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Legislation

Contents

(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

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2165/2001

of 5 November 2001

opening and providing for the administration of a tariff quota for imports of soluble coffee covered by CN code 2101 11 11

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The diversity of soluble coffee available on the Community market has decreased significantly in recent years.

(2) The best way of countering this trend is to open a zero-duty quota for a limited volume of soluble coffee.

(3) The best way of ensuring optimal use of the tariff quota is to allocate it in the chronological order of the dates on which declarations of release for free circulation are accepted.

(4) In order to ensure that the quota is administered efficiently, presentation of a certificate of origin should be required for imports of soluble coffee from Brazil, the main supplier and the main beneficiary of the quota.

(5) Soluble coffee benefiting from the tariff quota must be marketed in the Community in compliance with the quality conditions established by Directive 1999/4/EC of the European Parliament and of the Council of 22 February 1999 relating to coffee extracts and chicory extracts [1].

(6) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [2],

HAS ADOPTED THIS REGULATION:

Article 1

From 1 January 2002, imports of soluble coffee covered by CN code 2101 11 11 originating in any country shall be eligible for a zero-duty tariff quota.

Article 2

The tariff quota shall be opened annually for an initial period of three years. Its volume shall be fixed as follows:

— 10 000 tonnes from 1 January 2002 to 31 December 2002,

— 12 000 tonnes from 1 January 2003 to 31 December 2003,

— 14 000 tonnes from 1 January 2004 to 31 December 2004.

Article 3

The tariff quota shall be divided into two parts, as follows:

(a) a quota of 87,4 % of the annual volume, with the order number 09.2000, for imports originating in Brazil, and

(b) a quota of 12,6 % of the annual volume, with the order number 09.2001, for imports originating in other third countries.

Article 4

1. The origin of soluble coffee qualifying for the tariff quota shall be determined in accordance with the provisions in force in the Community.

2. Qualification for the share of the tariff quota allocated to Brazil in accordance with Article 3 shall be subject to presentation of a certificate of origin meeting the conditions laid down in Article 47 of Commission Regulation (EEC) No 2454/93 [3].

Certificates of origin shall be accepted only if the products meet the criteria for determining origin set out in the provisions in force in the Community.

Article 5

The tariff quota shall be administered by the Commission in accordance with Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93.

[1] OJ L 66, 13.3.1999, p. 26.
[2] OJ L 184, 17.7.1999, p. 23.
[3] OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1602/2000 (OJ L 188, 26.7.2000, p. 1).

Article 6

This Regulation may be revised during the third year after the tariff quota is opened in order to adapt the volume of the quota to the needs of the Community market. If, however, this revision is not completed three months before the date of closure of the initial tariff quota, i.e. 31 December 2004, the quota shall be automatically extended for a further year for a volume of 14 000 tonnes. Subsequently the tariff quota shall be extended regularly for one year at a time and for the same volume unless a revision is adopted not later than three months before the closure of the current quota.

Article 7

The measures necessary for the implementation of this Regulation, including the amendments and adjustments required by amendments to the Combined Nomenclature and the TARIC, shall be adopted in accordance with the procedure referred to in Article 8(2).

Article 8

1. The Commission shall be assisted by the Customs Code Committee (hereinafter referred to as 'the Committee') set up by Article 247a of Council Regulation (EEC) No 2913/92 [1].

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

Article 9

This Regulation shall enter into force on the third day following 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, 5 November 2001.

For the Council

The President

R. MILLER

[1] OJ L 302, 19.10.1992, p. 1.

COMMISSION REGULATION (EC) No 2166/2001

of 8 November 2001

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:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 9 November 2001.

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

Done at Brussels, 8 November 2001.

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 8 November 2001 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	102,3
	096	13,2
	204	40,3
	999	51,9
0707 00 05	052	124,4
	999	124,4
0709 90 70	052	80,0
	999	80,0
0805 20 10	204	65,9
	999	65,9
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	53,9
	204	72,3
	464	170,5
	999	98,9
0805 30 10	052	49,1
	382	34,7
	388	32,2
	524	55,6
	528	42,3
	600	76,1
	999	48,3
0806 10 10	052	108,0
	064	95,8
	400	310,1
	508	366,6
	999	220,1
0808 10 20, 0808 10 50, 0808 10 90	052	37,4
	060	37,1
	096	9,4
	388	43,0
	400	82,1
	404	80,9
	800	198,9
	804	65,1
	999	69,2
0808 20 50	052	96,7
	400	87,3
	720	46,6
	999	76,9

(1) Country nomenclature as fixed by Commission Regulation (EC) No 2032/2000 (OJ L 243, 28.9.2000, p. 14). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 2167/2001

of 8 November 2001

fixing the maximum export refund for white sugar for the 15th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1430/2001

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector [1], and in particular Article 27(5) thereof,

Whereas:

(1) Commission Regulation (EC) No 1430/2001 of 13 July 2001 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar [2] requires partial invitations to tender to be issued for the export of this sugar.

(2) Pursuant to Article 9(1) of Regulation (EC) No 1430/2001 a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question.

(3) Following an examination of the tenders submitted in response to the 15th partial invitation to tender, the provisions set out in Article 1 should be adopted.

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 15th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1430/2001 the maximum amount of the export refund is fixed at 42,079 EUR/100 kg.

Article 2

This Regulation shall enter into force on 9 November 2001.

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

Done at Brussels, 8 November 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 178, 30.6.2001, p. 1.
[2] OJ L 192, 14.7.2001, p. 3.

COMMISSION REGULATION (EC) No 2168/2001
of 8 November 2001
fixing the representative prices and the additional import duties for molasses in the sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the market in sugar [1],

Having regard to Commission Regulation (EC) No 1422/95 of 23 June 1995 laying down detailed rules of application for imports of molasses in the sugar sector and amending Regulation (EEC) No 785/68 [2], and in particular Article 1(2) and Article 3(1) thereof,

Whereas:

(1) Regulation (EC) No 1422/95 stipulates that the cif import price for molasses, hereinafter referred to as the 'representative price', should be set in accordance with Commission Regulation (EEC) No 785/68 [3]. That price should be fixed for the standard quality defined in Article 1 of the above Regulation.

(2) The representative price for molasses is calculated at the frontier crossing point into the Community, in this case Amsterdam; that price must be based on the most favourable purchasing opportunities on the world market established on the basis of the quotations or prices on that market adjusted for any deviations from the standard quality. The standard quality for molasses is defined in Regulation (EEC) No 785/68.

(3) When the most favourable purchasing opportunities on the world market are being established, account must be taken of all available information on offers on the world market, on the prices recorded on important third-country markets and on sales concluded in international trade of which the Commission is aware, either directly or through the Member States. Under Article 7 of Regulation (EEC) No 785/68, the Commission may for this purpose take an average of several prices as a basis, provided that this average is representative of actual market trends.

(4) The information must be disregarded if the goods concerned are not of sound and fair marketable quality or if the price quoted in the offer relates only to a small quantity that is not representative of the market. Offer prices which can be regarded as not representative of actual market trends must also be disregarded.

(5) If information on molasses of the standard quality is to be comparable, prices must, depending on the quality of the molasses offered, be increased or reduced in the light of the results achieved by applying Article 6 of Regulation (EEC) No 785/68.

(6) A representative price may be left unchanged by way of exception for a limited period if the offer price which served as a basis for the previous calculation of the representative price is not available to the Commission and if the offer prices which are available and which appear not to be sufficiently representative of actual market trends would entail sudden and considerable changes in the representative price.

(7) Where there is a difference between the trigger price for the product in question and the representative price, additional import duties should be fixed under the conditions set out in Article 3 of Regulation (EC) No 1422/95. Should the import duties be suspended pursuant to Article 5 of Regulation (EC) No 1422/95, specific amounts for these duties should be fixed.

(8) Application of these provisions will have the effect of fixing the representative prices and the additional import duties for the products in question as set out in the Annex to this Regulation.

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

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and the additional duties applying to imports of the products referred to in Article 1 of Regulation (EC) No 1422/95 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 9 November 2001.

[1] OJ L 178, 30.6.2001, p. 1.
[2] OJ L 141, 24.6.1995, p. 12.
[3] OJ L 145, 27.6.1968, p. 12.

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

Done at Brussels, 8 November 2001.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

to the Commission Regulation of 8 November 2001 fixing the representative prices and additional import duties to imports of molasses in the sugar sector

(in EUR)

CN code	Amount of the representative price in 100 kg net of the product in question	Amount of the additional duty in 100 kg net of the product in question	Amount of the duty to be applied to imports in 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 (2)
1703 10 00 (1)	9,25	—	0
1703 90 00 (1)	13,31	—	0

(1) For the standard quality as defined in Article 1 of amended Regulation (EEC) No 785/68.

(2) This amount replaces, in accordance with Article 5 of Regulation (EC) No 1422/95, the rate of the Common Customs Tariff duty fixed for these products.

COMMISSION REGULATION (EC) No 2169/2001

of 8 November 2001

altering the export refunds on white sugar and raw sugar exported in the natural state

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector [1], and in particular the third subparagraph of Article 27(5) thereof,

Whereas:

(1) The refunds on white sugar and raw sugar exported in the natural state were fixed by Commission Regulation (EC) No 2140/2001 [2].

(2) It follows from applying the detailed rules contained in Regulation (EC) No 2140/2001 to the information known to the Commission that the export refunds at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(1)(a) of Regulation (EC) No 1260/2001, undenatured and exported in the natural state, as fixed in the Annex to Regulation (EC) No 2140/2001 are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 9 November 2001.

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

Done at Brussels, 8 November 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 178, 30.6.2001, p. 1.
[2] OJ L 288, 1.11.2001, p. 8.

ANNEX

to the Commission Regulation of 8 November 2001 altering the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Destination	Unit of measurement	Amount of refund
1701 11 90 9100	A00	EUR/100 kg	36,54 (1)
1701 11 90 9910	A00	EUR/100 kg	35,92 (1)
1701 11 90 9950	A00	EUR/100 kg	(2)
1701 12 90 9100	A00	EUR/100 kg	36,54 (1)
1701 12 90 9910	A00	EUR/100 kg	35,92 (1)
1701 12 90 9950	A00	EUR/100 kg	(2)
1701 91 00 9000	A00	EUR/1 % of sucrose × net 100 kg of product	0,3972
1701 99 10 9100	A00	EUR/100 kg	39,72
1701 99 10 9910	A00	EUR/100 kg	39,05
1701 99 10 9950	A00	EUR/100 kg	39,05
1701 99 90 9100	A00	EUR/1 % of sucrose × net 100 kg of product	0,3972

(1) Applicable to raw sugar with a yield of 92 %; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 19(4) of Council Regulation (EC) No 1260/2001.

(2) Fixing suspended by Commission Regulation (EEC) No 2689/85 (OJ L 255, 26.9.1985, p. 12), as amended by Regulation (EEC) No 3251/85 (OJ L 309, 21.11.1985, p. 14).

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

The numeric destination codes are set out in Commission Regulation (EC) No 2032/2000 (OJ L 243, 28.9.2000, p. 14).

COMMISSION REGULATION (EC) No 2170/2001
of 8 November 2001
amending the import duties in the cereals sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals [1], as last amended by Regulation (EC) No 1666/2000 [2],

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector [3], as last amended by Regulation (EC) No 2104/2001 [4], and in particular Article 2(1) thereof,

Whereas:

(1) The import duties in the cereals sector are laid down in Commission Regulation (EC) No 2144/2001 [5].

(2) In addition, Regulation (EC) No 2104/2001 abolishes the difference of EUR 10 in the case of importation overland or by river, or by sea on vessels from ports on the Mediterranean, Black Sea or Baltic Sea referred to in Article 4(2) of Regulation (EC) No 1249/96. As a result, Annex I relating to import duties in the cereals sector should be amended. Under certain conditions, that Regulation also authorises reference to other quotation exchanges in the case of barley. Annex II relating to the basic data for calculation should therefore be adapted,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 2144/2001 are hereby replaced by Annexes I and II to this Regulation.

Article 2

This Regulation shall enter into force on 9 November 2001.

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

Done at Brussels, 8 November 2001.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 181, 1.7.1992, p. 21.
[2] OJ L 193, 29.7.2000, p. 1.
[3] OJ L 161, 29.6.1996, p. 125.
[4] OJ L 283, 27.10.2001, p. 8.
[5] OJ L 288, 1.11.2001, p. 16.

ANNEX I

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

CN code	Description	Import duty [2] (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00
	medium quality [1]	0,00
1001 90 91	Common wheat seed	0,00
1001 90 99	Common high quality wheat other than for sowing [3]	0,00
	medium quality	0,00
	low quality	3,35
1002 00 00	Rye	6,40
1003 00 10	Barley, seed	6,40
1003 00 90	Barley, other [4]	6,40
1005 10 90	Maize seed other than hybrid	40,36
1005 90 00	Maize other than seed [5]	40,36
1007 00 90	Grain sorghum other than hybrids for sowing	6,40

[1] In the case of durum wheat not meeting the minimum quality requirements for durum wheat of medium quality, referred to in Annex I to Regulation (EC) No 1249/96, the duty applicable is that fixed for low-quality common wheat.

[2] For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2(4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:

— EUR 3 per tonne, where the port of unloading is on the Mediterranean Sea, or

— EUR 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic coasts of the Iberian peninsula.

[3] The importer may benefit from a flat-rate reduction of EUR 14 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

[4] The importer may benefit from a flat-rate reduction of EUR 8 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

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

ANNEX II

Factors for calculating duties

(period from 31 October to 14 November 2001)

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

Exchange quotations	Minneapolis	Kansas City	Chicago	Chicago	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2. 14 %	HRW2. 11,5 %	SRW2	YC3	HAD2	Medium quality (*)	US barley 2
Quotation (EUR/t)	128,73	120,93	117,84	90,20	200,71 (**)	190,71 (**)	120,21 (***)
Gulf premium (EUR/t)	—	23,86	17,09	7,73	—	—	—
Great Lakes premium (EUR/t)	25,73	—	—	—	—	—	—

(*) A discount of 10 EUR/t (Article 4(1) of Regulation (EC) No 1249/96).
(**) Fob Duluth.
(***) Fob USA.

2. Freight/cost: Gulf of Mexico–Rotterdam: 20,18 EUR/t; Great Lakes–Rotterdam: 31,86 EUR/t.

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

COMMISSION REGULATION (EC) No 2171/2001

of 8 November 2001

on the issue of import licences for high-quality fresh, chilled or frozen beef and veal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 936/97 of 27 May 1997 opening and providing for the administration of tariff quotas for high-quality fresh, chilled and frozen beef and for frozen buffalo meat [1], as last amended by Regulation (EC) No 134/1999 [2],

Whereas:

(1) Regulation (EC) No 936/97 provides in Articles 4 and 5 the conditions for applications and for the issue of import licences for meat referred to in Article 2(f).

(2) Article 2(f) of Regulation (EC) No 936/97 fixes the amount of high-quality fresh, chilled or frozen beef and veal originating in and imported from the United States of America and Canada which may be imported on special terms for the period 1 July 2001 to 30 June 2002 at 11 500 t.

(3) It should be recalled that licences issued pursuant to this Regulation will, throughout the period of validity, be open for use only in so far as provisions on health protection in force permit,

HAS ADOPTED THIS REGULATION:

Article 1

1. All applications for import licences from 1 to 5 November 2001 for high-quality fresh, chilled or frozen beef and veal as referred to in Article 2(f) of Regulation (EC) No 936/97 shall be granted in full.

2. Applications for licences may be submitted, in accordance with Article 5 of Regulation (EC) No 936/97, during the first five days of December 2001 for 5 260,000 t.

Article 2

This Regulation shall enter into force on 11 November 2001.

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

Done at Brussels, 8 November 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 137, 28.5.1997, p. 10.
[2] OJ L 17, 22.1.1999, p. 22.

COMMISSION REGULATION (EC) No 2172/2001

of 8 November 2001

fixing the maximum export refund on barley in connection with the invitation to tender issued in Regulation (EC) No 1558/2001

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 1666/2000 [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 602/2001 [4], and in particular Article 4 thereof,

Whereas:

(1) An invitation to tender for the refund for the export of barley to all third countries except for the United States of America and Canada was opened pursuant to Commission Regulation (EC) No 1558/2001 [5].

(2) 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. In that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund.

(3) 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.

(4) 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 2 to 8 November 2001, pursuant to the invitation to tender issued in Regulation (EC) No 1558/2001, the maximum refund on exportation of barley shall be EUR 0,00/t.

Article 2

This Regulation shall enter into force on 9 November 2001.

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

Done at Brussels, 8 November 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 181, 1.7.1992, p. 21.
[2] OJ L 193, 29.7.2000, p. 1.
[3] OJ L 147, 30.6.1995, p. 7.
[4] OJ L 89, 29.3.2001, p. 16.
[5] OJ L 205, 31.7.2001, p. 33.

COMMISSION REGULATION (EC) No 2173/2001

of 8 November 2001

fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 943/2001

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 1666/2000 [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 602/2001 [4], and in particular Article 4 thereof,

Whereas:

(1) An invitation to tender for the refund for the export of common wheat to all third countries except for Poland was opened pursuant to Commission Regulation (EC) No 943/2001 [5].

(2) 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. In that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund.

(3) 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.

(4) 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 2 to 8 November 2001, pursuant to the invitation to tender issued in Regulation (EC) No 943/2001, the maximum refund on exportation of common wheat shall be EUR 0,00/t.

Article 2

This Regulation shall enter into force on 9 November 2001.

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

Done at Brussels, 8 November 2001.

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 193, 29.7.2000, p. 1.
[3] OJ L 147, 30.6.1995, p. 7.
[4] OJ L 89, 29.3.2001, p. 16.
[5] OJ L 133, 16.5.2001, p. 3.

COMMISSION REGULATION (EC) No 2174/2001

of 8 November 2001

concerning tenders notified in response to the invitation to tender for the export of rye issued in Regulation (EC) No 1005/2001

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 1666/2000 [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 602/2001 [4], and in particular Article 7 thereof,

Whereas:

(1) An invitation to tender for the refund for the export of rye to all third countries was opened pursuant to Commission Regulation (EC) No 1005/2001 [5].

(2) 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.

(3) On the basis of the criteria laid down in Article 1 of Regulation (EC) No 1501/95 a maximum refund should not be fixed.

(4) 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 2 to 8 November 2001 in response to the invitation to tender for the refund for the export of rye issued in Regulation (EC) No 1005/2001.

Article 2

This Regulation shall enter into force on 9 November 2001.

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

Done at Brussels, 8 November 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 181, 1.7.1992, p. 21.
[2] OJ L 193, 29.7.2000, p. 1.
[3] OJ L 147, 30.6.1995, p. 7.
[4] OJ L 89, 29.3.2001, p. 16.
[5] OJ L 140, 24.5.2001, p. 10.

COMMISSION REGULATION (EC) No 2175/2001
of 8 November 2001
fixing the corrective amount applicable to the refund on cereals

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 organization of the market in cereals [1], as last amended by Regulation (EC) No 1666/2000 [2], and in particular Article 13 (8) thereof,

Whereas:

(1) Article 13 (8) of Regulation (EEC) No 1766/92 provides that the export refund applicable to cereals on the day on which application for an export licence is made must be applied on request to exports to be effected during the period of validity of the export licence; whereas, in this case, a corrective amount may be applied to the refund.

(2) 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 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 602/2001 [4], allows for the fixing of a corrective amount for the products listed in Article 1(1) (c) of Regulation (EEC) No 1766/92; that corrective amount must be calculated taking account of the factors referred to in Article 1 of Regulation (EC) No 1501/95.

(3) The world market situation or the specific requirements of certain markets may make it necessary to vary the corrective amount according to destination.

(4) The corrective amount must be fixed at the same time as the refund and according to the same procedure; it may be altered in the period between fixings.

(5) It follows from applying the provisions set out above that the corrective amount must be as set out in the Annex hereto.

(6) 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 corrective amount referred to in Article 1(1) (a), (b) and (c) of Regulation (EEC) No 1766/92 which is applicable to export refunds fixed in advance except for malt shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 9 November 2001.

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

Done at Brussels, 8 November 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 181, 1.7.1992, p. 21.
[2] OJ L 193, 29.7.2000, p. 1.
[3] OJ L 147, 30.6.1995, p. 7.
[4] OJ L 89, 29.3.2001, p. 16.

ANNEX

to the Commission Regulation of 8 November 2001 fixing the corrective amount applicable to the refund on cereals

(EUR/t)

Product code	Destination	Current 11	1st period 12	2nd period 1	3rd period 2	4th period 3	5th period 4	6th period 5
1001 10 00 9200	—	—	—	—	—	—	—	—
1001 10 00 9400	—	—	—	—	—	—	—	—
1001 90 91 9000	—	—	—	—	—	—	—	—
1001 90 99 9000	C01	—	–0,93	–1,86	–2,79	–3,72	—	—
1002 00 00 9000	C02	–20,00	–20,00	–20,00	–20,00	–20,00	—	—
	A05	0,00	0,00	0,00	0,00	0,00	—	—
1003 00 10 9000	—	—	—	—	—	—	—	—
1003 00 90 9000	A00	—	–0,93	–1,86	–2,79	–3,72	—	—
1004 00 00 9200	—	—	—	—	—	—	—	—
1004 00 00 9400	A00	0	–0,93	–1,86	–2,79	–3,72	—	—
1005 10 90 9000	—	—	—	—	—	—	—	—
1005 90 00 9000	A00	0	–0,93	–1,86	–2,79	–3,72	—	—
1007 00 90 9000	—	—	—	—	—	—	—	—
1008 20 00 9000	—	—	—	—	—	—	—	—
1101 00 11 9000	—	—	—	—	—	—	—	—
1101 00 15 9100	C01	0	–1,27	–2,55	–3,82	–5,10	—	—
1101 00 15 9130	C01	0	–1,19	–2,38	–3,57	–4,76	—	—
1101 00 15 9150	C01	0	–1,10	–2,19	–3,29	–4,39	—	—
1101 00 15 9170	C01	0	–1,01	–2,03	–3,04	–4,05	—	—
1101 00 15 9180	C01	0	–0,95	–1,90	–2,85	–3,79	—	—
1101 00 15 9190	—	—	—	—	—	—	—	—
1101 00 90 9000	—	—	—	—	—	—	—	—
1102 10 00 9500	C01	0	0,00	0,00	0,00	0,00	—	—
1102 10 00 9700	C01	0	0,00	0,00	0,00	0,00	—	—
1102 10 00 9900	—	—	—	—	—	—	—	—
1103 11 10 9200	A00	0	–1,40	–2,79	–4,19	–5,58	—	—
1103 11 10 9400	A00	0	–1,25	–2,49	–3,74	–4,98	—	—
1103 11 10 9900	—	—	—	—	—	—	—	—
1103 11 90 9200	A00	0	–1,27	–2,55	–3,82	–5,10	—	—
1103 11 90 9800	—	—	—	—	—	—	—	—

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

The numeric destination codes are set out in Commission Regulation (EC) No 2032/2000 (OJ L 243, 28.9.2000, p. 14).

The other destinations are as follows:

C01 All destinations except for Poland,

C02 Poland, Czech Republic, Slovak Republic, Hungary, Estonia, Latvia, Lithuania, Norway, Faroe Islands, Iceland, Russia, Belarus, Bosnia and Herzegovina, Croatia, Slovenia, former Republic of Yugoslavia with the exception of Slovenia, Croatia and Bosnia and Herzegovina, Albania, Romania, Bulgaria, Armenia, Georgia, Azerbaijan, Moldova, Ukraine, Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan and Turkmenistan,

A05 other non-member countries.

COMMISSION REGULATION (EC) No 2176/2001
of 8 November 2001
fixing the corrective amount applicable to the refund on malt

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 organization of the market in cereals [1], as last amended by Regulation (EC) No 1666/2000 [2], and in particular Article 13(8),

Whereas:

(1) Article 13(8) of Regulation (EEC) No 1766/92 provides that the export refund applicable to cereals on the day on which application for an export licence is made, adjusted for the threshold price in force during the month of exportation, must be applied on request to exports to be effected during the period of validity of the export licence. In this case, a corrective amount may be applied to the refund.

(2) 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 602/2001 [4], allows for the fixing of a corrective amount for the malt referred to in Article 1(1)(c) of Regulation (EEC) No 1766/92. That corrective amount must be calculated taking account of the factors referred to in Article 1 of Regulation (EC) No 1501/95.

(3) It follows from applying the provisions set out above that the corrective amount must be as set out in the Annex hereto.

(4) 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 corrective amount referred to in Article 13(4) of Regulation (EEC) No 1766/92 which is applicable to export refunds fixed in advance in respect of malt shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 9 November 2001.

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

Done at Brussels, 8 November 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 181, 1.7.1992, p. 21.
[2] OJ L 193, 29.7.2000, p. 1.
[3] OJ L 147, 30.6.1995, p. 7.
[4] OJ L 89, 29.3.2001, p. 16.

ANNEX

to the Commission Regulation of 8 November 2001 fixing the corrective amount applicable to the refund on malt

(EUR/t)

Product code	Destination	Current 11	1st period 12	2nd period 1	3rd period 2	4th period 3	5th period 4
1107 10 11 9000	A00	0	0	0	0	0	0
1107 10 19 9000	A00	0	−1,18	−2,36	−3,54	−4,72	−5,91
1107 10 91 9000	A00	0	0	0	0	0	0
1107 10 99 9000	A00	0	−1,18	−2,36	−3,54	−4,72	−5,91
1107 20 00 9000	A00	0	−1,39	−2,77	−4,16	−5,54	−6,93

(EUR/t)

Product code	Destination	6th period 5	7th period 6	8th period 7	9th period 8	10th period 9	11th period 10
1107 10 11 9000	A00	0	0	0	0	0	0
1107 10 19 9000	A00	−7,09	−8,27	—	—	—	—
1107 10 91 9000	A00	0	0	0	0	0	0
1107 10 99 9000	A00	−7,09	−8,27	—	—	—	—
1107 20 00 9000	A00	−8,31	−9,70	—	—	—	—

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

The numeric destination codes are set out in Commission Regulation (EC) No 2543/1999 (OJ L 307, 2.12.1999, p. 46).

DIRECTIVE 2001/56/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 27 September 2001

relating to heating systems for motor vehicles and their trailers, amending Council Directive 70/156/EEC and repealing Council Directive 78/548/EEC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

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

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas:

(1) Council Directive 78/548/EEC of 12 June 1978 on the approximation of the laws of the Member States relating to heating systems for the passenger compartment of motor vehicles [4] was adopted as one of the separate directives of the EC type-approval procedure which has been established by Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers [5]. Consequently, the provisions laid down in Directive 70/156/EEC relating to vehicle systems, components and separate technical units apply to Directive 78/548/EEC.

(2) In particular, under Article 3(4) and Article 4(3) of Directive 70/156/EEC each separate directive is to be accompanied by an information document incorporating the relevant items of Annex I to Directive 70/156/EEC and also a type-approval certificate based on Annex VI thereto in order that type-approval may be computerised.

(3) In the light of technical progress, combustion heaters, usually fuelled by diesel, petrol or liquefied petroleum gas, are now fitted to many types of vehicle in order to provide heat for the passenger compartment (e.g. of buses), the load area (e.g. of trucks and trailers) or the sleeping compartment (e.g. of trucks and motor caravans) so that heat can be provided efficiently and without the noise and gaseous emissions associated with running the propulsion engine when the vehicle is parked. For reasons of safety, it is necessary to extend the scope to include requirements for combustion heaters, and for their installation. Such requirements should correspond to the highest standards consistent with current technology.

(4) It is necessary to provide for type-approval for combustion heaters as components and for vehicles in which a combustion heater is installed.

(5) It will be necessary to supplement this Directive with additional safety requirements for liquefied petroleum gas (LPG) combustion heaters by the addition of an Annex.

(6) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [6].

(7) For reasons of clarity it is advisable to repeal Directive 78/548/EEC and replace it by this Directive,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive, 'vehicle' means any vehicle to which Directive 70/156/EEC applies.

Article 2

No Member State may refuse to grant EC type-approval or national type-approval of a type of vehicle or of a type of heating system on grounds relating to the heating system for the passenger compartment or load area if the system satisfies the requirements set out in the Annexes.

Article 3

No Member State may refuse or prohibit the sale, registration, entry into service or use of any vehicle or the sale, entry into service or use of any heating system on grounds relating to the heating system for the passenger compartment or load area if the system satisfies the requirements set out in the Annexes.

[1] OJ C 326, 24.10.1998, p. 4 and OJ C 116 E, 26.4.2000, p. 2.
[2] OJ C 101, 12.4.1999, p. 15.
[3] Opinion of the European Parliament of 13 April 1999 (OJ C 219, 30.7.1999, p. 58), Council Common Position of 17 November 2000 (OJ C 36, 2.2.2001, p. 1) and Decision of the European Parliament of 14 March 2001 (not yet published in the Official Journal). Council Decision of 26 June 2001.
[4] OJ L 168, 26.6.1978, p. 40.
[5] OJ L 42, 23.2.1970, p. 1. Directive as last amended by Directive 98/91/EC of the European Parliament and of the Council (OJ L 11, 16.1.1999, p. 25).
[6] OJ L 184, 17.7.1999, p. 23.

Article 4

1. With effect from 9 May 2003 Member States may not, on grounds relating to heating systems:

— refuse, in respect of a type of vehicle or heating system, to grant EC type-approval or national type-approval, or

— prohibit the sale, registration, or entry into service of vehicles, or the sale or entry into service of heating systems,

if the heating system complies with the requirements of this Directive.

2. With effect from 9 May 2004 Member States:

— shall no longer grant EC type-approval, and

— may refuse to grant national type-approval,

for a type of vehicle on grounds relating to heating systems, or for a type of combustion heater, if the requirements of this Directive are not fulfilled.

3. With effect from 9 May 2005 Member States:

— shall consider certificates of conformity which accompany new vehicles in accordance with the provisions of Directive 70/156/EEC to be no longer valid for the purposes of Article 7(1) of that Directive, and

— may refuse the sale, registration and entry into service of new vehicles,

on grounds relating to heating systems if the requirements of this Directive are not fulfilled.

This paragraph shall not apply to vehicle types equipped with a waste-heat heating system, using water as the transfer medium.

4. With effect from 9 May 2005 the requirements of this Directive relating to combustion heaters as components shall apply for the purposes of Article 7(2) of Directive 70/156/EEC.

Article 5

No later than 9 November 2002 the Commission shall examine additional safety requirements with respect to liquefied petroleum gas (LPG) fuelled heating systems of motor vehicles, and, if appropriate, amend this Directive in accordance with the procedure referred to in Article 6(2).

Article 6

1. The Commission shall be assisted by the Committee for Adaptation to Technical Progress, set up by Article 13 of Directive 70/156/EEC, hereinafter referred to as 'the Committee'.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

Article 7

Directive 70/156/EEC is hereby amended as follows:

1. Item 36 in Part 1 of Annex IV shall be replaced by the following:

Subject	Directive	Official Journal reference	Applicability									
			M_1	M_2	M_3	N_1	N_2	N_3	O_1	O_2	O_3	O_4
'36. Heating systems	2001/56/EC	L 292 of 9.11.2001	X	X	X	X	X	X	X	X	X	X'

2. In Annex XI:

(a) Item 36 in Appendix 1 shall be replaced by the following:

Item	Subject	Directive	$M_1 \leq 2\,500$ [1] kg	$M_1 > 2\,500$ [1] kg
'36	Heating systems	2001/56/EC	I	G + P'

(b) Item 36 in Appendix 2 shall be replaced by the following:

Item	Subject	Directive	Armoured vehicles of category M_1
'36	Heating systems	2001/56/EC	X'

Article 8

Directive 78/548/EEC shall be repealed with effect from 9 May 2004. References made to Directive 78/548/EEC shall be construed as references to this Directive.

Article 9

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 9 May 2003, and shall forthwith inform the Commission thereof.

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

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 10

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

Article 11

This Directive is addressed to the Member States.

Done at Brussels, 27 September 2001.

For the European Parliament	*For the Council*
The President	*The President*
N. FONTAINE	C. PICQUÉ

LIST OF ANNEXES

ANNEX I

ADMINISTRATIVE PROVISIONS FOR EC TYPE-APPROVAL

1. APPLICATION FOR EC TYPE-APPROVAL OF A VEHICLE TYPE

1.1. The application for EC type-approval pursuant to Article 3(4) of Directive 70/156/EEC of a vehicle type with regard to its heating system shall be submitted by the manufacturer.

1.2. A model for the information document is given in Appendix 1.

1.3. The following must be submitted to the technical service responsible for conducting the type-approval tests:

1.3.1. a vehicle representative of the type to be approved.

2. GRANTING OF EC TYPE-APPROVAL OF A VEHICLE TYPE

2.1. If the relevant requirements are satisfied, EC type-approval pursuant to Article 4(3) of Directive 70/156/EEC shall be granted.

2.2. A model for the EC type-approval certificate is given in Appendix 2.

2.3. An approval number in accordance with Annex VII to Directive 70/156/EEC shall be assigned to each type of vehicle approved. The same Member State shall not assign the same number to another type of vehicle.

3. APPLICATION FOR EC TYPE-APPROVAL OF A TYPE OF COMBUSTION HEATER

3.1. The application for EC type-approval pursuant to Article 3(4) of Directive 70/156/EEC of a type of combustion heater as a component shall be submitted by the manufacturer of the heating system.

3.2. A model for the information document is given in Appendix 3.

3.3. The following must be submitted to the technical service responsible for conducting the type-approval tests:

3.3.1. a combustion heater representative of the type to be approved.

4. GRANTING OF EC TYPE-APPROVAL OF A TYPE OF COMBUSTION HEATER

4.1. If the relevant requirements are satisfied, EC type-approval pursuant to Article 4(3) and, if applicable, Article 4(4) of Directive 70/156/EEC shall be granted.

4.2. A model for the EC type-approval certificate is given in Appendix 4.

4.3. An approval number in accordance with Annex VII to Directive 70/156/EEC shall be assigned to each type of combustion heater approved. The same Member State shall not assign the same number to another type of combustion heater.

4.4. Every combustion heater conforming to a type approved pursuant to this Directive shall bear an EC component type-approval mark as specified in Appendix 5.

5. MODIFICATIONS OF THE TYPE AND AMENDMENTS TO APPROVALS

5.1. In the case of modifications of the type of vehicle or type of combustion heater approved pursuant to this Directive, the provisions of Article 5 of Directive 70/156/EEC shall apply.

6. CONFORMITY OF PRODUCTION

6.1. Measures to ensure the conformity of production shall be taken in accordance with the provisions laid down in Article 10 of Directive 70/156/EEC.

Appendix 1

INFORMATION DOCUMENT No .....

in accordance with Annex I to Council Directive 70/156/EEC (*) relating to EC type-approval of a vehicle with regard to its heating systems (**) (Directive 2001/56/EC)

The following information, if applicable, must be supplied in triplicate and include a list of contents. Any drawings must be supplied in appropriate scale and in sufficient detail on size A4 or on a folder of A4 format. Photographs, is any, must show sufficient detail.

If the systems, components or separate technical units have electronic controls, information concerning their performance must be supplied.

0. GENERAL

0.1. Make (trade name of manufacturer): .....

0.2. Type: .....

0.2.1. Commercial name(s) if available: .....

0.3. Means of identification of type, if marked on the vehicle ([b]): .....

0.3.1. Location of that marking: .....

0.4. Category of vehicle ([c]): .....

0.5. Name and address of manufacturer: .....

0.8. Address(es) of assembly plant(s): .....

1. GENERAL CONSTRUCTION CHARACTERISTICS OF THE VEHICLE

1.1. Photographs and/or drawings of a representative vehicle: .....

3. POWER PLANT ([q])

3.1.1. Manufacturer's engine code: .....
(as marked on the engine, or other means of identification)

3.2.1.1. Working principle: positive ignition/compression ignition, four stroke/two stroke ([l])

3.2.1.2. Number and arrangement of cylinders: .....

3.2.1.8. Maximum net power: .....kW at ..... min^{-1} (manufacturer's declared value)

3.2.7. Cooling system (liquid/air) ([l])

3.2.7.1. Nominal setting of the engine temperature control mechanism: .....

3.2.8.1. Pressure charger: yes/no ([l])

3.2.8.1.2. Type(s): .....

3.2.8.1.3. Description of the system (e.g. maximum charge pressure: ..... kPa, wastegate if applicable)

(*) The item numbers and footnotes used in this information document correspond to those set out in Annex I to Directive 70/156/EEC. Items not relevant for the purpose of this Directive are omitted.

(**) In the case of heating systems using heat from the engine cooling fluid, only items 0 to 0.8, 3.2.7 and 9.10.5.1 are applicable.

9. BODYWORK

9.10.5. *Heating systems for the passenger compartment*

9.10.5.1. A brief description of the vehicle type with regard to the heating system if the heating system uses the heat of the engine cooling fluid: .....

9.10.5.2. A brief description of the vehicle type with regard to the heating system if the cooling air or the exhaust gases of the engine are used as the heat source, including: .....

9.10.5.2.1. layout drawing of the heating system showing its position in the vehicle: .....

9.10.5.2.2. layout drawing of the heat exchanger for heating systems using the exhaust gases for heating or of the parts where the heat exchange takes place (for heating systems using the engine cooling air for heating): .....

9.10.5.2.3. sectional drawing of the heat exchanger or the parts respectively where the heat exchange takes place, indicating the thickness of the wall, materials used and the characteristics of the surface: .....

9.10.5.2.4. Specifications shall be given for further important components of the heating system, such as e.g. the heater fan, with regard to their method of construction and technical data.

9.10.5.3. Maximum electrical consumption: ..... kW

Appendix 2

MODEL

(maximum format: A4 (210 mm × 297 mm))

EC TYPE-APPROVAL CERTIFICATE

Stamp
of administration

Communication concerning the

— type-approval ([1]),

— extension of type-approval ([1]),

— refusal of type-approval ([1]),

— withdrawal of type-approval ([1]),

of a type of vehicle/component/separate technical unit ([1]) with regard to Directive 2001/56/EC.

Type-approval No: .....

Reason for extention: .....

SECTION I

0.1. Make (trade name of manufacturer): .....

0.2. Type: .....

0.2.1. Commercial name(s), if available: .....

0.3. Means of identification of type if marked on the vehicle/component/separate technical unit ([1]) ([2]): .....

0.4. Category of vehicle ([1]) ([3]): .....

0.5. Name and address of manufacturer: .....

0.7. In the case of components and separate technical units, location and method of affixing of the EC approval mark: .....

.....

0.8. Address(es) of assembly plant(s): .....

SECTION II

1. Additional information (where applicable): see addendum

2. Technical service responsible for carrying out the tests: .....

3. Date of test report: .....

4. Number of test report: .....

5. Remarks (if any): see addendum

6. Place: .....

7. Date: .....

8. Signature: .....

9. The index to the information package lodged with the approval authority, which may be obtained on request, is attached.

([1]) Delete where not applicable.

([2]) If the means of identification of type contains characters not relevant to describe the vehicle, component or separate technical unit types covered by this type-approval certificate, such characters shall be represented in the documentation by the symbol: '?' (e.g. ABC??123??).

([3]) As defined in Annex II A to Directive 70/156/EEC.

Addendum

to EC type-approval certificate No … concerning the type-approval of a type of vehicle with regard to Directive 2001/56/EC

1. Additional information: ……

1.1. Heating system using heat from the engine cooling fluid/exhaust gases/engine cooling air [1]: ……

1.2. Combustion heaters, if any: ……

5. Remarks: ……

[1] As defined in Annex II to Directive 70/156/EEC.

Appendix 3

Information document No …… relating to EC component type-approval of a combustion heater (Directive 2001/56/EC)

The following information, if applicable, must be supplied in triplicate and include a list of contents. Any drawings must be supplied in appropriate scale and in sufficient detail on size A4 or on a folder of A4 format. Photographs, if any, must show sufficient detail.

If the systems, components or separate technical units have electronic controls, information concerning their performance must be supplied.

0. GENERAL

0.1. Make (trade name of manufacturer): ……

0.2. Type: ……

0.2.1. Commercial description(s) (if avalaible): ……

0.5. Name and address of manufacturer: ……

0.7. In the case of components and separate technical units, location and method of affixing of the EC type-approval mark:

……

0.8. Address(es) of assembly plant(s): ……

1.0 COMBUSTION HEATER

1.1. Test pressure (in the case of a combustion heater) fuelled by liquified petroleum gas or similar, the pressure applied at the gas inlet connector of the heater: ……

1.2. etc.

Appendix 4

MODEL

(maximum format: A4 (210 mm × 297 mm))

EC TYPE-APPROVAL CERTIFICATE

Stamp
of administration

Communication concerning the:

— type-approval (1),

— extension of type-approval (1),

— refusal of type-approval (1),

— withdrawal of type-approval (1),

of a type of vehicle/component/separate technical unit (1) with regard to Directive 2001/56/EC.

Type-approval number: .....

Reason for extention: .....

SECTION I

0.1. Make (trade name of manufacturer): .....

0.2. Type and general commercial description(s): .....

0.3. Means of identification of type if marked on the vehicle/component/separate technical unit (1) (2): .....

0.4. Category of vehicle (1) (3): .....

0.5. Name and address of manufacturer: .....

0.6. In the case of components and separate technical units, location and method of affixing of the EC approval mark: .....

.....

0.7. Address(es) of assembly plant(s): .....

SECTION II

1. Additional information (where applicable): see addendum

2. Technical service responsible for carrying out the tests: .....

3. Date of test report: .....

4. Number of test report: .....

5. Remarks (if any): see addendum

6. Place: .....

7. Date: .....

8. Signature: .....

9. The index to the information package lodged with the approval authority, which may be obtained on request, is attached.

(1) Delete where not applicable.

(2) If the means of identification of type contains characters not relevant to describe the vehicle, component or separate technical unit types covered by this type-approval certificate, such characters shall be represented in the documentation by the symbol: '?' (e.g. ABC??123??).

(3) As defined in Annex II A to Directive 70/156/EEC.

Addendum

to EC type-approval certificate No … concerning the type-approval of a type of combustion heater with regard to Directive 2001/56/EC

1. *Additional information:*

1.1. Description of the type of combustion heater: ……

etc.

5. Remarks: ……

Appendix 5

EC COMPONENT TYPE-APPROVAL MARK

1. GENERAL

1.1. The EC component type-approval mark consists of:

1.1.1. a rectangle surrounding the lower case letter 'e' followed by the distinguishing number or letters of the Member State which has granted the EC component type-approval:

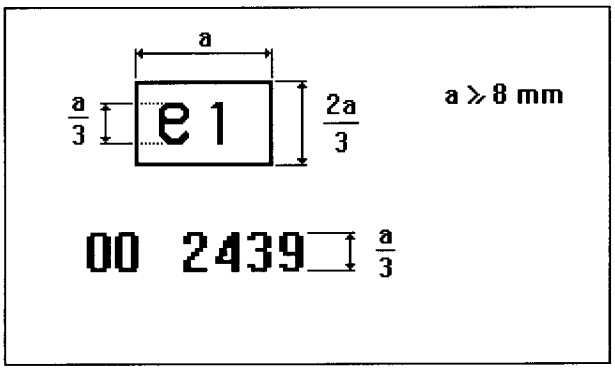
1 for Germany
2 for France
3 for Italy
4 for the Netherlands
5 for Sweden
6 for Belgium
9 for Spain
11 for the United Kingdom
12 for Austria
13 for Luxembourg
17 for Finland
18 for Denmark
21 for Portugal
23 for Greece
24 for Ireland

1.1.2. in the vicinity of the rectangle the 'base approval number' contained in Section 4 of the type-approval number referred to in Annex VII to Directive 70/156/EEC, preceded by the two figures indicating the sequence number assigned to the most recent major technical amendment to Directive 78/548/EEC on the date EC component type-approval was granted. In this Directive, the sequence number is 00.

1.2. The EC component type-approval mark must be clearly legible and indelible.

2. EXAMPLE OF THE EC COMPONENT TYPE-APPROVAL MARK

2.1.



The above component type-approval mark shows that the combustion heater in question has been approved in Germany (e1) under approval number 2439. The first two digits (00) indicate that this component was approved according to this Directive.

ANNEX II

SCOPE, DEFINITIONS AND REQUIREMENTS

1. SCOPE

1.1. This Directive applies to all vehicles in categories M, N and O where a heating system is fitted.

2. DEFINITIONS

For the purposes of this Directive:

2.1. 'Heating system' means any type of device which is designed to increase the temperature of the interior of a vehicle, including any load area.

2.2. 'Combustion heater' means a device directly using liquid or gaseous fuel and not using the waste heat from the engine used for propulsion of the vehicle.

2.3. 'Vehicle type with regard to heating system' means vehicles which do not differ in essential respects such as:

— functioning principle(s) of the heating system,

— type of combustion heater, if any.

2.4. 'Type of combustion heater' means devices which do not differ in essential respects such as:

— fuel type (e.g. liquid or gaseous),

— transfer medium (e.g. air or water),

— vehicle location (e.g. passenger compartment or load area).

2.5. 'Waste-heat heating system' means any type of device using the waste heat from the engine used for propulsion of the vehicle to increase the temperature of the interior of the vehicle, this may include water, oil or air as the transfer medium.

2.6. 'Interior' means the inside of a vehicle used for the accommodation of the vehicle occupants and/or the load.

2.7. 'Heating system for the passenger compartment' means any type of device designed to increase the temperature of the passenger compartment.

2.8. 'Heating system for the load area' means any type of device designed to increase the temperature of the load area.

2.9. 'Passenger compartment' means the interior part of the vehicle used to accommodate the driver and any passengers.

2.10. 'Gaseous fuel' includes fuels that are gaseous at normal temperature and pressure (288,2 K and 101,33 kPa), such as liquefied petroleum gas (LPG) and compressed natural gas (CNG).

2.11. 'Overheating' means the condition that exists when the air inlet for the heating air to the combustion heater is completely blocked.

3. REQUIREMENTS FOR HEATING SYSTEMS

3.1. The passenger compartment of every vehicle in categories M and N shall be fitted with a heating system.

3.2. The general requirements for heating systems are that:

— the heated air entering the passenger compartment shall be no more polluted than the air at the point of inlet to the vehicle,

— the driver and passengers, during road use, will not be able to come into contact with parts of the vehicle or heated air liable to cause burns,

— the exhaust emissions from combustion heaters are within acceptable limits.

The test procedures for the verification of each of these requirements are set out in Annexes IV, V and VI.

3.2.1. The following table indicates which Annexes apply to each type of heating system within each vehicle category:

Heating system	Vehicle category	Annex IV Air quality	Annex V Temperature	Annex VI Exhaust	Annex VIII LPG safety
Engine waste heat — water	M				
	N				
	O				
Engine waste heat — air See Note 1	M	1	1		
	N	1	1		
	O				
Engine waste heat — oil	M	1	1		
	N	1	1		
	O				
Gaseous fuel heater See Notes 2 and 3	M	1	1	1	1
	N	1	1	1	1
	O	1	1	1	1
Liquid fuel heater See Note 3	M	1	1	1	
	N	1	1	1	
	O	1	1	1	

3.3. Other requirements for combustion heaters and their installation in vehicles are laid down in Annex VII.

Note 1: Vehicles which comply with the requirements of Annex III are exempt from these test requirements.

Note 2: A new Annex VIII 'Safety requirements for LPG combustion heaters' will be added to this Directive in accordance with Article 5.

Note 3: Combustion heaters located outside the passenger compartment, using water as a transfer medium, are deemed to comply with Annexes IV and V.

ANNEX III

REQUIREMENTS FOR WASTE HEATING SYSTEMS — AIR

1. The requirements set out in paragraph 3.2 of Annex II are considered satisfied in respect of heating systems which include a heat exchanger, the primary circuit of which is passed over by exhaust gases or polluted air, provided that the following conditions are satisfied:

2. the walls of the primary circuit of the heat exchanger must be leak tight at any pressure up to and including 2 bar;

3. the walls of the primary circuit of the heat exchanger must not include any detachable component;

4. the wall of the heat exchanger where the exchange of heat takes place must be at least 2 mm thick if made of non-alloy steels;

4.1. in cases where other materials are used (including composite or coated materials), the thickness of the wall must be such as to ensure that the heat exchanger has the same service life as in the case referred to in point 4;

4.2. if the wall of the heat exchanger where the exchange of heat takes place is enamelled, the wall where such enamel has been applied must be at least 1 mm thick and this enamel must be durable, leak tight and not porous;

5. the pipe conducting the exhaust gases must include a corrosion test zone at least 30 mm long, this zone being situated directly downstream of the heat exchanger, uncovered and easily accessible;

5.1. the wall of this corrosion test zone must not be thicker than the pipes for the exhaust gases situated inside the heat exchanger and the materials and surface properties of this section must be comparable with those of these pipes;

5.2. if the heat exchanger forms a single unit with the vehicle exhaust silencer, the external wall of the latter must be regarded as the zone complying with point 5.1 where any corrosion should occur.

6. In the case of waste heat heating systems using the cooling air of the engine for heating purposes, the conditions of paragraph 3.2 of Annex II are considered satisfied without the use of a heat exchanger provided that the following conditions are satisfied:
   — the cooling air which is used for heating purposes comes into contact only with surfaces of the engine which do not include any detachable part, and
   — the connections between the walls of this cooling air circuit and the surfaces used for the transfer of heat are gastight and oil-resistant.

   These conditions are considered satisfied if, for example:

6.1. a sheath around each sparking plug draws off any gas leaks outside the heating air circuit;

6.2. the joint between the cylinder head and the exhaust manifold is situated outside the heating air circuit;

6.3. there is double leak protection between the cylinder head and the cylinder and any leaks from the first joint are drawn off outside the heating air circuit, or

   the leak protection between the cylinder head and the cylinder still holds when the cylinder head nuts are cold-tightened at one-third of the nominal torque prescribed by the manufacturer, or

   the area where the cylinder head is joined to the cylinder is situated outside the heating air circuit.

ANNEX IV

TEST PROCEDURE FOR AIR QUALITY

1. In the case of complete vehicles the following test shall be carried out:

1.1. Operate the heater for one hour at maximum output in conditions of still air (wind speed ≤ 2 m/s), with all windows closed and, in the case of a combustion heater, the propulsion engine switched off. If, however, having selected the maximum output the heater switches off automatically in less than an hour, the measurements may be made before switch-off.

1.2. The proportion of CO in the ambient air shall be measured by taking samples from:

(a) a point outside the vehicle as close as possible to the heating air inlet, and

(b) a point inside the vehicle less than 1 m from the heated air outlet.

1.3. Readings shall be taken for a representative time of 10 minutes.

1.4. The reading from position (b) shall be less than 20 ppm CO higher than from position (a).

2. In the case of combustion heaters as components the following test shall be carried out after the tests of Annexes V, VI and item 1.3 of Annex VII.

2.1. The primary circuit of the heat exchanger shall be subjected to a leakage test to ensure that polluted air cannot enter the heated air intended for the passenger compartment.

2.2. This requirement shall be considered to be fulfilled if, at a gauge pressure of 0,5 hPa, the leakage rate from the heat exchanger is ≤ 30 dm^3/h.

ANNEX V

TEST PROCEDURE FOR TEMPERATURE

1. Operate the heater for one hour at maximum output in conditions of still air (wind speed ≤ 2 m/s), with all windows closed. If, however, having selected the maximum output the heater switches off automatically in less than an hour, the measurements may be made earlier. If the heated air is drawn from outside the vehicle the test shall be carried out at an ambient temperature of not less than 15° C.

2. The surface temperature of any part of the heating system likely to come into contact with the driver of the vehicle during normal road use shall be measured with a contact thermometer. No such part or parts shall exceed a temperature of 70 °C for uncoated metal or 80 °C for other materials.

2.1. In the case of part or parts of the heating system behind the driver's seat, and in the case of overheating, the temperature shall not exceed 110 °C.

3.1. In the case of vehicles of categories M_1 and N, no part of the system likely to come into contact with seated passengers during normal road use of the vehicle, with the exception of the outlet grille, shall exceed a temperature of 110 °C.

3.2. In the case of vehicles of categories M_2 and M_3, no part of the system likely to come into contact with passengers during normal road use of the vehicle shall exceed a temperature of 70 °C for uncoated metal or 80 °C for other materials.

4. The temperature of the heated air entering the passenger compartment shall not exceed 150 °C to be measured at the centre of the outlet.

ANNEX VI

TEST PROCEDURE FOR EXHAUST EMISSIONS

1. Operate heater for one hour at maximum output in conditions of still air (wind speed ≤ 2 m/s) and an ambient temperature of 20 ± 10° C. If, however, having selected the maximum output the heater switches off automatically in less than an hour, the measurements may be made before switch-off.

2. The dry and undiluted exhaust emissions, measured using an appropriate meter, shall not exceed the values indicated in the following table:

Parameter	Heaters using gaseous fuels	Heaters using liquid fuel
CO	≤ 0,1 % vol.	≤ 0,1 % vol.
NO_x	≤ 200 ppm	≤ 200 ppm
HC	≤ 100 ppm	≤ 100 ppm
Bacharach reference unit (*)	≤ 1	≤ 4

(*) Reference unit 'Bacharach' ASTM D 2156 is used.

3. The test shall be repeated in conditions equivalent to a vehicle speed of 100 km/h. Under these conditions the CO value must not exceed 0,2 % vol. If the test has been carried out on the heater as a component, then it need not be repeated in the case of the vehicle type in which the heater is installed.

ANNEX VII

REQUIREMENTS FOR COMBUSTION HEATERS AND THEIR INSTALLATION

1. GENERAL REQUIREMENTS

1.1. Operating and maintenance instructions shall be supplied with every heater and, in the case of heaters intended for the after-market, installation instructions shall also be supplied.

1.2. Safety equipment shall be installed (either as part of the combustion heater or as part of the vehicle) to control the operation of every combustion heater in an emergency. It shall be designed such that, if no flame is obtained at start-up or if the flame goes out during operation, the ignition and switching times for the supply of fuel are not exceeded by four minutes in the case of liquid fuel heaters or in the case of gaseous fuel heaters, one minute if the flame supervision device is thermoelectric or 10 seconds if it is automatic.

1.3. The combustion chamber and the heat exchanger of heaters using water as a transfer medium shall be capable of withstanding a pressure of twice the normal operating pressure or 2 bar (gauge), whichever is greater. The test pressure shall be noted in the information document.

1.4. The heater must have a maker's label showing the maker's name, the model number and type together with its rated output in kilowatts. The fuel type must also be stated and, where relevant, the operating voltage and gas pressure.

1.5. *Delayed shut-off of combustion air blowers*

1.5.1. If a combustion air blower is fitted a delayed shut-off must be provided even in the event of overheating and in the event of interruption of the fuel supply.

1.5.2. Other measures to prevent damage due to deflagration and exhaust corrosion can be applied if the manufacturer provides evidence to the satisfaction of the approval authority of their equivalent effect.

1.6. *Requirements for electrical supply*

1.6.1. All technical requirements affected by the voltage must be within the voltage range of ± 16 % of the rated figure. However, if undervoltage and/or over voltage protection is provided, the requirements shall be met at rated voltage and in the immediate vicinity of the cut-off points.

1.7. *Warning light*

1.7.1. A clearly visible tell-tale in the operator's field of view shall inform when the combustion heater is switched on or off.

2. VEHICLE INSTALLATION REQUIREMENTS

2.1. *Scope*

2.1.1. Subject to paragraph 2.1.2, combustion heaters shall be installed according to the requirements of this Annex.

2.1.2. Vehicles of category O having liquid fuel heaters are deemed to comply with the requirements of this Annex.

2.2. *Positioning of heater*

2.2.1. Body sections and any other components in the vicinity of the heater must be protected from excessive heat and the possibility of fuel or oil contamination.

2.2.2. The combustion heater shall not constitute a risk of fire, even in the case of overheating. This requirement shall be deemed to be fulfilled if the installation ensures an adequate distance to all parts and suitable ventilation, by the use of fire resistant materials or by the use of heat shields.

2.2.3. In the case of M_2 and M_3 vehicles, the heater must not be positioned in the passenger compartment. However, an installation in an effectively sealed envelope which also complies with the conditions in paragraph 2.2.2 may be used.

2.2.4. The label referred to in paragraph 1.4, or a duplicate, must be positioned so that it can be easily read when the heater is installed in the vehicle.

2.2.5. Every reasonable precaution should be taken in positioning the heater to minimise the risk of injury and damage to personal property.

2.3. *Fuel supply*

2.3.1. The fuel filler must not be situated in the passenger compartment and must be provided with an effective cap to prevent fuel spillage.

2.3.2. In the case of liquid fuel heaters, where a supply separate to that of the vehicle is provided, the type of fuel and its filler point must be clearly labelled.

2.3.3. A notice, indicating that the heater must be shut down before refuelling, must be affixed to the fuelling point. In addition a suitable instruction must be included in the manufacturer's operating manual.

2.4. *Exhaust system*

2.4.1. The exhaust outlet must be located so as to prevent emissions from entering the vehicle through ventilators, heated air inlets or opening windows.

2.5. *Combustion air inlet*

2.5.1. The air for the combustion chamber of the heater must not be drawn from the passenger compartment of the vehicle.

2.5.2. The air inlet must be so positioned or guarded that blocking by rubbish or luggage is unlikely.

2.6. *Heating air inlet*

2.6.1. The heating air supply may be fresh or recirculated air and must be drawn from a clean area not likely to be contaminated by exhaust fumes emitted either by the propulsion engine, the combustion heater or any other vehicle source.

2.6.2. The inlet duct must be protected by mesh or other suitable means.

2.7. *Heating air outlet*

2.7.1. Any ducting used to route the hot air through the vehicle must be so positioned or protected that no injury or damage could be caused if it were to be touched.

2.7.2. The air outlet must be so positioned or guarded that blocking by rubbish or luggage is unlikely.

2.8. *Automatic control of the heating system*

The heating system must be switched off automatically and the supply of fuel must be stopped within five seconds when the vehicle's engine stops running. If a manual device is already activated, the heating system can stay in operation.

ANNEX VIII

SAFETY REQUIREMENTS FOR LPG COMBUSTION HEATERS

(See Annex II, point 3.3, Note 2)

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 6 November 2001

granting a Community guarantee to the European Investment Bank against losses under a special lending action for selected environmental projects in the Baltic Sea basin of Russia under the Northern Dimension

(2001/777/EC)

THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

Whereas:

(1) The Northern Dimension was launched by the Helsinki Council of 10-11 December 1999, which invited the Commission to put forward an Action Plan for the Northern Dimension. The Feira European Council in June 2000 adopted the Action Plan in the external and cross-border policies of the EU during 2000-2003. The Northern Dimension covers the geographical area from Iceland to the west across to North West Russia, from the Norwegian Barents and Kara Seas in the North to the Southern coast of the Baltic Sea.

(2) The Northern Dimension aims at addressing the special regional development challenges in northern Europe. These include harsh climatic conditions, long distances, particularly wide disparities in living standards, environmental challenges including problems with nuclear waste and waste water management, as well as insufficient transport and cross border facilities. It aims to intensify cross border cooperation between the European Union and its neighbouring countries and regions in northern Europe.

(3) The Community already supports some environmental projects in Northwest Russia with grants from TACIS, which, *inter alia*, pays attention to the need to reduce environmental risks and pollution, including transboundary pollution. It is justified for the Community to strengthen its support through limited European Investment Bank (EIB) loans. The involvement of the EIB would reinforce the impact of Community actions, not only by increasing the funds available, but also through the professional involvement of the Bank's project teams.

(4) At the initiative of the Presidency, the Ecofin Council of 12 March 2001 considered a set of criteria for a limited EIB special action for environmental projects in North West Russia, notably in the St Petersburg and Kaliningrad areas. It was underlined that (a) projects must be assessed by the EIB and the loans authorised on a case-by-case basis by its Board of Governors. It is thus not a question of a general lending mandate for Russia; (b) projects must have a strong environmental objective and be of significant interest for the European Union; (c) the EIB must cooperate and co-finance with other international financial initiatives in order to ensure reasonable risk sharing and appropriate project conditionality; (d) the aggregate volume of loans is to be subject to an indicative ceiling of EUR 100 million; (e) Russia must honour its international financial obligations, including those to the Paris Club.

(5) The Stockholm European Council of 23-24 March 2001 concluded that the Union should open up EIB lending for selected environmental projects in Russia, according to specific criteria decided by the Council.

[1] OJ C 240 E, 28.8.2001, p. 295.
[2] Opinion delivered on 24 October 2001 (not yet published in the Official Journal).

(6) It is therefore appropriate to provide a guarantee to the EIB to allow it to sign loan operations under this special lending action for selected environmental projects in the Baltic Sea rim of Russia, notably in the St Petersburg and Kaliningrad areas. The EIB has indicated its ability and willingness to extend loans from its own resources in North West Russia in accordance with its Statute.

(7) This special action, involving a separate 100 % Community guarantee, is of an exceptional nature and is not to be considered as a precedent for any future actions.

(8) The Northern Dimension Environmental Partnership (NDEP) will provide a framework for the setting of priorities, involving the Commission, bilateral and multilateral donors, international financial institutions and the transition countries concerned.

(9) EIB financing in Russia under this Decision should be managed in accordance with the EIB's usual criteria and procedures, including appropriate control measures, as well as with the relevant rules and procedures concerning the Court of Auditors and OLAF.

(10) For the purpose of adopting this Decision, the only powers provided for by the Treaty are those set out in Article 308,

HAS DECIDED AS FOLLOWS:

Article 1

Objective

The Community shall grant the European Investment Bank (hereinafter referred to as 'the EIB') a guarantee in respect of all payments not received by it but due in respect of credits opened, in accordance with its usual criteria, for investment projects carried out under this special lending action in the Baltic Sea basin of Russia under the Northern Dimension. Eligible projects shall have a strong environmental objective and be of significant interest to the European Union.

Article 2

Ceiling and conditions

1. The overall ceiling of the credits opened shall be EUR 100 million.

2. For the purposes of this specific Decision, the EIB shall benefit from an exceptional Community guarantee of 100 % which covers the total amount of credits opened under this decision and all related sums.

3. Projects financed by loans to be covered by the guarantee shall satisfy the following criteria:

(a) eligibility in accordance with Article 1;

(b) cooperation and co-financing by the EIB with other international financial institutions in order to ensure reasonable risk-sharing and appropriate project conditionality.

4. The Board of Governors of the EIB, under Article 18(1), second paragraph, of the Protocol on the Statute of the European Investment Bank shall approve on a case-by-case basis each loan to be covered by the Community guarantee.

5. The Board of Directors of the EIB shall only propose projects for approval to the Board of Governors if Russia honours its international financial obligations, including obligations for its Paris Club debt.

Article 3

Reporting

The Commission shall inform the European Parliament and the Council each year of the loan operations carried out under this Decision and shall, at the same time, submit an assessment of the implementation of this Decision and of coordination between the international financial institutions involved in the projects. The information submitted by the Commission to the European Parliament and the Council shall include an assessment of the contribution of the lending under this Decision to the fulfilment of the Community's objectives under the Northern Dimension.

For the purposes of the first subparagraph, the EIB shall transmit to the Commission the appropriate information.

Article 4

Duration

The guarantee shall cover loans signed during a period of three years from the date of adoption of this Decision. If, on expiry of those three years, the loans signed by the EIB have not attained the overall ceiling referred to in Article 2, this period shall be automatically extended by six months.

Article 5

Final provisions

1. This Decision shall take effect on the day of its publication in the *Official Journal of the European Communities*.

2. The EIB and the Commission shall fix the terms on which the guarantee is to be given.

Done at Brussels, 6 November 2001.

For the Council

The President

D. REYNDERS

COUNCIL DECISION

of 6 November 2001

amending Decision 2000/24/EC so as to extend the Community guarantee granted to the European Investment Bank to cover loans for projects in the Federal Republic of Yugoslavia

(2001/778/EC)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament [1],

Whereas:

(1) Recent political developments in the Federal Republic of Yugoslavia (FRY) have led to the establishment of democratic governments and the FRY has undertaken commitments to political and economic reform programmes in line with the conditions of the European Union's Stabilisation and Association process for the countries of south-eastern Europe.

(2) On 9 October 2000, the General Affairs Council agreed to lift the sanctions applied to Serbia and to integrate the FRY fully in the Stabilisation and Association process.

(3) The FRY is currently facing severe economic and financial challenges, with difficulties common to the transition economies being compounded by the aftermath of armed conflicts and sanctions.

(4) It is important to demonstrate the European Union's support to the FRY at this moment in implementing its political and economic reform programme, by supporting the FRY's investment activities in infrastructure and private sector development.

(5) It is therefore appropriate to provide a guarantee mandate to the European Investment Bank (EIB) to allow it to sign loan operations in the FRY.

(6) The EIB has indicated its ability and willingness to extend loans from its own resources in the FRY, in accordance with its Statute.

(7) EIB lending, under the Community guarantee, should be conditional upon clearance in full of all outstanding due financial obligations of all public entities of the FRY towards the European Communities and the EIB and upon the acceptance by the FRY of responsibility by way of guarantee of those obligations that are not yet due. The EIB applies in this case as in all other cases best banking practices to its lending under the Community guarantee, including not entering into new commitments involving borrowers or guarantors who fall into arrears in their obligations for debt to the EIB.

(8) The FRY has, in October 2001, cleared all its arrears outstanding as of that date towards the European Communities and the EIB.

Furthermore, the FRY Parliament has, in September 2001, ratified an agreement with the EIB, whereby the FRY has assumed responsibility for all financial obligations of all public entities of the FRY towards the EIB that are not yet due.

(9) On 31 October 1994 the Council adopted Regulation (EC, Euratom) No 2728/94 establishing a Guarantee Fund for external actions [2].

(10) The global guarantee covering the general EIB external lending mandate laid down in Council Decision 2000/24/EC of 22 December 1999 granting a Community guarantee to the European Investment Bank against losses under loans for projects outside the Community (Central and Eastern Europe, Mediterranean countries, Latin America and Asia and the Republic of South Africa) [3] should be extended to the FRY and the loan ceilings increased. Decision 2000/24/EC should therefore be amended accordingly.

(11) The Treaty does not provide, for the adoption of this Decision, powers other than those under Article 308,

HAS DECIDED AS FOLLOWS:

Article 1

Article 1 of Decision 2000/24/EC is hereby amended as follows:

1. the second sentence of the second subparagraph of paragraph 1 shall be amended as follows:

   (a) in the introductory phrase 'EUR 19 110 million' shall be replaced by 'EUR 19 460 million';

[1] Opinion delivered on 4 October 2001 (not yet published in the Official Journal).

[2] OJ L 293, 12.11.1994, p. 1. Regulation as amended by Regulation (EC, Euratom) No 1149/1999 (OJ L 139, 2.6.1999, p. 1).

[3] OJ L 9, 13.1.2000, p. 24. Decision as last amended by Decision 2000/788/EC (OJ L 314, 14.12.2000, p. 27).

(b) in the first indent 'EUR 8 930 million' shall be replaced by 'EUR 9 280 million';

2. in the first indent of paragraph 2, 'Federal Republic of Yugoslavia' shall be inserted after 'Estonia'.

Article 2

This Decision shall take effect on the day of its publication in the *Official Journal of the European Communities*.

Done at Brussels, 6 November 2001.

For the Council
The President
D. REYNDERS

COMMISSION

COMMISSION DECISION
of 15 November 2000
on the State aid which Italy is planning to grant to Solar Tech srl

(notified under document number C(2000) 3565)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2001/779/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on interested parties to submit their comments pursuant to the provisions cited above [1] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter of 24 November 1999, Italy notified the Commission of the aid it planned to award Solar Tech srl, which was registered under Action N 736/1999; it transmitted further information by letters dated 20 December 1999, 4 February 2000 and 17 February 2000. Italy also provided other documents relating to the notification by letters dated 20 May 1999, 23 July 1999 and 25 October 1999 and at bilateral meetings with the Commission departments.

(2) By letter of 4 April 2000 the Commission informed Italy of its decision to initiate proceedings under Article 88(2) of the Treaty in respect of the aid.

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

(4) The Commission received comments from interested parties, which it forwarded to the Italian authorities by letter of 29 June 2000 in order to give them an opportunity to react.

[1] OJ C 142, 20.5.2000, p. 11.
[2] See footnote 1.

2. DETAILED DESCRIPTION OF THE AID

2.1. *THE RECIPIENT COMPANY*

2.1.1. SOLAR TECH SRL

(5) The aid is intended for Solar Tech srl (hereinafter 'Solar Tech'), a newly established company. Solar Tech is to produce amorphous silicon film for the manufacture of photovoltaic solar panels for roofing, curtain walling and cladding elements and noise barriers.

(6) At the date of notification, Solar Tech did not have any employees; its turnover, assets and financial situation were not significant.

(7) Most (76 %) of the shares in Solar Tech belong to three individuals: Messrs Colomban (46 %), Pavan (15 %) and Bonotto (15 %), the remaining 24 % being held by another company, Permasteelisa.

2.1.2. PERMASTEELISA SpA

(8) Permasteelisa SpA is the enterprise heading the Permasteelisa Group, which is specialised in curtain walls and other cladding materials for large civil infrastructure projects.

(9) In 1998 the Permasteelisa Group had a workforce of 1 261 (of whom 520 in the EEA) and a turnover of more than EUR 280 million.

(10) Documents attached to the notification show that Permasteelisa SpA is listed on the Milan stock exchange; 48,7 % of its shares are held by the Luxembourg holding company Bateman & P, 3,6 % by the Luxembourg holding company Holding Bau and the remainder by market investors (except for 6,9 % of the shares held by the company itself).

According to the same documents, the individuals owning shares in Solar Tech (in particular Mr Colomban) control Permasteelisa SpA ([3]) and hold all the management positions in the Group: Mr Colomban is the founder of Permasteelisa SpA and owns 9 % of its shares; Mr Pavan is chairman of the board; and Mr Bonotto is the chairman of PM Design srl, a company belonging to the Permasteelisa Group.

2.2. *THE INVESTMENT PROJECT*

2.2.1. NATURE AND AMOUNT OF THE INVESTMENT

(11) The project involves the construction of a plant for producing amorphous silicon film and integrated solar panels. The plant is to be located in Manfredonia (Foggia). When fully operational (in 2003), Solar Tech is expected to produce panels representing a capacity of around 25 MW and to generate turnover of ITL 106,5 billion (EUR 55 million).

(12) The project will give rise to the following investments:

(in EUR 1 000)

Investments	2000	2001	2002	Total ([1])
Land	195	0	0	195
Buildings	6 314	159	0	6 464
Plant and machinery	20 315	29 855	335	48 884
Intangible investments	0	511	0	484
Total eligible expenditure	26 824	30 525	335	56 027
Non-eligible expenditure	0	0	52	46
Total investment expenditure	26 824	30 525	386	56 073

([1]) Amounts discounted to the year 2000 at the annual rate of 5,61 % (rate applicable at the date of notification).

([3]) Page 2: 'the individuals owning shares in Solar Tech together hold a majority stake (in particular Mr Colomban) in the holding company which owns the Permasteelisa group'.

2.2.2. DIRECT JOB CREATION

(13) When fully operational (in 2003), the project will create 280 direct jobs (one manager, 114 white-collar and 165 blue-collar workers) ([4]).

2.2.3. INDIRECT JOB CREATION

(14) Italy expects that the project will create 204 indirect jobs in the assisted area concerned and the neighbouring assisted areas, broken down as follows:

Suppliers of raw materials (grid cables)	134
Miscellaneous materials	10
Handling/fire protection/waste disposal	31
Cleaning/canteen/sick bay	15
IT/administrative/legal services	6
Miscellaneous transport operations	8

2.3. *THE PLANNED AID*

2.3.1. THE MEASURE

(15) The planned aid, in the form of a non-repayable grant, is to be paid by the Italian State (Cassa Depositi e Prestiti from CIPE funds) under Law No 488/92 and subsequent implementing provisions (in particular Article 2(203)(c) of Law No 662/96 and the Decision by the CIPE of 21 March 1997). Those rules were approved by the Commission ([5]).

(16) The aid was granted pursuant to the Secondo Protocollo Aggiuntivo del Contratto d'Area per l'area di Manfredonia of 19 March 1999.

That document stated that notification to the EU authorities under the multi sectoral framework on regional aid for large investment projects ([6]) (hereinafter 'the multi sectoral framework') was pending and that disbursement of the first instalment of aid was subject to EU approval ([7]).

2.3.2. AMOUNT OF THE AID

(17) The planned aid amounts to EUR 42 788 290, to be paid in two equal instalments of EUR 21 394 150 in 2000 and 2001. This represents a present value of EUR 41 652 000.

(18) According to the Italian authorities, this amount corresponds to the maximum allowable intensity, i.e.:

— 40 % nge (maximum intensity for aid under Article 87(3)(a) of the EC Treaty, zone B) ([8]) plus

— 15 % gge ('bonus' or increase in maximum intensity for SMEs).

(19) Given the characteristics of the project, the intensity of the planned aid is 50,14 % nge.

([4]) Point 4.6.1 of the notification.
([5]) Aid N 27/A/97, Commission letter of 30 June 1997 No SG(97) D/4949.
([6]) OJ C 107, 7.4.1998, p. 7.
([7]) '(…) notification to the EU pursuant to the "multi sectoral framework on regional aid for large investment projects" is pending (…). Therefore, as far as payments to be made from CIPE funds are concerned (…), payment of the first instalment of the grants is subject to the EU decisions'.
([8]) Aid N 27/A/97, Commission letter of 30 June 1997 No SG(97) D/4949.

2.4. *INITIATION OF PROCEEDINGS*

(20) On 4 April 2000 the Commission informed Italy of its decision to initiate proceedings under Article 88(2) of the Treaty in respect of the aid. The doubts raised by the Commission centred mainly on whether Solar Tech could be classed as a small or medium-sized enterprise in accordance with the Community guidelines on State aid for small and medium-sized enterprises ([9]) (hereafter 'the SME guidelines') and the fact that it did not suffer from the typical handicaps of SMEs.

3. **ASSESSMENT**

3.1. *THE RELEVANT MARKET*

3.1.1. THE PRODUCT

(21) The product market is the market in integrated photovoltaic cladding elements for buildings (including civil infrastructures): roofing, curtain walling and cladding elements and noise barriers for highway and railway use.

3.1.2. GEOGRAPHIC COVERAGE

(22) On the basis of the notification, the market should be analysed at European level. Italy has stated that for the purpose of calculating market shares and in view of the characteristics of the products, the market could be regarded as worldwide.

However, given the market shares (see point 3.1.4), there is no need in the present case to determine whether the market is worldwide or European-wide.

3.1.3. EVOLUTION OF THE MARKET ([10])

(23) It can be observed generally that the European market in photovoltaic systems is small but highly dynamic and rapidly expanding, even though the share of electricity generated by such systems is still fairly modest in the Community. There are two technologies present on the market: crystalline silicon and thin film, with market shares of around 89 % and 11 % respectively ([11]). It should also be stressed that access to the market is hindered by many legislative and technological entry barriers.

(24) Total production in Europe stood at around 13,1 MWp in 1995, rising to between 30 and 35 MWp in 1999 ([12]), an annual growth rate of some 20 %.

This greatly outstripped the growth rate of manufacturing industry, which was less than 3 % over the same period.

As regards future prospects, it is difficult to make reliable forecasts. Nevertheless, since Frost & Sullivan estimated total production at 26,4 MWp for 1999 and 59,3 MWp for 2003, it is reasonable to forecast, today, total production of around 75 to 85 MWp for 2003.

It should also be pointed out that, given the steady decline in the price of photovoltaic modules (EUR 5,36/Wp in 1995; EUR 3,30/Wp in 1999), this strong growth in volume terms is being reflected in a less substantial rise in turnover.

([9]) OJ C 213, 23.7.1996, p. 4.
([10]) Unless otherwise indicated, the market assessment is based on the study 'European Photovoltaic Modules Market' conducted by Frost & Sullivan Inc., in 1997.
([11]) Source: Strategies Unlimited, 2000, Photovoltaic Industry Competition Analysis, Report PC-11, July 2000.
([12]) Sources: abovementioned report by Strategies Unlimited; Systèmes solaires No 136; International Energy Agency, PVPS report, T1, August 2000; information supplied by third parties in the course of the proceedings.

3.1.4. MARKET SHARES

(25) According to the study by Strategies Unlimited, the production figures for the main manufacturers are as follows:

Production in Europe

Manufacturer	1996 production (MWp)	1999 production (MWp)	Share of 1999 production
Photowatt	2,70	8,50	27 %
Isofoton	1,60	4,50	14 %
BP Solarex Spain	2,70	5,00	16 %
ASE GmbH	0,90	3,00	9,5 %
Shell Solar	0,70	2,50	8 %
Helios	1,10	1,90	6 %
Intersolar	1,00	1,60	5 %
Eurosolare	2,20	1,50	5 %
Koncar	0,80	0,80	2,5 %
Free Energy	0,45	0,40	1 %

Source: Strategies Unlimited (see footnote).

(26) Since Solar Tech is a newly created company, its turnover is not yet significant: its market share at the time when the application for aid was submitted was therefore close to zero. Permasteelisa is not at present active on the market in question.

(27) As far as future prospects are concerned, Solar Tech's production forecasts for 2003 (25 MWp) would give it an estimated share of the European market of around 30 to 35 % (shares of the worldwide market are, of course, smaller). Solar Tech will be operating in the subsector with the weaker (thin film) technology. Its most direct competitors (BPSolar and SiemensSolar) have large market shares in that subsector too.

3.2. *DETERMINATION OF THE MAXIMUM ALLOWABLE INTENSITY*

3.2.1. NOTIFICATION OBLIGATION UNDER THE MULTI SECTORAL FRAMEWORK

(28) The aid in question is granted under a regional aid scheme approved by the Commission ([13]). It falls within the scope of the multi sectoral framework because:

— the project has a total cost of over EUR 50 million (its present value is EUR 56 million),

([13]) Aid N 27/A/97, Commission letter of 30 June 1997 No SG(97) D/4949.

— the combined intensity of the amount of aid, expressed as a percentage of the eligible investment costs, is over 50 % of the regional aid ceiling for large firms in the area in question (over 100 % in this case, since Italy intends to grant 100 % of the ceiling plus the 15 % gge bonus for SMEs), and

— the aid per job created or safeguarded is over EUR 40 000 (the nominal amount of the planned aid is EUR 42 788 290 and the number of (direct) jobs to be created is 280, which gives an amount of aid per job created of over EUR 150 000).

(29) Italy notified the aid to the Commission on 24 November 1999, after it had been granted (19 March 1999). It is not to be classed as unnotified aid, however, since the decision granting it makes payment to the recipient subject to Commission approval.

(30) Under the multi sectoral framework ([14]), the Commission determines the maximum allowable aid intensity for a notified proposal to award aid according to a formula which takes account of a number of factors. It begins by identifying the maximum aid intensity (regional aid ceiling) which a large company could obtain in the assisted area concerned within the context of the authorised regional aid scheme valid at the time of notification. A range of adjustment factors are then applied to that percentage figure, in accordance with three specific assessment factors, in order to calculate the maximum allowable aid intensity for the project in question: the competition factor, the capital-labour factor and the regional impact factor.

3.2.2. DETERMINATION OF THE MAXIMUM THEORETICAL AID INTENSITY (R)

3.2.2.1. ***Maximum aid intensity allowable for large firms***

(31) The maximum allowable aid intensity for large firms in the Manfredonia (Foggia) area under the regional aid scheme was, at the time of notification, 40 % nge.

3.2.2.2. ***Applicability of the bonus for small and medium-sized enterprises***

Introduction

(32) Italy intends to grant Solar Tech, over and above the 40 % nge, the 15 % gge bonus for small and medium-sized enterprises and claims that the company meets the criteria laid down by the SME guidelines because:

— it is a newly created company and therefore does not have any employees or significant turnover,

— it meets the independence requirement since it is not 25 % or more owned (of the capital or voting rights) by one or more enterprises falling outside the definition of an SME: the only enterprise holding shares in Solar Tech is Permasteelisa, which has only a 24 % stake in the company.

([14]) Point 3.1 of the framework (Assessment rules).

The SME guidelines

(33) In order to determine whether the bonus for small and medium-sized enterprises is allowable in this case, reference has to be made to the SME guidelines of 23 July 1996 (which replace the Community guidelines on State aid for small and medium-sized enterprises adopted on 20 May 1992 ([15]) and to the Commission recommendation of 3 April 1996 concerning the definition of small and medium-sized enterprises ([16]) (hereafter 'the Commission recommendation').

(34) Point 1.2 of the SME guidelines states that SMEs play a decisive role in job creation but suffer from a number of handicaps that can slow down their development. Those handicaps include the difficulty in obtaining capital and credit, the difficulty in gaining access to information, new technology and potential markets, and the costs of complying with new regulatory requirements.

(35) The bonus, or increase in the amount of aid allowable, for SMEs is therefore justified not only by the contribution which they make to objectives in the common interest, but also by the need to compensate for the handicaps they face, given the positive role they play. It is necessary, however, to make sure that the bonus is indeed granted to enterprises suffering from such handicaps. In particular, the SME definition used has to circumscribe the concept of a small or medium-sized enterprise so as to include therein only those enterprises which generate the positive externalities envisaged and suffer from the abovementioned handicaps. It should not therefore extend to the many larger firms which do not necessarily produce the positive external effects or suffer from the handicaps typical of SMEs. Aid granted to such firms is liable to result in further distortion of competition and intra-Community trade.

That principle is set out in the 22nd recital to the Commission recommendation, which reads as follows:

> 'Whereas, therefore, fairly strict criteria must be laid down for defining SMEs if the measures aimed at them are genuinely to benefit the enterprises for which size represents a handicap.'

(36) It is consequently in the light of those principles that the Commission has to determine whether Solar Tech falls within the scope of the definition of SMEs. Solar Tech does not fulfil the necessary conditions to qualify for the bonus for SMEs.

This is because, from an economic standpoint, Solar Tech has to be regarded as belonging to the Permasteelisa Group, a large firm, despite the fact that the latter holds only 24 % of its shares. Thanks to the economic, financial and organisational links between the two companies, Solar Tech does not have to contend to any great extent with the handicaps from which SMEs usually suffer and which constitute a fundamental justification for the increase in the maximum amount of aid allowable for such enterprises.

Solar Tech and the Permasteelisa Group

(37) Solar Tech must be regarded as belonging to the Permasteelisa Group. This is clear from the notification (page 2), which states that the reasons for the investment lie in the fact that the Permasteelisa Group, a world leader in the production and installation of innovative cladding materials for large civil infrastructure works, wishes through this project to extend its range of products to include solar technology ([17]).

([15]) OJ C 213, 19.8.1992, p. 2.
([16]) OJ L 107, 30.4.1996, p. 4.
([17]) '(… the) Permasteelisa Group, a world leader in the production and installation of innovative cladding materials for large civil infrastructure works, which wishes through this project to enrich its products with solar technology'.

(38) It has also been seen in point 2.1.2 that the individuals who are shareholders in and/or executives of Solar Tech are also shareholders in and/or executives of Permasteelisa:

— Mr Colomban is the founder of the Permasteelisa Group and its reference shareholder (this is stated in the notification; he holds 9 % of the capital directly plus an unknown number of shares via Luxembourg holding companies); he acts as the group's chief executive officer. He is at the same time the main shareholder in Solar Tech, with 46 % of the shares, and the sole director of that company,

— Mr Pavan is the chairman of the Permasteelisa Group and also holds 15 % of the shares in Solar Tech,

— Mr Bonotto is a member of the board of directors of Permasteelisa and chairman of one of the companies in the Group. He also holds 15 % of the shares in Solar Tech.

(39) The above is in addition to the fact that Permasteelisa holds 24 % of the shares in Solar Tech.

Handicaps facing SMEs

(40) It is clear from the foregoing that there are extremely close ties between Solar Tech and Permasteelisa. Thanks to those ties, Solar Tech does not suffer from the typical handicaps facing SMEs: the difficulty in obtaining capital and credit, the difficulty in gaining access to information, new technology, etc. SMEs can also face handicaps linked to the cost of administrative procedures, the establishment of distribution networks, the search for new markets, etc.

(41) As regards the difficulty in obtaining capital and credit, Italy stated in the notification that neither the Permasteelisa Group nor its shareholders have assisted or will assist Solar Tech in gaining access to sources of finance.

That claim is, however, at variance with the documents forwarded in the context of the notification, and in particular the documents on which the national authorities based their examination of the application for aid. Those documents state that, as far as capital is concerned, Solar Tech will be able to raise the funds it needs on the basis of Permasteelisa's financial standing ([18]).

(42) Neither does Solar Tech suffer from any of the other typical handicaps of SMEs. Thanks to its economic, financial and organisational ties with Permasteelisa, Solar Tech does not have to overcome the entry barriers (of a technological and distributive nature) to the relevant market:

— Solar Tech has access to partners with the necessary technology (Eurosolare, United Solar Systems Corp. and ENEA) via the three individuals who own shares in it and are also executives of the Permasteelisa Group,

— as regards product distribution, Italy has stated that Solar Tech will sell part of its production (20 % to 30 %) to Permasteelisa and will be able to benefit from the latter's contacts with a number of clients in the property sector. This explains how Solar Tech will be able to supply the worldwide market, whereas most small European operators are active mainly on their own domestic market.

(43) From this standpoint, the situation of Solar Tech differs from that of a company seeking to overcome the typical handicaps of SMEs under a 'tutorship' (technical assistance) arrangement. In the case in point, Solar Tech is relieved of those handicaps from the outset thanks to its pre-existing links with the group (Permasteelisa) or its executives.

([18]) See page 31 of the document drawn up by Europrogetti & Finanza: 'in view of the substantial coincidence between the management of Permasteelisa and its main shareholders and between the latter and the other partners in the project, it appears likely that all the funds to be used in the project will be raised on the basis of Permasteelisa's financial standing'.

3.2.2.3. ***Comments from Italy***

(44) First, Italy states that Solar Tech formally meets the criteria for SMEs laid down by the Commission recommendation and the SME guidelines.

It should be pointed out here that purely formal compliance with the Community rules does not constitute sufficient justification for allowing the bonus for SMEs, which, as stated earlier, should be reserved exclusively for enterprises which suffer from handicaps on account of their size. Thanks to its links with Permasteelisa, Solar Tech does not suffer from such handicaps.

(45) Second, Italy argues that the fact that Solar Tech's shareholders are also executives of or shareholders in Permasteelisa does not detract from Solar Tech's SME status or, in particular, from the handicaps it faces. This is because (i) that coincidence is not necessarily indicative of any link between the two companies, and (ii) taking the contrary view would be tantamount to obstructing the freedom of individuals to set up SMEs.

In response to (i), it is sufficient to note that the persons concerned are at the same time 'influential' shareholders in or senior executives of Solar Tech and Permasteelisa and as such are in a position to enable Solar Tech to benefit from Permasteelisa's size. For example, as stated by the national authority which examined the application for aid, Solar Tech will be able to take advantage, in order to raise its own funds, of Permasteelisa's creditworthiness.

With regard to (ii), what is at stake here is not the freedom of individuals to set up an SME. Permasteelisa's shareholders and executives are free to set up firms of any size whatsoever. Individual freedoms are not in dispute. It is a quite separate issue to determine whether a new company created by Permasteelisa's executives and shareholders, whose sphere of activity is complementary to that of Permasteelisa and which will operate in close cooperation with it, suffers from the same handicaps as an SME undertaking a similar project.

(46) Third, Italy maintains that the relations between Solar Tech and Permasteelisa are of a commercial nature since one is the other's supplier just like any other firm.

This argument cannot be accepted because Solar Tech's links with Permasteelisa mean precisely that the relations between them are of a different nature from the relations that usually exist between separate businesses. It should be borne in mind in this connection that the shareholders and/or executives who are common to the two companies are 'influential' shareholders and/or senior executives who can, either individually or collectively, exercise influence over the two companies. The individuals concerned could decisively influence the behaviour of the two companies, and it is likely that they would do so in a rational and coherent manner. This could result in coordination of strategies and the development of joint activities, as is furthermore anticipated in the case in point.

The fact that the same individuals are playing key roles (as either executives or shareholders) in both companies, whose respective spheres of activity are, at least to some extent, closely linked, will therefore have the same effect on their behaviour as if they formed a single group. Consequently, Solar Tech will not suffer from the handicaps it would have had to face without such special links. For example, Solar Tech will have a captive market, something which SMEs do not usually enjoy.

(47) Fourth, Italy argues that Solar Tech suffers from the same handicaps as all SMEs because the solar panels sector is innovative and therefore a high-risk business: that level of risk gives rise to extra costs typically incurred by SMEs.

This argument is not relevant either. As mentioned in recital 35, the handicaps for which the bonus for SMEs is intended to compensate are those facing firms on account of their size and are not related to their area of activity.

(48) Last, Italy points out that, following the introduction of shares in Permasteelisa on the stock exchange, Solar Tech's shareholders now have only a 20 % stake in the company.

This argument does not hold water because, as shown by the documents submitted in the context of the notification, the shareholders in question control Permasteelisa despite the fact that the company is listed on the Milan stock exchange. This is the result of the group's legal structure (see point 2.1.2 of this Decision).

The possibility that the shareholders may have lost control over Permasteelisa after the notification is a possible new development that is completely irrelevant for the purpose of examining the compatibility of the aid. When determining whether the bonus for SMEs is applicable to the recipient of a notified aid measure, the Commission has to look at the factual situation prevailing at the time when the aid was granted (19 March 1999), as described in the notification.

This is because, given the objectives of aid for SMEs (and particularly the need to overcome the handicaps they face because of their size), the size of the recipients has to be assessed before they carry out the investment. And if this were not so (in other words if it had to take account of future developments), the Commission would, for example, have to take the view that Solar Tech is not an SME as it will generate turnover of more than EUR 50 million (and will therefore automatically put itself outside the scope of the definition of SMEs).

(49) It is also worth noting that Italy has not supplied any evidence demonstrating that Solar Tech has obtained credit from the banks in its own name, i.e. independently of Permasteelisa's creditworthiness.

3.2.2.4. ***Conclusion***

(50) In the light of the foregoing, Solar Tech does not qualify for the bonus for SMEs because, thanks to its economic, financial and organisational links with Permasteelisa, it does not suffer from the typical handicaps of SMEs to which the SME guidelines refer. Consequently, the bonus of 15 % gge for SMEs cannot be applied in the case in point.

3.2.3. COMPETITION FACTOR (T) ([19])

(51) The competition factor involves an analysis of whether the notified project would take place in a sector or subsector suffering from structural overcapacity.

(52) In determining whether structural overcapacity exists in the sector or subsector concerned, the Commission considers, at Community level, the difference between the average capacity utilisation rate for manufacturing industry as a whole and the average capacity utilisation rate of the relevant sector or subsector. In the absence of sufficient data on capacity utilisation, the Commission will consider whether the investment takes place in a declining market. For that purpose, it will compare the evolution of apparent consumption of the product(s) in question with the growth rate of EEA manufacturing industry as a whole.

(53) In the case in point, insufficient data are available either on the capacity utilisation rate or on apparent consumption. Neither does it appear possible to classify the product by means of a specific NACE code (codes 28.11 and 26.12 do not accurately reflect the production concerned).

(54) Nevertheless, as stated in point 3.1, the sector in question appears to be enjoying rapid growth and there are no fears of structural overcapacity at this stage. The Commission further takes the view that the development of competitively priced solar energy-related products should be encouraged, particularly in view of the Kyoto commitments on reducing the greenhouse effect.

(55) Factor T should therefore be assigned a value of 1,00.

([19]) Points 3.2 to 3.6 of the multi sectoral framework.

3.2.4. CAPITAL-LABOUR FACTOR (I)

(56) The present value of the eligible investment is EUR 56 027 000.

Italy has stated that the number of jobs to be created is 280.

(57) The ratio is therefore 200,1 to 1. Since this ratio lies between 200 and 400, factor I should be assigned a value of 0,9.

3.2.5. REGIONAL IMPACT FACTOR (M)

(58) Italy has stated that the number of indirect jobs to be created is 204, which means that the proportion of jobs created indirectly in the region (in relation to direct jobs created) is 73 %.

(59) As regards the 134 jobs to be created among cable suppliers, the Commission takes note of the estimate provided by the Italian authorities. Some 28,5 metres of cable are needed per square metre of solar panel. Solar Tech is to produce 450 000 m^2 of panels; it will therefore use 12,8 million metres of cable. Given the relatively high transport costs (representing 3 % of the value of the product) and the presence in the assisted region of producers deemed capable of supplying the cable of the requisite quality at competitive prices, it is likely that those jobs will be created in the region concerned.

(60) This aspect should be checked as part of the *ex post* monitoring required under point 6 of the multi sectoral framework in the event that (a reduced amount of) aid is granted. The following in particular will have to be checked:

— whether Solar Tech does in fact source from suppliers in the assisted region, and

— whether the productivity of those suppliers actually stands at around 96 000 metres of cable per year per worker.

(61) With regard to the other 70 indirect jobs forecast, the number of jobs actually created could prove to be lower than that given by Italy, but any downward adjustment could not cause the regional impact indicator to fall below the 50 % level. If (a reduced amount of) aid is granted, this aspect will have to be checked only in the event that the *ex post* monitoring were to reveal that the forecast number of 134 jobs created among suppliers is manifestly excessive.

(62) As the regional impact indicator works out at 73 %, factor M should be assigned a value of 1,25.

3.2.6. CONCLUSION

(63) Applying the above factors, the maximum theoretical aid intensity in this case is: R x T x I x M = 0,4 × 1,0 × 0,9 × 1,25 = 45 %.

(64) However, in accordance with point 3.10(3) of the multi sectoral framework, no project can be allowed to receive aid above the regional ceiling. The regional ceiling in this case is 40 %.

The maximum allowable aid intensity in this case is therefore 40 %.

3.3. *COMMENTS FROM INTERESTED PARTIES*

(65) Certain interested parties submitted comments in response to the invitation published in the *Official Journal of the European Communities*. Their comments basically claimed that the amount of aid which Italy planned to grant was excessive because:

— Italy granted little, if any, sectoral aid to the solar energy sector,

— Italy was not pursuing consistent policies in the area,

— the recipient was not currently active on the market,

— Solar Tech's production capacities would create serious distortions of competition since they alone would represent the equivalent of the entire European production in 1999.

(66) The first two arguments are not relevant for the purpose of assessing the aid, which has to be examined in the light of its regional objective.

(67) Neither does the fact that Solar Tech is not currently active on the market constitute a convincing argument in favour of limiting the intensity of the aid. If investment aid were to be reserved for operators already present on the market (or if such operators were to qualify for higher aid intensities than new entrants), its distortive effect would be greater, not lesser. In addition to the 'usual' distortions, the aid would create barriers to entry for new competitors and would protect operators already present on the market. Such a policy would not be in the common interest.

(68) Lastly, fears that Solar Tech's new production capacities will create serious distortions of competition appear unfounded, above all because Solar Tech's production capacity (25 MW) will in any event be lower than that indicated by interested parties (32 MW), and also because both the prospects for growth of the European market and the opportunities on the worldwide market suggest that the additional output will be easily absorbed by demand.

3.4. *COMPATIBILITY OF THE AID*

(69) The net intensity of the grant planned by Italy (50,14 %) is above the maximum aid intensity allowable in this case (40 %).

It should also be noted that:

— the measure notified by Italy does constitute State aid within the meaning of Article 87 of the EC Treaty,

— the aid is liable to distort competition since it confers a financial advantage on an undertaking in a sector in which financial resources play an important role, given the need to adapt to technological progress,

— the aid is liable to affect intra-Community trade, given the globalization of the relevant market.

4. **CONCLUSION**

(70) In view of the foregoing, the Commission comes to the conclusion that the notified aid is incompatible with the common market since it exceeds the maximum intensity allowable in the case in point,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Italy is planning to grant to Solar Tech srl, amounting to EUR 42 788 290, is incompatible with the common market in so far as its intensity exceeds the maximum allowable in the case in point (40 % nge).

The aid may accordingly not be implemented by Italy to the extent that it exceeds an intensity of 40 % nge.

Article 2

Italy shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 15 November 2000.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION
of 6 June 2001
on State aid which Italy is planning to implement for Iveco SpA

(notified under document number C(2001) 1545)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2001/780/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on interested parties to submit their comments pursuant to the provisions cited above [1],

Whereas:

I. PROCEDURE

(1) By letter dated 2 November 1999, registered as received on 10 November 1999, Italy notified a plan to grant R & D aid to Iveco for a project carried out between 1994 and 1999. Following a preliminary analysis, the Commission registered the case as notified aid N 670/1999. On 7 January 2000 it asked for further details. After Italy requested an extension of the deadline for its reply, a meeting was held on 29 February 2000. After a further extension of the deadline, Italy sent additional information by letters dated 31 March, 8 May and 18 May 2000.

(2) By letter dated 4 August 2000, the Commission informed Italy that it had decided to initiate the procedure in Article 88(2) of the EC Treaty in respect of the proposed aid measures and invited it to submit any comments it might have and to provide the information required to assess the compatibility of the aid with the common market.

(3) After requesting an extension of the deadline for the reply by letter dated 16 August 2000, Italy sent the Commission the information required by the latter in order to complete its examination of the case by letter dated 24 October 2000 and registered as received on 30 October 2000.

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [2]. The Commission invited interested parties to submit their comments on the aid. No comments were received.

II. DETAILED DESCRIPTION OF THE AID

(5) The planned aid would be granted to Iveco SpA, a subsidiary of the Fiat group. Iveco designs, manufactures and sells mainly light commercial vehicles, lorries, buses and diesel engines under the trade marks Iveco, Astra, Iveco-Ford Truck, Iveco Magirus and Iveco Pegaso. In 1999 Iveco employed 36 000 workers, and sold 149 900 vehicles and 405 000 engines. It achieved a turnover of EUR 7,4 billion and an operating income of EUR 311 million.

(6) The aid is for research and development activities under an approved scheme provided for by Law No 46/1982, which aims to provide an incentive for the development of production processes and products presenting a significant technological innovation. The Law also provides for a retroactive period of 24 months from the date on which the application was made. The project was carried out in the period 1994 to 1999 and Iveco applied for aid in 1996.

(7) The notified project concerns the renewal and expansion of Iveco's range of light vehicles in the 2,8 t to 6,5 t range, with a loading capacity of between 7 m^3 and 17 m^3. The goal was to develop a completely new 'vehicle system' for the Iveco S 2000 range that would introduce substantial innovations into the product and the production process.

[1] OJ C 27, 27.1.2001, p. 25.

[2] See footnote 1.

(8) The investments amounted to ITL 214,485 billion (approximately EUR 110,8 million), of which ITL 139,646 billion was regarded as eligible by the Italian authorities. The investment schedule was as follows:

(in billion ITL)

	1994	1995	1996	1997	1998	1999	Total
Planned	0,597	8,793	21,169	71,687	75,329	36,910	214,485
Eligible		7,602	13,232	46,483	51,232	20,736	139,646

(9) The project was regarded as 'highly innovative' by the Italian authorities. As a result, 55 % of the eligible investment qualified for aid under Law No 46/1982. Total R & D aid worth ITL 31,249 billion (EUR 16,14 million) in nominal terms was earmarked.

(10) The proposed aid includes a grant of ITL 15,926 billion (EUR 8,23 million) and a reduced-interest loan of ITL 38,402 billion (EUR 19,83 million). The interest rate on the loan amounts to 15 % of the industrial reference rate during the pre-amortisation period, to 36 % of the industrial reference rate during the amortisation period if the investment takes place in an assisted area and to 60 % of the industrial reference rate during the amortisation period if the investment does not take place in an assisted area. The nominal aid resulting from the loan is ITL 15,323 million (EUR 7,91 million).

(11) No other aid is planned for the project.

(12) When the Commission decided to initiate the procedure on 19 July 2000, it expressed doubts as to the compatibility of the aid. In particular, doubts were raised regarding the necessity for the aid, its incentive effect, the dissemination of the results of the project, the innovative nature of the research, the definition of the investments as R & D activities and the proportion of the investments devoted to industrial research and pre-competitive development.

III. COMMENTS FROM THE ITALIAN AUTHORITIES

(13) The Italian authorities submitted their comments on the initiation of procedure by letter dated 30 October 2000.

(14) The comments relate first to the need for the aid and to the fact that the project was started before the application for aid under the approved scheme provided for by Law No 46/1982 was made. The Italian authorities pointed out that the Law provides for retroactive application to eligible investments and that it is common practice among Italian firms applying for R & D aid to exercise that option. Iveco was aware of Law No 46/1982 in 1994 and was certain to qualify for the benefits it provided for, given the nature and objectives of its R & D activities.

(15) Second, the Italian authorities pointed out that Iveco launched a very ambitious project at a critical moment for the motor vehicle industry, with a significant risk of failure. In their opinion, the proposed aid was crucial to the decision to design a completely new product rather than upgrade and improve existing ones. The fact that R & D expenditure did not increase as a percentage of turnover in the period 1994 to 1998 was said to be due to the unexpected increase in turnover, and did not reflect the scale of the investment programme.

(16) Third, the Italian authorities stated that the project included industrial research and pre-competitive development activities in line with the criteria specified in Annex I to the Community framework for State aid for research and development [3]. They provided a breakdown of the activities classified as industrial research and pre-competitive development for each subproject and a description of the main features of the subprojects.

(17) Fourth, as regards the dissemination of the results of the project, Italy supplied information on the subprojects carried out with in partnership with component suppliers, both Italian and international. According to the Italian authorities, dissemination of the results is guaranteed by the fact that Iveco's partners in the project can use the know-how acquired to supply any other client worldwide with better products.

(18) Last, Italy provided a recalculation of the aid contained in the interest-rate subsidy on the loan, using the Commission reference rate of 5,61 % to calculate the present value of the aid.

[3] OJ C 45, 17.2.1996, p. 5.

IV. **ASSESSMENT OF THE AID**

(19) The measure constitutes State aid within the meaning of Article 87(1) of the EC Treaty as it would be financed by the State or through State resources; moreover, given that it represents a significant proportion of the project funding, it may distort competition within the Community by giving an advantage to Iveco over other companies not receiving aid. Finally, the market for motor vehicles is characterised by extensive trade between Member States.

(20) Article 87(2) of the EC Treaty lists certain types of aid that are compatible with the Treaty. In view of the nature and purpose of the aid and the geographical location of the firm, subparagraphs (a), (b) and (c) are not applicable to the plan in question. Article 87(3) of the Treaty specifies other forms of aid which may be compatible with the common market. As the region of Turin is not experiencing serious underemployment or an abnormally low standard of living, exemption under Article 87(3)(a) is not possible. Moreover, the project does not promote culture and heritage conservation, and thus the aid cannot be exempted under Article 87(3)(d). As the project does not remedy a serious disturbance in the Italian economy, the aid does not qualify for exemption under Article 87(3)(b) either. As regards the exemption relating to an important project of common European interest, the Commission's standard practice ([4]) has made any benefit deriving from Article 87(3)(b) dependent on all four of the following criteria being met:

— the aid must promote a project, 'promote' being taken to mean action which contributes to implementation of the project,

— it must be a specific, precise and clearly defined project,

— the project must be important both quantitatively and qualitatively, especially qualitatively,

— the project must be 'of common European interest' and, as such, be of benefit to the whole of the Community.

In this case, the project is not qualitatively important and is not of common European interest. It is not therefore eligible for exemption under Article 87(3)(b).

([4]) See, in particular, Commission Decision 96/369/EC of 13 March 1996 concerning fiscal aid given to German airlines in the form of a depreciation facility (OJ L 146, 20.6.1996, p. 42); see also paragraphs 3.3 and 3.4 of the Community framework for State aid for research and development.

(21) As regards the exemption under Article 87(3)(c), Italy has not notified the project as a regional aid measure in accordance with the framework for State aid to the motor vehicle sector ([5]) and has never argued that the conditions set out in that framework with respect to regional investment aid had been met. The aid may, however, qualify for exemption under Article 87(3)(c) as aid to facilitate the development of certain economic activities.

(22) The aid in question is intended for an R & D project carried out by a firm which manufactures motor vehicles. The firm is part of the motor vehicle industry within the meaning of the Community framework for State aid to the motor vehicle industry ([6]) (the 'motor vehicle framework'). According to that framework, aid for research and development is to be assessed under the Community framework for State aid for research and development ([7]) (the 'R & D framework').

(23) Both the total cost of the project and the amount of aid exceed the notification thresholds laid down in the motor vehicle framework (paragraph 2.2(a)) and in the R & D framework (paragraph 4.7) for an individual project under authorised aid schemes. Thus, in notifying the plan to grant aid to Iveco, the Italian authorities have satisfied the requirement in Article 88(3) of the EC Treaty.

(24) To determine whether the proposed aid measures are compatible with the common market under the exemption provided for in Article 87(3)(c) of the Treaty, the Commission must therefore ascertain whether the conditions specified in the R & D framework have been complied with.

(25) When it assesses the compatibility of R & D aid, the Commission pays particular attention to the type of research carried out, the aid recipients, the accessibility of the results, the planned intensity and the incentive effect of the aid.

(26) The R & D framework takes a positive view of aid to research and development. However, the closer the R & D activity is to the market, the more significant may be the distortive effect of the State aid. In this context, a distinction must be made between fundamental research, industrial research and pre-competitive development activity (see paragraph 2.2 of the R & D framework).

([5]) OJ C 279, 15.9.1997, p. 1.
([6]) OJ C 279, 15.9.1997.
([7]) OJ C 45, 17.2.1996.

(27) Pursuant to paragraph 6.2 of the R & D framework, aid must induce firms to pursue research which they would not otherwise have pursued or could not have pursued within the same period. R & D aid should therefore serve as an incentive for firms to undertake R & D activities in addition to their normal day-to-day operations. Member States are therefore required, when notifying R & D aid, to demonstrate that the aid is necessary as an incentive and is on no account operating aid. Where this incentive effect is not evident, the Commission may consider such aid less favourably than it usually does.

(28) The Commission attaches particular importance to the incentive effect of R & D aid in the case of individual, close-to-the-market research projects to be undertaken by large firms and in all cases in which a significant proportion of the R & D expenditure has already been made prior to the aid application.

(29) The Commission notes that Iveco has the characteristics of a large firm. According to the firm's plans, production resulting from the research would start at the end of 1999, some three months before the marketing of each model. The new paint shop was first used experimentally to paint vehicles in the old range in 1998 and then came fully on stream when the first vehicles in the new range were produced. Iveco's suppliers, which produced components for which Iveco carried out the research, started production between November 1998 and April 1999. Given the nature of the project and the subsequent start of production and marketing for the vehicles resulting from the research project, the Commission concludes that the research is close to the market and thus attaches particular importance to the incentive criterion with which the R & D aid must comply in this case.

(30) The project is divided into subprojects that relate to innovations in the vehicle and production systems. The vehicle system subproject concerns the chassis, front and back suspension, transmission and axle, cab and body, brakes and engines. The production system subproject concerns a new paint shop. The Commission has analysed the subprojects with the technical assistance of an independent automotive expert.

(31) When initiating the procedure, the Commission expressed doubts concerning the innovative character of the research and whether the investments constituted R & D activities. However, it has not received any additional information proving that the investment in question constitutes research within the meaning of the R & D framework.

(32) The main chassis development was the extension of the gross vehicle weight range to 2,8 to 6,5 tonnes. The choice of an extended size range can be explained by the necessity to compete with other products that offer similar weight ranges. The weight extension has been achieved through the use of a ladder chassis instead of the unitary steel body (monocoque) construction. The ladder chassis is commonly used for lorries, and its adaptation to a light van does not involve significant R & D efforts.

(33) The new technical solutions adopted for suspensions, driveline, bodywork and brakes match the new extended weight range of the van. The new independent front suspension, control unit for the rear suspension, pneumatic rear suspension, gearbox, braking system and electronic management control unit do not contain significant innovations in relation to existing products. The parts have often been developed in partnership with firms that supply Iveco with components for the new light van range. In the motor vehicle industry it is common practice for suppliers to design and develop systems for manufacturers. Although such collaboration has led to improvements on previous design, their R & D content is no greater than is usual for the development of a new model.

(34) According to Italy's comments when the procedure was initiated, the light van is powered by a common rail fuel injection system (CRFS). Although the new engine constitutes an improvement on previous models, it cannot be regarded as a significant innovation. The Fiat group was the first motor vehicle manufacturer to introduce CRFS in 1997, soon followed by other manufacturers. CRFS is still state-of-the-art and is used by virtually every diesel engine manufacturer.

(35) The new paint shop is an improvement on the previous one, leading to reduced consumption of water, energy and chemical products. However, this does not prove that significant innovations have taken place. Paint shops have to be renewed on a regular basis in order to be able to meet stricter requirements with regard to the environment standards and the quality of the finished product. Furthermore, from the information submitted by Italy it appears that the new paint shop utilises a water-based technique instead of the more innovative powder-based processes.

(36) As regards the nature of the subprojects described above, the Commission, with the aid of its independent expert, analysed the incentive effect of the planned aid. It concluded that the proposed aid has no incentive effect.

(37) First, Italy's claim that the R & D activities in the project are in addition to day-to-day operations is not substantiated. The outcome of the project is a new light commercial vehicle that replaces an old model dating back to the 1970s. The Commission, in line with the view of the independent expert, therefore concluded that it was urgent for Iveco to replace the old model. The company itself has presented the new light van to the public as a response to a change in demand that the old model was not able to satisfy ([8]). Moreover, the investment in the design, development and marketing of the new Iveco van is no higher than the investments made by competitors to bring out similar products.

(38) Furthermore, the subprojects described above are part of the usual procedures for designing and developing new models. In the motor vehicle industry, such procedures are carried out periodically as part of the normal activities of the company involved and must therefore be considered normal day-to-day operations. Similarly, partnerships with component suppliers are common practice in the automotive industry and are also to be considered normal day-to-day operations.

(39) Second, the Commission rejects Italy's claim that the aid addressed an unusual risk in the relevant market because the project coincided with a particularly difficult period for Iveco and the industry. The expert noted that the commercial vehicle market is an extremely cyclical market with regular ups and downs and that car manufacturers cannot afford to postpone or cancel investments because of a low point in the cycle. The aid cannot therefore be regarded as necessary to address a market failure.

(40) Third, the Commission has looked at quantifiable factors such as R & D spending, R & D staff and R & D spending as a proportion of turnover. Average annual R & D expenditure increased in nominal terms from EUR 121 million in 1990 to 1993 to EUR 136 million in the period 1994 to 1998 ([9]). The number of people assigned to R & D rose from 907 on average in 1990 to 1993 to 945 in the period 1994 to 1998. However, in every single year during the period 1994 to 1998, the number of R & D staff was always lower than in 1990 (1 091).

([8]) See, for example, the commercial information at http://www.madeinfiat.com/feb00/briefa.htm.

([9]) 1998 is the last year for which figures were provided by the Italian authorities.

(41) The change in R & D expenditure and staff numbers seems to be related to Iveco's general performance. Decreases in these indicators in the period 1991 to 1993 coincided with a period of decreasing turnover and net losses for Iveco, implying a need to cut costs. An improved financial situation, in terms of revenue and profitability, from 1994 onwards coincided with increased R & D commitments.

(42) A more precise indicator of the company's position is R & D expenditure as a proportion of total turnover. This indicator fell from an average of 4,81 % in 1990 to 1993 to an average of 4,16 % in 1994 to 1998. Furthermore, Iveco's R & D expenditure as a proportion of total turnover is in line with that of comparable motor vehicle manufacturers.

(43) In the Commission's view, the quantifiable factors do not indicate that the proposed aid served as an incentive for Iveco to carry out R & D activities which it would not have pursued otherwise.

(44) Fourth, although the Commission notes that there was some cross-border cooperation on the project with component suppliers, it doubts that the cooperation involved additional costs that Iveco would not have incurred had it chosen national instead of international partners. Cross-border cooperation is certainly normal practice in the global market for motor vehicle components.

(45) The Commission concludes that the R & D activities carried out by Iveco are normal for a motor vehicle manufacturer and thus considers that Italy has failed to demonstrate the incentive effect of the notified R & D project. The planned aid is therefore not compatible with the common market.

(46) In addition to the points set out above, the Commission notes that the fact that the project was started before the aid application points to the conclusion that the aid was not necessary. It is aware that Law No 46/1982, which had been approved previously, allows for a 24-month retroactive period for costs incurred by the applicant. However, the aid in question was subject to a prior notification requirement under both the R & D and the motor vehicle frameworks and should therefore have been scrutinised by the Commission. Given the nature of the project, the Commission finds that Iveco could not be certain that the project would qualify for aid and could not therefore take it for granted that such aid would be approved. Nevertheless, it started the project in 1994 and applied for State aid only in 1996.

(47) Given that the aid has no incentive effect, the Commission does not consider that further analysis of the case, in particular of the specific industrial research and pre-competitive development content of the subprojects, as well as the admissible aid intensities is necessary.

V. **CONCLUSION**

(48) The Commission concludes that the R & D aid which the Italian authorities plan to grant to Iveco is not necessary in order to achieve the objectives referred to in Article 87(3)(c) of the Treaty, in particular that of facilitating the development of certain economic activities. The aid in question has therefore to be regarded as being incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Italy is planning to grant to Iveco SpA, amounting to ITL 31,249 billion in nominal terms, is incompatible with the common market.

The aid may accordingly not be implemented.

Article 2

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

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 6 June 2001.

For the Commission

Mario MONTI

Member of the Commission