national markets. Also, with greater separation of the management of railway infrastructure from the operation of rail transport services, as provided for in Council Directive 91/440/EEC on the development of the Community's railways [4], there should be an increasing trend towards cross-border purchasing.

Intra-Community trade in rolling stocks [5] amounted to some ECU 1,5 billion in 1993, ECU 2,6 billion in 1994, ECU 1,4 billion in 1995 and ECU 1,2 billion in 1996. Italy's share of those totals was as follows:

(%)

	1993	1994	1995	1996
Imports	2,36	1,74	4,33	9,33
Exports	14,84	4,17	6,28	10

It should be noted that, according to the Italian authorities, Keller SpA exported to Germany rolling stock worth ITL 7 414 million in 1991, ITL 18 968 million in 1992 and ITL 6 820 million in 1993.

[1] Panorama of EU Industry 97, European Commission.

[2] OJ L 297, 29. 10. 1990, p. 1.
[3] OJ L 164, 30. 6. 1994, p. 3.
[4] OJ L 237, 24. 8. 1991, p. 25.
[5] Eurostat, intra-European Union statistics.

VI

The Italian authorities have described the proposed State guarantee for part of the soft loans to Keller SpA and Keller Meccanica SpA as restructuring aid. The loans themselves have therefore also to be considered as financial aid for restructuring. Even if the aid elements involved in the loans were regarded as rescue aid, they could not be authorised under the Community Guidelines on State aid for rescuing and restructuring firms in difficulty. This is because they do not meet all the conditions laid down in the Guidelines; in particular, they have not been granted for the time needed to devise the necessary and feasible recovery plan. Only in cases where the Commission is still examining the restructuring plan when the period for which rescue aid has been authorised expires can it consider favourably an extension of the rescue aid until it has completed its examination.

In this case, the aid is designed to help the companies to complete their existing orders, and both the periods forecast for these completions (31 to 39 months) and the duration of the loans go well beyond the six months for which rescue aid is normally approved. Moreover, as is explained below, the plans submitted are concerned only with completing the orders and cannot be viewed as restructuring plans capable of restoring the firms' long-term viability.

The Community Guidelines on State aid for rescuing and restructuring firms in difficulty stipulate that restructuring aid can, generally speaking, be allowed only in circumstances in which it can be demonstrated that the approval of restructuring aid is in the Community interest. This is only possible when strict criteria are fulfilled and account taken of the possible distortive effect of the aid.

For the Commission to approve aid, the restructuring plan must satisfy all the following general conditions:

— it must restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions. Consequently, restructuring aid must be linked to a viable restructuring/recovery programme submitted in all relevant details to the Commission,

— it must avoid undue distortions of competition caused by the aid,

— the aid must be in proportion to the restructuring costs and benefits,

— it must be fully implemented and detailed annual reports must be sent to the Commission.

In this case, as regards both Keller SpA and Keller Meccanica SpA, the Italian authorities submitted recovery programmes aimed at completing existing orders so as to return both companies to economic and financial viability. In addition, it was not impossible that new orders would be accepted depending on progress in completing orders in hand. All the measures envisaged in the recovery programmes, including those concerning renovation of the production plants and modernisation of the machinery, are geared to that end. The financial plan presented to the Commission by Keller SpA forecast a profit of ITL 1 805 million after the orders have been completed. In the case of Keller Meccanica SpA, the profit forecast is ITL 8 300 million.

At the time the proceedings were initiated, neither company had any new orders. The Commission could not conclude that the restructuring plans for the firms would render them economically and financially viable in the long term because, even if existing orders were completed, the forecast profits would not be sufficient to cover the companies' past losses.

In their comments on the initiation of proceedings, the Italian authorities outlined the special nature of the provisions of Law 95/1979, pointing out that the purpose of extraordinary administrative arrangements is to allow the insolvent company to continue its activities where there is a possibility of recovery with a view to transferring the viable assets to a private third party as soon as possible. It is therefore clear that the recovery programme cannot cover a period longer than the duration of the extraordinary administrative arrangements (maximum of four years). Any decision on the future of the companies beyond that period must be taken by the private purchaser. In addition, the Sardinian authorities explained that, under the extraordinary administrative arrangements, the initiatives of the administrator in the case of Keller Meccanica SpA are not structural in nature but are aimed at the completion of orders.

In their last letter, dated 27 January 1998, the Italian authorities informed the Commission that they had started the procedure for selling the plant of both Keller SpA and Keller Meccanica SpA and that this new element made it unnecessary to forward restructuring plans.

On the basis of the above information, the Commission cannot alter its preliminary conclusions that the 'recovery programme' established by the extraordinary administrator for both Keller SpA and Keller Meccanica SpA under Law 95/1979 constitutes simply a financial plan aimed at the completion of orders in hand at the time the law was applied.

The recovery programme cannot be regarded as a restructuring plan within the meaning of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty because it does not constitute a feasible, coherent and far-reaching plan to restore the firm's long-term economic and financial viability. To fulfil the viability criterion, the restructuring plan must be considered capable of enabling the company to cover all its costs, including depreciation and tax charges, and generating a minimum return on capital so that, after completing its restructuring, the firm will not require any further injection of State aid and will be able to compete in the market on its own merits.

Clearly, this is not the case here. The aim of the measure is to keep both companies in operation for a limited transitional period while a private purchaser is found. The Italian authorities even admit that any initiative to ensure the firms' future viability will have to be taken by the potential private purchaser after expiry of the extraordinary administrative arrangements. It must therefore be concluded that the first and most important condition laid down in the Community Guidelines (namely, a restructuring plan to restore the firms' long-term economic and financial viability) is not met.

The requirement that the aid should not unduly distort competition is not met either since, during the transitional period, both companies are being kept in operation artificially to the detriment of non-aided competitors in the sector. In addition, it is not impossible that the companies will obtain new orders.

Consequently, the aid elements in the ITL 33 839 million soft loan granted to Keller SpA and the ITL 6 500 million soft loan granted to Keller Meccanica SpA do not qualify for the derogation under Article 92(3)(c), which is the only basis for exempting aid for rescuing and restructuring firms in difficulty. The derogation under Article 92(3)(a) is not applicable because the aid is not aimed at promoting the economic development of areas where the standard of living is abnormally low.

It should be added that, if both companies had been privatised at the end of the four-year period of extraordinary administrative arrangements, the Commission would have reached the same conclusions for the reasons already explained. This would not have obviated the need for the Commission to adopt a position on the measures taken during the transitional period of the extraordinary administrative arrangements and which have to be assessed on their own merits, independently of any possible sale.

Nor does the fact that both companies are subject to extraordinary administrative arrangements affect the Commission's conclusions. In a previous State aid case (State aid C 8/96 — Ferdofin Srl [1]), the Commission took the view that aid measures granted to Ferdofin under Law 95/1979 constituted State aid since measures under that law are not aimed at all companies, but only the largest ones (more than 300 employees) and the procedure itself is subject to the discretion of the public authorities. In the absence of a genuine restructuring plan, the Commission terminated the case by ordering the aid granted to Ferdofin by the Italian authorities to be repaid. In line with this decision, the Commission cannot adopt a different position in cases with similar characteristics, such as the present one.

VII

The aid elements may be calculated as the difference between the interest rates charged to the companies and the reference rate used to calculate the net grant equivalent of regional aid in Italy in 1995, i.e. 11,35 %. This gives an aid element of ITL 4 288 million for the soft loan granted to Keller SpA and one of ITL 903 million for the soft loan granted to Keller Meccanica SpA.

It must therefore be concluded that the interest rebate amounting to ITL 4 288 million for the soft loan granted to Keller SpA and ITL 903 million for the soft loan granted to Keller Meccanica SpA must be declared illegal and incompatible with the common market.

Where aid granted illegally is found to be incompatible with the common market, Article 93(2) of the EC Treaty allows the Commission to require the Member State to recover it from the recipient, as the Court of Justice has confirmed in its judgments in Cases 70/72 Commission v. Germany [2], 310/85 Deufil v. Commission [3] and C-5/89 Commission v. Germany [4].

The Italian authorities are therefore requested to take the necessary steps to recover the illegal and incompatible aid,

HAS ADOPTED THIS DECISION:

Article 1

The conditions under which soft loans of ITL 33 839 million and ITL 6 500 million were granted to Keller SpA and Keller Meccanica SpA are not in accordance

[1] OJ L 306, 11. 11. 1997, p. 25.
[2] [1973] ECR 813.
[3] [1987] ECR 901.
[4] [1990] ECR I-3437.

with the conditions laid down in the regional aid schemes approved by the Commission. Furthermore, the loans were granted before the Commission had submitted its comments on the subsequent alterations to those schemes, in accordance with Article 93(3) of the EC Treaty.

Article 2

The aid in the form of interest rebates amounting to ITL 4 288 million for Keller SpA and to ITL 903 million for Keller Meccanica SpA is illegal.

Such aid does not qualify for any of the exemptions laid down in Article 92(2) and (3) of the EC Treaty or Article 61(2) and (3) of the EEA Agreement and is therefore incompatible with the common market within the meaning of Article 92(1) of the EC Treaty and Article 61 (1) of the EEA Agreement.

Article 3

Italy shall take whatever steps are necessary to recover the illegal aid referred to in Article 2. Repayment shall be made in accordance with the procedures and provisions of Italian law.

The amounts to be repaid shall bear interest from the date on which the aid was granted until the date on which it is effectively repaid. The interest shall be calculated on the basis of the reference rate used to calculate the net grant equivalent of regional aid applicable in Italy on the date of repayment.

Article 4

Italy shall inform the Commission within two months of the date of notification of this decision of the measures it has taken to comply with it.

Article 5

This Decision is addressed to the Republic of Italy.

Done at Brussels, 1 July 1998.

For the Commission
Karel VAN MIERT
Member of the Commission

COMMISSION DECISION

of 14 July 1998

on guarantees granted to Eisen- und Stahlwalzwerke Rötzel GmbH

(notified under document number C(1998) 2369)

(Only the German text is authentic)

(Text with EEA relevance)

(1999/196/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular point (c) of Article 4 thereof,

Having regard to Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry [1], and in particular Article 6 thereof,

After giving notice to the parties concerned to submit their comments,

Whereas:

I

By letter dated 12 August 1997, the Commission informed the German Government of its decision to initiate the procedure under Article 6(5) of Decision No 2496/96/ECSC (hereinafter referred to as the 'Steel Aid Code') in respect of an 80 % deficiency guarantee granted by the *Land* of North Rhine-Westphalia to Eisen- und Stahlwalzwerke Rötzel GmbH ('Rötzel').

On 25 April 1995 the *Land* of North Rhine-Westphalia granted an 80 % deficiency guarantee to Rötzel to cover a bank credit amounting to DEM 15 million. The guarantee was granted on the basis of an approved guarantee scheme of the *Land* (N 155/88; letter of 9 June 1988, SG(88) D/6814). Approval was given only under the EC Treaty and not under the ECSC Treaty. It was also conditional in the sense that individual cases in sensitive sectors such as steel had to be notified individually. No notification of aid was made in this case.

The credit and the deficiency guarantee were designed to support the restructuring plan of the company. Rötzel manufactures hot-rolled strip, cold-rolled strip and some profiled/alloyed products as its plant in Nettetal. Its hot-rolling production capacity is 54 000 t/year. The company produces some 50 000 t/year of steel products in total, of which 30 000 t are hot-rolled and 20 000 t cold-rolled products. Approximately half of its hot-rolled production is consumed internally. Rötzel employs 170 people, of whom 95 are engaged in the production of cold-rolled products and 35 in the production of hot-rolled products.

In the period 1950-1993 the company also operated a plant in Dinslaken with a hot-rolling capacity of 264 000 t/year. On account of market conditions the annual production of hot-rolled products decreased in the period 1976-1994, and Rötzel expanded its cold-rolling facilities in Nettetal, at an investment cost of some DEM 20 million. In the 1990s the situation worsened and Rötzel decided to close its plant in Dinslaken. The German Government puts the costs of closure at DEM 10,5 million. The production capacity of 264 000 t/year of hot-rolled products was dismantled. The closure of such a large part of the company prompted some restructuring that led to the reopening of hot-rolling mill No IV in Nettetal.

The restructuring costs of the company following the closure of Dinslaken necessitated the sale of real estate and required in its last phase the abovementioned bank credit of DEM 15 million. The credit was secured for an amount of DEM 5 million by the two shareholders and as to 80 % by the *Land* of North Rhine-Westphalia in the form of a deficiency guarantee. According to the German Government, the investments did not concern the hot-rolling facilities in Nettetal.

Rötzel's products are covered by two different Treaties, the EC Treaty and the ECSC Treaty. Its hot-rolled products fall under the ECSC Treaty. When initiating the procedure, the Commission argued that, since Rötzel is an undertaking engaged in production in the steel industry, it is caught by Article 80 of the ECSC Treaty and by the State aid rules set out in that Treaty. Although the aforementioned guarantee might have been granted only in

[1] OJ L 338, 28. 12. 1996, p. 42.

respect of a bank credit for investment in the cold-rolling production facilities, as is claimed by the German Government, the restructuring of Rötzel, of which the investment formed part, also entailed the reopening of hot-rolled production facilities. Furthermore, there is a risk that the effects of the guarantee may spill over to the ECSC steel-making sector since the degree of integration of the cold-rolling activities with the ECSC activities is significant as both activities are combined in a single company.

Since, the *Land* of North Rhine-Westphalia undertook a degree of risk in guaranteeing the bank credit without charging a risk premium, the Commission considered that it was not acting in accordance with the private-investor principle. Consequently, it regarded the guarantee as State aid.

Point (c) of Article 4 of the ECSC Treaty recognises as incompatible with the common market subsidies or aids granted by States in any form whatsoever. Exceptions to this rule are to be found in the Steel Aid Code, adopted on the basis of Article 95 of the ECSC Treaty.

When initiating the procedure, the Commission had serious doubts whether the State aid was compatible with the common market since none of the exemptions laid down in the Steel Aid Code seemed to apply. It took the view, therefore, that the guarantee was caught by the prohibition laid down in Article 4(c) of the ECSC Treaty.

Accordingly, the Commission decided to initiate the procedure provided for in Article 6(5) of the Steel Aid Code.

II

The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [1]. It called on other Member States and interested parties to submit their comments on the matter.

The UK Steel Association submitted its comments on 18 November 1997, stating that, although it disagreed with the view that all State aid paid to a company involved in either ECSC or non-ECSC activities should automatically be subject to ECSC rules regardless of the use to which the aid was put, the fact that Rötzel's activities are fully integrated at a single site justifies the approach adopted by the Commission in this case. The Commission communicated the Association's comments to the German Government by letter dated 10 December 1997 so as to give it the opportunity to reply.

By letter dated 24 February 1998, the German Government gave its reaction to the opening of the procedure and to the comments made by the UK Steel Association. It confirmed that on 18 May 1995 a deficiency guarantee had been granted to Rötzel fpr 80 % of a bank credit of DEM 15 million comprising:

(a) a DEM 2,5 million redeemable loan for investment purposes

(b) a DEM 4,5 million redeemable loan for operating purposes

(c) a DEM 8 million credit line for operating purposes.

The guarantee has been taken up, since Rötzel has now gone into liquidation. The *Land* authorities have already managed to reduce some of their loss, although at this stage the future situation regarding the guarantee cannot be determined since the bankruptcy proceedings will be completed by the end of 1998 at the earliest.

III

Point (c) of Article 4 of the ECSC Treaty states that subsidies or aids granted by States are recognised as incompatible with the common market and must accordingly be abolished and prohibited within the Community. The only exemptions from this prohibition are spelt out in the Steel Aid Code. They are:

(a) aid for research and development

(b) aid for environmental protection

(c) aid for closures.

Germany has not relied on any of these exemptions in this case.

Nor has Germany contested the argument rehearsed in the decision initiating the procedure, to the effect that the guarantee constitutes State aid since the *Land* authorities assumed a risk without charging a risk premium. The Commission takes the view that the State aid involved is equivalent to the full amount guaranteed. The closure of the Dinslaken plant and the continuing need to restructure the Nettetal facilities indicate that Rötzel was already encountering difficulties when the guarantee was granted. The DEM 15 million credit was necessary for the restructuring of Rötzel and, to that extent, was of vital importance to the company. Given the difficulties facing the company, it is extremely unlikely that the credit would have been granted without a State guarantee. Thus, the State aid involved amounts to DEM 12 million (80 % of DEM 15 million).

In addition, the Commission considers that, in view of the degree of integration between ECSC and non-ECSC activities, the guarantee must be assessed in accordance with the provisions of the ECSC Treaty and the Steel Aid Code. The German authorities have not provided any information that would permit a breakdown of the costs by sector of activity. The Commission possesses information indicating that the restructuring led to the reopening of a hot-rolling facility which falls within the scope of the

[1] OJ C 328, 30. 10. 1997, p. 11.

ECSC Treaty. It also notes that the bank credit in fact covers DEM 12,5 million for operating purposes and only DEM 2,5 million for investment purposes. Since it is impossible to distinguish clearly between the operating costs arising in the production sectors covered by the two Treaties, the Commission is obliged to examine the guarantee in the light of the ECSC Treaty. The UK Steel Association supports this view and the German authorities have not contested the approach in the course of the procedure.

The Commission, therefore, concludes that the guarantee constitutes State aid which falls under the ECSC Treaty and is in breach of point (c) of Article 4 of that Treaty. For the rest, none of the exemeptions laid down in the Steel Aid Code is applicable in this case,

HAS ADOPTED THIS DECISION:

Article 1

The aid in the form of an 80 % guarantee granted by the *Land* of North Rhine-Westphalia in respect of a bank credit of DEM 15 million for Eisen- und Stahlwalzwerke Rötzel GmbH in Nettetal is unlawful since it was not notified in advance. Furthermore, it is incompatible with the common market for coal and steel under point (c) of Article 4 of the ECSC Treaty.

Article 2

Germany shall, in accordance with the provisions of German law relating to the recovery of amounts owed to the State, recover the DEM 12 million which is the full amount guaranteed in favour of Eisen- und Stahlwalzwerke Rötzel GmbH in Nettetal. In order to nullify the effects of the aid, interest shall be charged on that amount from the date on which the aid was granted to the date on which it is repaid. The rate of interest shall be that applied by the Commission in calculating the net grant equivalent of regional aid during the period in question.

Article 3

Germany shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply herewith.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 14 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DECISION

of 22 July 1998

concerning the notified capital increase of Air France

(notified under document number C(1998) 2404)

(Only the French text is authentic)

(Text with EEA relevance)

(1999/197/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93(2) thereof,

Having regard to the Agreement establishing the European Economic Area, and in particular point (a) of Article 62(1) thereof and Protocol 27 thereto,

Having, in accordance with Article 93 of the Treaty, given notice to the parties concerned to submit their comments by opening the procedure on 25 May 1994, and having regard to those comments,

Whereas:

I. THE FACTS

(1) By Decision 94/653/EC [1] (hereinafter referred to as 'the 1994 Decision'), the Commission authorised the French authorities to grant to the Compagnie Nationale Air France (hereinafter referred to as 'Air France') State aid amounting to FRF 20 billion. The first two Articles of the enacting part of the Decision read as follows:

> *'Article 1*
>
> The aid to be granted in the period 1994 to 1996 in favour of Air France, in the form of a FRF 20 billion capital increase to be paid in three tranches, and aimed at its restructuring in accordance with the plan is compatible with the common market and the EEA Agreement by virtue of Article 92(3)(c) of the Treaty and Article 61(3)(c) of the Agreement, provided that the French Government comply with the following commitments:
>
> (1) the entire amount of aid shall benefit Air France alone. Air France means the Compagnie Nationale Air France, as well as any company of whose capital it holds more than 50 %, with the exception of Air Inter. In order to prevent any transfer of aid to Air Inter, a holding company will be set up by 31 December 1994 which will have a majority shareholding in Air France and Air Inter. No financial transfer which does not form part of normal commercial relationships shall be made between the companies in the group, either before or after the actual setting up of the holding company. Accordingly, all transfers of goods and services between the companies shall be carried out at market prices; in no case may Air France apply preferential tariffs in favour of Air Inter;
>
> (2) the process of privatising Air France shall begin once the company's economic and financial recovery has been achieved, in accordance with the plan, having regard also to the situation on the financial markets;
>
> (3) Air France shall continue the process of implementing in full the plan as communicated to the Commission on 18 March 1994, in particular as regards the following productivity targets expressed by the indicator equivalent revenue passenger kilometre/employee for the duration of the restructuring plan:
>
> — 1994: 1 556 200 equivalent revenue passenger kilometre/employee,
>
> — 1995: 1 725 000 equivalent revenue passenger kilometre/employee,
>
> — 1996: 1 829 200 equivalent revenue passenger kilometre/employee;
>
> (4) they shall adopt the normal behaviour of a shareholder *vis-à-vis* Air France, allowing the company to be managed in accordance with commercial principles alone and abstaining from intervention in its management for reasons other than those connected with its status as a shareholder;
>
> (5) they will not grant to Air France, in accordance with Community law, any new appropriation or any other form of aid;
>
> (6) they will ensure that, for the duration of the plan, the aid is used exclusively by Air France for the purposes of restructuring the company and not to acquire new holdings in other air carriers;

[1] OJ L 254, 30. 9. 1994, p. 73.

(7) they will ensure that, during the period covered by the plan, Compagnie Nationale Air France does not increase the number of aircraft in its operating fleet beyond 146;

(8) they will not increase, during the period covered by the plan, the supply of Compagnie Nationale Air France beyond the level reached in 1993 for the following routes:

— between Paris and all destinations in the European Economic Area (7 045 million available seat kilometre),

— between provincial airports and all destinations in the European Economic Area (1 413,4 million available seat kilometre).

The supply could be increased by 2,7 % each year, unless the growth rate of each of the corresponding markets is lower.

However, if the annual growth rate of these markets exceeds 5 %, supply could be increased beyond 2,7 % by the amount of increase above 5 %;

(9) they will ensure that Air France does not, during the period covered by the plan, apply tariffs below those of its competitors for an equivalent supply on the routes that it operates within the European Economic Area;

(10) they will not grant preferential treatment to Air France in the matter of traffic rights;

(11) they will ensure that Air France does not operate, during the period covered by the plan, more scheduled routes between France and the other countries in the European Economic Area than it did in 1993 (89);

(12) they will limit, during the period covered by the plan, the supply of Air Charter to its 1993 level (3 047 seats and 17 aircraft), with a possible annual increase corresponding to the market growth rate;

(13) they will guarantee that any transfer of goods or services from Air France to Air Charter reflects market prices;

(14) they will ensure that Air France disposes of its shareholding in the Meridien hotel group by the end of the year on the best possible financial, commercial and legal terms;

(15) with the cooperation of Aéroports de Paris, they will, as soon as possible, modify the traffic distribution rules for the Paris airport system in accordance with the Commission Decision of 27 April 1994 on the opening of the Orly-London link;

(16) they will ensure that the work required to adapt the two terminals at Orly carried out by Aéroports de Paris, and a possible saturation of one or other of those terminals, do not affect competitive conditions to the detriment of the companies operating there.

Article 2

In order to ensure that the amount of aid remains compatible with the common market, the payment of the second and third tranches of the capital increase shall be subject to fulfilment of the above commitments and to the actual implementation of the plan and achievement of the planned results (particularly as regards the profits and cost-effectiveness ratio as expressed in equivalent revenue passenger kilometre/employee, as well as the sale of shares).

The French Government shall submit to the Commission a report of the progress of the restructuring programme and on the economic and financial situation of Air France. These reports shall be submitted at least eight weeks before the release of the second and third tranches of aid in 1995 and 1996.

The Commission shall have the proper implementation of the plan and the fulfilment of the conditions laid down for the approval of aid verified, in the light of, *inter alia,* the business environment and market trends, by independent consultants chosen by the Commission in consultation with the French Government'.

(2) The 1994 Decision was contested before the Court of First Instance by British Airways, SAS, KLM, Air UK, Euralair and TAT, applicants in Case T-371/94, and by British Midland, applicant in Case T-394/94. On 25 June 1998 the Court of First Instance delivered a judgment in these two actions and annulled the 1994 Decision. The conclusions of the grounds for the judgment of the Court were as follows (point 454 of the Judgment):

'Examination of all the pleas in law raised in the present litigation has made it clear that the contested decision suffers from insufficient reasoning on two points, concerning, respectively, the purchase of 17 new aircraft for FRF

11,5 billion (see paragraphs 84 to 120 above) and the competitive position of Air France on the network of its non-EEA routes with the associated feeder traffic (see paragraphs 238 to 280 above). Those two points are of crucial importance within the general scheme of the contested decision. That decision must consequently be annulled'.

(3) With regard, more specifically, to the insufficient reasoning concerning the purchase of 17 new aircraft, the Court of First Instance first recalled the case-law of the Court of Justice [2] quoted by the parties concerned in the procedure through administrative channels preceding the 1994 Decision, according to which investment intended to ensure the renewal or modernisation, whether regular or normal, of the production capacity of an undertaking could not be financed through State aid. According to the Court of First Instance it appears that the 1994 Decision '... acknowledged that the aid was intended to finance the fleet investment involving the acquisition of 17 new aircraft ...' and that '... in any event, the decision did not preclude the possibility that the aid might be used, at least in part, for the purpose of financing such investment ...' since '... the only independent financial means at Air France's disposal designed to contribute to financing this investment, namely the disposal of assets, was expected to realise only FRF 7 billion, whereas the costs of the investment in question amounted to FRF 11,5 billion' (point 111). The Court considered that the acquisition of the 17 aircraft '... clearly constitutes a modernisation of Air France's fleet' and that in the reasons given for the 1994 Decision the Commission failed to specify whether it would tolerate, exceptionally, the financing of this acquisition through State aid because it considered the case-law quoted to be '... irrelevant in the specific circumstances of the present context or whether it intended to depart from the actual principle laid down therein' (point 112). It noted that the Commission's own decision-making practice reflected its opposition in principle to all operating aid intended to finance normal modernisation of installations, and concluded that:

'It follows that the grounds of the contested decision do not make it clear that the Commission did in fact examine whether, contrary to the above case-law and its own decision-making practice, the modernisation of the Air France fleet could be partially financed by aid earmarked for restructuring of the company, and, if so, for what reasons' (point 114).

(4) The Court of First Instance added that the argument presented by the Commission's agents that the aid in question was intended only to reduce Air France's indebtedness and not for the acquisition of the 17 new aircraft could not be upheld in that it was contradicted by the reasoning of the 1994 Decision and that it is for the College of the Commissioners alone to adopt any alteration to the statement of reasons. The Court also considered contradictory the reasoning according to which the restructuring plan was intended to produce a cash flow enabling Air France to meet its operating and investment costs and also the reasons for the 1994 Decision from which it was clear that the financial stability and profitability of Air France were not expected to be restored until the end of 1996 (point 119).

(5) As for Air France's competitive position in the network of routes outside the European Economic Area (EEA) in regard to associated feeder traffic, the Court, having recalled that this question had been raised by some of the applicants in the administrative procedure prior to the adoption of the 1994 Decision, held that '... the statement of the grounds of the contested decision does not contain the slightest indication as to Air France's competitive position outside the EEA' (point 270). It emphasised that there was no analysis of Air France's international network and that the conditions of authorisation of the aid in terms of quantity and pricing practices covered only routes within the EEA even though the Commission, in a case connected with the application of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings [3], made a relevant market analysis using the concept of substitutability of flights and Air France's restructuring plan expressly provided for the development of long-haul flights. From this, the Court concludes that '... having regard to that decision-making practice and bearing in mind the observations which the parties concerned made in that connection, the Commission was obliged to set out its views on the problem of non-EEA air routes served by Air France, the beneficiary of the authorised aid, in competition with other companies within the EEA' (point 273) and that as it did not extend the aforementioned conditions to EEA

[2] Judgments of the Court of 24 February 1987 in Case 310/85, Deufil v. Commission, [1987] ECR 901, and of 8 March 1988 in Joined Cases 62/87 and 72/87, Exécutif régional wallon and SA Glaverbel v. Commission, [1988] ECR 1573.

[3] OJ L 395, 30. 12. 1989, p. 1; corrigendum: OJ L 257, 21. 9. 1990, p. 13.

routes served by France, it '... was required to assess, in its examination of the relevant market, the potential substitutability of the non-EEA flights operated, for example, from Paris, London, Rome, Frankfurt, Copenhagen, Amsterdam and Brussels, and thus the potential competition, in regard to those flights, between the airline companies whose hubs are situated in any of those cities' (point 274).

(6) The Court adds that Air France's conduct on routes outside the EEA from its hub at Paris (CDG) airport may have repercussions on feeder traffic to that hub, possibly at the expense of feeder traffic to other hubs, and that the Commission ought therefore to have set out its views in the arguments for its decision, regarding the situation of the small airline companies which frequently depend on a few specific routes.

(7) The Court further notes that none of the requirements imposed by the Commission and associated with the 1994 Decision can make up for the fact that the Decision provides insufficient reasoning with regard to non-EEA routes. Nor does the Court accept, because it is not covered by collegiate responsibility, the argument put forward by the Commission and the interveners to the effect that the restrictions imposed on Air France for non-EEA connections, governed by bilateral agreements, would have benefited only non-EEA airlines and would therefore have been manifestly contrary to the common interest. The Court concludes that it cannot examine whether the arguments put forward on the effects of the aid on the competitive position of Air France in regard to its network of non-EEA routes and the associated feeder traffic are well founded, nor can it '... rule on the argument relating to Air France's pricing practices on its non-EEA network, allegedly operational measures financed by the aid' (point 280).

(8) The Court declared unfounded all the other arguments put forward by the applicants, including those relating to the allegedly incorrect course of the administrative procedure and those ensuing from errors of assessment and errors of law, in particular the alleged violation of the principle of proportionality with regard to the amount of the aid, the change in trading conditions to an extent contrary to the common interest, and the inability of the restructuring plan to restore Air France's viability.

II. LEGAL EVALUATION

(9) Under Article 176 of the Treaty, 'the institution or institutions whose act has been declared void or whose failure to act has been declared contrary to this Treaty shall be required to take the necessary measures to comply with the judgment of the Court of Justice'.

(10) The Court has elaborated on these provisions as follows. 'The institution is required, in order to comply with the judgment and implement it fully, to have regard not only to the operative part of the judgment but also to the grounds which led to the judgment and constitute its essential basis, in so far as they are necessary in order to determine the exact meaning of what is stated in the operative part. It is those grounds which, on the one hand, identify the precise provision held to be illegal and, on the other, indicate the specific reasons which underlie the finding of illegality contained in the operative part and which the institution concerned must take into account when replacing the annulled measure' ([4]). The Court also emphasised that it is for the institution whose act has been declared void to determine the measures necessary to comply with a judgment annulling an act ([5]).

(11) In the present case, to take due account of the Court's judgment, it is for the Commission to adopt a new decision including the reasoning for the two points on which the Court found that there was insufficient reasoning. Moreover, as the 1994 Decision was annulled because of a breach of procedure, Article 176 does not oblige the Commission to reopen the procedure that led to the Decision and again go through the entire procedure before adopting a new decision. It appears from the established case-law that when an act has been annulled because of formal or procedural flaws, the institution concerned may take up the procedure from the stage at which the flaw occurred ([6]). In particular, as the Court stated in its judgment of 25 June 1998 (point 81), this Decision

([4]) Judgment of the Court of Justice of 26 April 1988 in Joined Cases 97/86, 193/86, 99/86 and 215/86, Astéris and Others v. Commission, [1988] ECR 2181, point 27.
([5]) Judgment of the Court of 5 March 1980 in Case 76/79, Könecke v. Commission, [1980] ECR 665, points 13 to 15.
([6]) Judgment of the Court of 13 November 1990 in Case 331/88, Fedesa and others, [1990] ECR I-4023, and judgment of the Court of First Instance of 17 October 1991 in Case T-26/89, De Compte v. European Parliament, [1991] ECR II-781, point 70.

must be based on the elements of fact existing at the time when the 1994 Decision was adopted, the Member States and the other interested parties have already had the opportunity to state their points of view in the administrative procedure preceding the adoption of the 1994 Decision and the procedural rights have therefore been respected, the Commission can adopt a new decision without reopening the procedure provided for by Article 93(2) of the Treaty.

(12) As the Court recalled in its judgment of 25 June 1998, the statement of grounds required by Article 190 of the Treaty must disclose in a clear and unequivocal fashion the reasoning followed by the Community authority which adopted the contested act in such a way as to enable the Court to exercise its supervisory jurisdiction and the interested parties to know the grounds of the measure taken in order to be able to defend their rights ([7]). Moreover, it appears from the established case-law of the Court that the question whether the statement of the grounds for a decision meet the requirements of Article 190 of the Treaty must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question ([8]). In this regard, while the Commission is not obliged to reply, in its statement of the grounds for a decision, to all the points of fact and of law invoked by the parties concerned in the course of the administrative procedure, it must nevertheless take account of all the circumstances and all the relevant factors of the case to enable the Court to exercise its supervision of legality and to inform the Member States and the nationals concerned of the conditions in which it applies the Treaty ([9]).

(13) In order to meet the abovementioned obligations on the two points which the Court found to be based on insufficient reasoning, the Commission wishes to point to the fact, first of all, that the aid granted to Air France is an aid for the restructuring of the company. In accordance with Article 92(3)(c) of the Treaty, the Commission holds that aids for the restructuring of undertakings in difficulty may contribute to the development of certain economic activities without affecting trade to an extent contrary to the common interest. It is therefore for the Commission to ascertain, under the supervision of the Court, the discipline required to ensure that intervention by the Member States is not detrimental to the economic activities regarded as being in the common interest. In this exercise, the Commission has indispensable discretionary powers to identify and specify the conditions in which national intervention benefiting individual companies do not have the effect of shifting the difficulties of one Member State to another and may be considered as pursuing the common interest of developing activities in an economic sector. Past Commission decision-making in this matter has been highlighted from 1978 in its Eighth Report on Competition Policy: aid to companies in difficulty may be justified under the Treaty if it is subject to the achievement of a coherent restructuring programme designed to attain a long-term improvement of the situation and restore the competitiveness of these companies, and if it is confined to what is strictly necessary to preserve the company's equilibrium during the unavoidable transitional period before the programme bears fruit ([10]). This approach was confirmed by the Commission's communication on State aids in the aviation sector ([11]), which continues the policy line followed by the Commission in its Decisions 94/118/EC ([12]) Aer Lingus, 94/698/EC ([13]) TAP and 94/696/EC ([14]) Olympic Airways. It was set out in more general terms in the Guidelines on State aid for rescuing and restructuring firms in difficulty ([15]).

(14) In the abovementioned guidelines, the Commission states that restructuring '... is part of a feasible, coherent and far-reaching plan to restore a firm's long-term viability. Restructuring usually involves one or more of the following elements: the reorganisation and rationalisation of the firm's activities on a more efficient basis typically involving the withdrawal from activities that are no longer viable or are already loss-making, the restructuring of those existing activities that can be made competitive again and, possibly, the development of, or diversification to new viability activities.

([7]) Judgment of the Court of 14 February 1990 in Case 350/88, Delacre and Others v. Commission, [1990] ECR I-395, point 15.

([8]) Ibid., point 16. See also judgment of the Court of 2 April 1998 in Case 367/95P, Commission v. Sytraval and Brink's France SARL, [1998] ECR I-1719, point 63.

([9]) Judgments of the Court of Justice of 24 October 1996 in Joined Cases C-329/93, C-62/95 and C-63/95, Bremer Vulkan v. Commission, [1996] ECR I-5151, point 32, and of 17 January 1995 in Case C-360/92 P, Publishers Association v. Commission, [1995] ECR I-23, point 39.

([10]) See paragraphs 227, 228 and 177 of the Eighth Report on Competition Policy.

([11]) OJ C 350, 10. 12. 1994, p. 5.

([12]) OJ L 54, 25. 2. 1994, p. 30.

([13]) OJ L 279, 28. 10. 1994, p. 29.

([14]) OJ L 273, 25. 10. 1994, p. 22.

([15]) OJ C 368, 23. 12. 1994, p. 12.

Financial restructuring (capital injections, debt reduction) usually has to accompany the physical restructuring. Restructuring plans take account of, *inter alia,* the circumstances giving rise to the firm's difficulties, market supply and demand for the relevant products as well as the expected development and the specific strengths and weaknesses of the firm. They allow an orderly transition of the firm to a new structure that gives it viable long-term prospects and will enable it to operate on the strength of its own resources without requiring further State assistance' (paragraph 2.1). Where the Commission examines, pursuant to Article 92 of the Treaty, a restructuring operation involving a State aid, it must first determine if the restoration of the company may be regarded as an objective of its Community policy. Next, it ascertains whether the aid may restore the company to viability and whether the aid is commensurate with the costs and advantages of restructuring without engendering inappropriate distortion of competition. With this in mind, it may make a decision to authorise aid subject to compliance with certain conditions.

(15) In the present case, the Commission took the view in its 1994 Decision that it is in the Community's interest to foster the success of restructuring Air France and ensure its long-term viability, and this view was not questioned by the Court (point 235 of the judgment).

On the reason concerning the financing of fleet renewal

(16) In connection with the above, it should be pointed out that, with regard to the financing of the acquisition of new aircraft by Air France in the restructuring stage, company restructuring is based on an independent overall programme to restore the company's viability within a reasonable timeframe without the grant of any other aid [16]. It comprises the reorganisation and rationalisation of Air France's activities, planned cost reductions, giving up some loss-making routes, improving efficiency and productivity, sale of assets, reducing major financial burdens, all these being measures without which the return to viability is bound to fail. All of these operations are partly financed through the recapitalisation of the company by a total amount of FRF 20 billion. This capital injection thus constitutes an indispensable element, inextricably linked with the overall restructuring of the airline, as is clear from the report compiled by Lazard Frères.

(17) On account of the comprehensiveness of the restructuring operation and the indispensable nature of recapitalisation, the full amount of the aid is intended for the financing of the restructuring measures as a whole. These measures may be of various kinds: purely structural, such as the measures to reorganise the company's activity; social [17], such as those relating to staff cuts (dismissal, retirement, etc.); financial, for example those intended to eliminate the company's accumulated losses or even cover losses realised during the restructuring period [18]. There may also be measures relating to the ordinary activity or the normal functioning of the company. In short, the nature of the co-financing measure through the aid is not decisive as it forms part of a restructuring plan that is likely to restore the company's viability, and the above-mentioned conditions of proportionality and the absence of inappropriate distortions of competition are fulfilled [19]. The acquisition of new aircraft forms part of Air France's overall restructuring plan and a failure to renew the fleet might jeopardise the viability of this restructuring exercise, as noted by the Commission in the 1994 Decision. The Court has recognised that the reasoning for this decision on the latter point was insufficient (point 102 of the judgment). The Commission is therefore of the opinion that there is no obstacle to the aid received by Air France being used to finance fleet renewal.

(18) It is correct, as the Court points out (point 113 of the judgment), that for operating aids intended to finance normal modernisation of installations and relieve an undertaking of the expenses which it would itself normally have had to bear in its day-to-day management there can be no derogation from the prohibition laid down in Article 92(1),

[16] See note 11, paragraph V.2.38.

[17] Ibid.

[18] See point 228 of the Eighth Report on Competition Policy.

[19] Judgment of the Court of First Instance of 5 November 1997 in Case T-149/95, Ducros v. Commission [1997] ECR II-2031, point 65. See also the Commission's decisions published in full: ABB (OJ L 309, 13. 12. 1993, p. 21), La Papelera Española (OJ C 123, 5. 5. 1993, p. 7), Bull (OJ L 386, 31. 12. 1994, p. 1), Iritecna (OJ L 330, 13. 12. 1995, p. 23), Seda de Barcelona (OJ L 298, 21. 11. 1996, p. 14), SEAT (OJ L 88, 5. 4. 1996, p. 7), Compagnie Générale Maritime (OJ L 5, 9. 1. 1997, p. 40), Aircraft Services Lemverder (OJ L 306, 11. 11. 1997, p. 19) and the numerous Commission decisions not to raise objections, published in summary: for example, Bayerische Zellstoff (SG 93/D/18262), Polte (SEC(97) 1055), Magdeburger Stahlbau (SEC(97) 1271), Koenitz (SEC(97) 546/2), etc.

except if their distorting effects are counterbalanced by one of the objectives of common interest specified in Article 92(2) and (3) ([20]). This is the context of the reference to the Court's rulings in the Deufil and Glaverbel cases made by the parties concerned during the administrative procedure. In the present case, however, even if fleet renewal does not constitute initial investment and does not relate to additional or new equipment ([21]), it does form part of a restructuring operation encompassing the elements detailed above, in contrast with the situation in the Deufil and Glaverbel cases.

(19) Furthermore, the investment considered in these two court cases had to be viewed in the context of a significant overcapacity on the markets in question and, in the Deufil case, the investment had enabled the company to double its production capacity. In the present case, however, the acquisition of new aircraft in no way increases Air France's supply in terms of greater seating capacity and the European aviation market was not suffering a structural overcapacity crisis in 1994 as illustrated below.

(20) Moreover, in the notification sent to the Commission on 18 March 1994, the French authorities stated that through the capital injection Air France's indebtedness would be reduced from FRF 34 billion to FRF 15 billion between the end of 1993 and the end of 1996. Lazard Freres' report appended to the notification presents the following development of Air France's equity capital and net debt over this period

(in billion FRF)

	1993	1994	1995	1996
Equity capital	(0,4)	7,1	11,7	17,4 ([1])
Net debt	34,1	25,1	20,7	15,2 ([1])

([1]) Excluding capitalised rents amounting to FRF 6,9 billion and before conversion of ORAs (Obligations remboursables en actions) totalling FRF 1,25 billion.

The table shows that Air France's indebtedness should decrease by FRF 18,9 billion between the end of 1993 and the end of 1996. If account is taken of the airline's additional indebtedness in the first half of 1994, the Commission takes the view that the aid granted to Air France, is in its entirety, intended to reduce the company's indebtedness, concomitantly with the increase of its equity capital, and not to finance the purchase of new aircraft. Moreover, the financing table included in Lazard Frères' report also shows that the operational resources obtained from the sale of assets (FRF 7 billion) and the self-financing capacity (FRF 12,1 billion), which not only includes the company's results but also depreciation, depletion and amortisation, are more than sufficient to cover operational requirements (FRF 14 billion), including FRF 11,5 billion for investment in aircraft. It should be pointed out, finally, that net expenditure on investment in aircraft does not amount to FRF 11,5 billion during the period covered by the restructuring programme, but to FRF 6,2 billion, of which FRF 3,5 billion for investment in aeroplanes alone, as the plan notified to the Commission makes provision for FRF 4,1 billion from the transfer of aircraft and FRF 1,2 billion from the sale of spare parts in 1994 to 1996.

The reasoning as to Air France's competitive position on non-EEA routes

(21) With regard, secondly, to Air France's competitive position on the network of routes to non-EEA countries, it should first of all be pointed out that the relevant markets defmed by the Commission in a case concerning State aid are more general than those covered by its analysis in the competition cases referred to it under Articles 85 and 86 of the Treaty or Regulation (EEC) No 4064/89. The Commission's communication on State aid in the aviation sector states that the geographical market to be taken into consideration to limit the effects of aid on competition may be either the EEA market in its entirety or a specific regional market particularly subject to competition ([22]), whereas the Commission partly makes a route-by-route analysis by applying Articles 85 and 86 of the Treaty to civil aviation markets ([23]).

(22) The judgment of the Court of First Instance of 25 June 1998 confirms the validity of this approach. In its 1994 Decision the Commission refrained from carrying out a route-by-route examination within the EEA but addressed the question of Air France's competitive position on this market as a

([20]) Judgment of the Court of 15 May 1997 in Case C-278/95P, Siemens v. Commission, [1997] ECR I-2507, point 23, confirming the judgment of the Court of First Instance in Case T-459/93, [1995] ECR II-1675, point 48.

([21]) The concept of operational aid extended to replacement investment, mentioned in the Glaverbel and Deufil judgments, is not necessarily identical with that evolved by economic theory.

([22]) See footnote 11, point V.2.38.4.

([23]) Judgment of the Court of 11 April 1989 in Case 66/86, Ahmed Saeed Flugreisen and Silver Line Reisebüro v. Zentrale zur Bekämpfung unlauteren Wettbewerbs, [1989] ECR 803, points 40 to 46. Judgment of the Court of First Instance of 19 May 1994 in Case T-2/93, Air France v. Commission, [1994] ECR II-323, points 45 and 80 to 85. Commission Decisions 92/213/EEC of 26 February 1992, British Midland/Aer Lingus (OJ L 96, 10. 4. 1992, p. 34); of 5 October 1992, Air France/Sabena (OJ C 272, 21. 10. 1992); of 27 November 1992, British Airways/TAT (OJ C 326, 11. 12. 1992); of 20 July 1995, Swissair/Sabena (OJ C 200, 4. 8. 1995, p. 10); 96/180/EC, LH/SAS (OJ L 54, 5. 3. 1996, p. 28).

whole. The Court accepted this Commission position both with regard to its reasoning (point 269) and the principle as such (point 288). The Commission therefore holds that it can undertake a similar overall analysis with regard to non-EEA routes.

(23) With regard to the restrictions that may be imposed to limit distortions resulting from the aid or effects on trade between the Member States, the Commission's guidelines on State aid for rescuing and restructuring firms in difficulty provide that the restructuring plan must include a reduction in production capacity if there is structural overcapacity on the Community market in question. The situation is different, however, if there is no such overcapacity: 'Where, on the other hand, there is no structural excess of production capacity in a relevant market in the Community served by the recipient, the Commission will normally not require a reduction of capacity in return for the aid. However, it must be satisfied that the aid will be used only for the purpose of restoring the firm's viability and that it will not enable the recipient during the implementation of the restructuring plan to expand production capacity, except in so far as is essential for restoring viability without thereby unduly distorting competition' ([24]). This approach is confirmed by the case-law, in which reduction of capacity is considered an acceptable remedy for distortions of competition ([25]). However, on the subject of the proportionality of restraint mechanisms that may be imposed, the Court has recognised that no exact quantitative ratio needs to be established between the amount of the aid and the size of the required cuts in production capacity. The Commission's assessment cannot be subjected to a review based solely on economic criteria but may also '... take account of a wide variety of political, economic and social considerations' in exercising its discretion ([26]).

(24) In the present case, in order to prevent trade being affected to an extent contrary to the common interest, the Commission makes its decision to authorise the aid subject to compliance with the following main conditions: a commitment by Air France that it will use the aid exclusively for restructuring purposes; limiting to 146 the number of Air France's aircraft during the period covered by the plan; limiting the supply of Air France in terms of seat/kilometre available within the EEA during the period covered by the plan; prohibition for Air France to act as a price leader within the EEA for the duration of the plan; no preferential treatment for Air France in terms of traffic rights; limiting to 89 the number of routes regularly operated by Air France between France and the other EEA countries. Of these various conditions, the absence of preferential treatment with regard to traffic rights and the limitation to 146 of the number of aircraft apply to all routes, including those to non-member countries. Within the scope of its overall discretionary powers, the Commission has seen fit not to extend the other abovementioned conditions to non-EEA routes, in particular the prohibition of price leadership and the limitation of the quantity of seat/kilometre available, for the following reasons:

— the existence of substantial guarantees for all routes

— the conditions of competition and intra-Community trade in 1994 were much more strongly affected by the development of routes within the EEA than by that of non-EEA routes

— extending the above conditions to non-EEA routes would essentially benefit airlines in non-member countries.

(25) On the first point, the Commission takes the view that the commitment to use the aid exclusively for the purpose of restructuring Air France and the limitation of the number of aircraft, both of which conditions fully apply to non-EEA routes, are in themselves substantial concessions to be made by Air France in return for the aid. As demonstrated above, the FRF 20 billion capital injection must be regarded as used solely to reduce the debt, to the exclusion of any use intended to revert to tariff or other practices that are likely to lead to losses. The notified restructuring plan also limits the number of aircraft to 146 during the period covered by the plan, with concomitantly a slight reduction in the total number of seats available, and in its communication on State aids in the aviation sector the Commission specified that the programme financed by State aid must not be intended to increase the capacity and supply of the company concerned to the detriment of its direct European competitors and that at any rate the programme must not lead to an increase in the number of aircraft or seats available on the markets concerned in excess of the growth of these markets ([27]).

([24]) See footnote 15.
([25]) Ducros, see footnote 19, point 67.
([26]) Judgment of the Court of First Instance of 24 October 1997 in Case T-244/94, Wirtschaftsvereinigung Stahl v. Commission, [1997] ECR II-1963, point 111, referring to the judgment of the Court of Justice of 3 October 1985 in Case 214/83, Germany v. Commission, [1985] ECR 3053, point 33.
([27]) See footnote 11, point V.2.38.4.

(26) In the 1994 Decision the Commission took the view that the European air transport market was not going through a structural overcapacity crisis and that the situation in the aviation sector did not justify an overall reduction of capacity. The Commission's reasoning on these two aspects was accepted by the Court of First Instance (points 365 and 367 of the judgment). It should be added here that civil aviation is one of the sectors where long-term growth has been strongest for the past 50 years. This growth even continued in the period 1990 to 1994 in which air transport went through the worst crisis in its history. As the Commission indicated in the 1994 Decision, the prospects for long-term growth are of the order of 6 % per year. In this context, the slight reduction in the total number of seats available from Air France during the period covered by the programme, which is tantamount to a freeze of its production capacity, appears on its own as a very serious limitation, in particular as there are no plans for partnerships with other major airlines. Forecasts of the trend of Air France's traffic on non-EEA routes in 1994 to 1996, communicated to the Commission in April 1994, show for each major region in the world a growth in Air France's traffic that is substantially lower than that for traffic as a whole, measured in terms of passenger-kilometres carried (e.g. [. . .] ([28]) as against [. . .] for North America, [. . .] as against [. . .] for South America, [. . .] as against [. . .] for the Asia/Pacific zone, etc.). In practice, finally, the risk that Air France would benefit from the aid to deploy more capacity and put more planes on routes to non-member countries is very small in practice as, on the one hand, the capacity available to Air France on routes to non-member countries is regulated by bilateral agreements which cannot be changed without the consent of the other countries concerned, as indicated above, and on the other hand short- and medium-haul aircraft used on routes within the EEA can hardly be used to replace long-haul aircraft used for intercontinental flights which account for a very large proportion of non-EEA routes.

(27) With regard to the second point, it should be noted in general that the Commission logically focuses the restrictions imposed on Air France on routes within the EEA, where the effect of the aid will be strongest, since it has to ensure that this effect does not change the trading conditions to an extent contrary to Community interest. Moreover, the Third Aviation Package which entered into force on 1 January 1993 grants full freedom to Community airlines to choose their own air fares, flight frequency and seating capacity on all routes within the EEA. However, the operating conditions of routes between the various EEA countries and non-EEA countries are still largely regulated by bilateral agreements which, except on certain trans-atlantic routes, strictly limit the quantities offered and the possibilities of air-fare variation. The risks involved in using a State aid to finance practices that distort competition are thus naturally much greater on routes within the EEA than on non-EEA routes. In its communication on State aids in the aviation sector, the Commission specifically indicated, in connection with relations with non-member countries, that market access conditions and the limitation of competition laid down by most bilateral agreements with non-member countries appear to be far more important economically than any State aids ([29]).

(28) For instance, one third of the bilateral agreements in force in 1994 between France and countries outside the EEA include a sole designation clause limiting the number of airlines likely to be designated by France to a single one. Virtually all of these agreements comprise provisions restricting all or part of the services supplied (in terms of flight frequency, seating capacity, etc.) by the airline or airlines designated by each party. Only a very small number of bilateral agreements concluded by France do not lay down a specific provision limiting supply. The France-USA relationship is a special case as, since the termination in 1992 of the aviation agreement by which their relationship was governed, the capacity made available by each airline required approval by both parties for each scheduling season. Air fares are completely governed by the bilateral agreements concluded by France, as they are almost systematically subject to the principle of double approval by the States concerned ([30]). Finally, all of these bilateral agreements confine possible designation to airlines largely owned and effectively controlled by French nationals.

(29) Among the routes outside the EEA that may be affected by the grant of the aid to Air France, a distinction should be made between direct flights

([28]) This version of the Decision has been edited to ensure that confidential information is not disclosed.

([29]) See footnote 11, point II.2.11.

([30]) See the *Digest of Bilateral Air Transport Agreements* published by the International Civil Aviation Organisation.

between France and non-EEA countries, on the one hand, and flights between other EEA countries and non-EEA countries following an indirect route via the Paris-CDG hub.

(30) On the markets constituted by flights between France and non-EEA countries, Air France is in practice not in direct competition with other non-French Community airlines because of the restrictions imposed by bilateral agreements regarding the air carrier's nationality. The sole designation provision included in many agreements also prevents the designation of French airlines in competition with Air France. The fact is that even if another French airline were to enter the market as a result, in particular, of the condition precluding all preferential treatment of Air France, the other restrictions imposed by bilateral agreements concerning prices and capacities offered limit very strictly the conditions of competition. It is emphasised that the system of dual approval of air fares in practice precludes all risks of predatory air fare practices by one of the designated airlines on an extra-Community route, which removes the possible useful effects of a prohibition on price leadership. A limitation of capacities made available by Air France on extra-Community routes would hardly be more useful as price controls make it much less interesting for an airline to increase considerably the number of seats available on these routes, even assuming that the bilateral agreements allow such an increase. Particularly on the North Atlantic market, which is by far the most important intercontinental market for flights from France, control exercised by the French and American authorities since 1992 has in effect sought to limit the trend toward increasing seating capacity.

(31) On the markets made up of indirect flights via Paris-CDG between other EEA countries and non-EEA countries there is a certain competition between Air France and its principal Community competitors also operating hubs. However, the conditions of this competition are likewise limited by restrictive provisions of bilateral agreements concluded between EEA member countries and non-member countries, whose effects have been explained above. These agreements usually do not allow a 'second freedom' airline to act as a price leader in air fares. Moreover, the services in question are only partly mutually substitutable since a direct link is hard to compare with an indirect flight involving waiting time in transit, often a change of planes, and sometimes a transfer to another terminal building with luggage-processing risks. The Commission is of the opinion that there is a certain degree of substitutability between the Paris-CDG hub and other hubs located in the Community on the relevant markets for the segment of customers mainly interested in low air fares, i.e. essentially tourists. This substitutability, however, is only very slight for business passengers, who are mainly interested in travelling time, punctuality and quality of service. It is for the business passenger segment that airline margins are the most significant and risks of distortion of competition through improper use of aid the most pronounced.

(32) It should also be mentioned that in 1994 Paris-CDG airport was not an efficient hub with an optimal combination of waves of aircraft arrivals and departures. In 1992 the average connecting time for Air France passengers was 2 hours 48 minutes and early-1994 the airline offered an average of 16 possible connecting flights for each incoming flight compared with 23 for Lufthansa at Frankfurt and 29 for KLM at Amsterdam. Most internal French flights end at Paris-Orly airport, which is some 40 km away from Paris-CDG and the links between them are poor. This double handicap adversely affects the 'substitutability' of the Paris-CDG hub. Thus, the number of Air France transit passengers between EEA countries (other than France) and non-EEA countries would account for only approximately 4 % of the airline's traffic in 1991 and about 5 % in 1993. This means that the effect of the aid on feeder air traffic to the Paris-CDG hub may be considered very slight. Consequently, the position of the small airlines serving the Paris-CDG airport and the other major European hubs will hardly be affected.

(33) With regard to the third point, it follows from what has been said previously about the restrictions imposed by bilateral agreements concerning designation that any limitation of capacity or price imposed on Air France on routes between France and non-member countries would basically benefit air carriers resident in the EEA in cases where the bilateral agreements allow some room for manoeuvre. On the market for transatlantic routes between France and the United States, where Air France has been in difficulty for several years as it is confronted by more powerful US airlines covering two thirds of this market in 1993, limiting

Air France's capacity would in fact directly benefit the airlines from across the Atlantic as the French authorities would not be able to impose the constraints incumbent on Air France to the same extent on the American airlines. Such a situation would be contrary to Community interest which calls for the development of the civil aviation sector in the Community.

(34) Limiting, beyond the level of the bilateral agreements, the possibilities given to France to adapt its pricing or quantities available on intercontinental routes from France would furthermore hamper the airline's return to viability. Air France is one of the four Community airlines, with KLM, British Airways and Lufthansa, with an international network encompassing all parts of the world from its own country. The existence of this network and the 'Air France' trade mark are two of the principal assets of the airline which is faced with ever increasing competition from airlines of non-EEA countries, in particular on transatlantic routes.

III. **CONCLUSION**

(35) All of the above meets the demand for a statement of reasons on the two points on which the 1994 Decision was found to be wanting because of insufficient reasoning. With regard to the other points, the Commission refers to the recitals of the text of the 1994 Decision that must be regarded as forming an integral part of this Decision without the need to repeat them here in full.

(36) The Commission also notes that the annulment of the 1994 Decision removes the legal basis of the three decisions it adopted on 21 June 1995, 24 July 1996 and 16 April 1997 regarding the payment of the second and third tranches of aid to Air France. Under these conditions, it is proper not to object once again to the payment of the relevant tranches.

The Commission refers in this connection to the statement of grounds in the letters it sent to the French authorities on 5 July 1995 ([31]), 31 July 1996 ([32]) and 10 June 1997 ([33]), which must also be regarded as forming an integral part of this Decision,

HAS ADOPTED THIS DECISION:

Article 1

The aid granted to Air France by the French State in the period 1994 to 1996, in the form of a FRF 20 billion capital increase to be paid in three tranches, is compatible with the common market and the EEA Agreement by virtue of point (c) of Article 92(3) of the Treaty and point (c) of Article 61(3) of the Agreement, account being taken of the commitments and conditions of Articles 1 and 2 of Decision 94/653/EC, reproduced in Part I of this Decision.

Article 2

The Commission does not object to the payment of the second and third tranches of the capital increase of Air France effected in 1995 and 1996.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 22 July 1998.

For the Commission
Neil KINNOCK
Member of the Commission

([31]) OJ C 295, 10. 11. 1995, p. 2.
([32]) OJ C 374, 11. 12. 1996, p. 9.
([33]) OJ C 374, 10. 12. 1997, p. 6 (incorporation of the FRF 1 billion previously blocked).