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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.

II *Acts whose publication is not obligatory*

I

(Acts whose publication is obligatory)

REGULATION (EC) No 417/2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 18 February 2002

on the accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers and repealing Council Regulation (EC) No 2978/94

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

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

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

Having regard to the opinion of the Committee of the Regions [3],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [4],

Whereas:

(1) Within the framework of the common transport policy, further measures must be taken to enhance safety and prevent pollution in maritime transport.

(2) The Community is seriously concerned by the shipping accidents involving oil tankers and the associated pollution of its coast-lines and harm to its fauna and flora and other marine resources.

(3) In its communication 'a common policy on safe seas', the Commission underlined the request of the extraordinary Council on Environment and Transport of 25 January 1993 to support the action in the International Maritime Organisation (IMO) on the reduction of the safety gap between new and existing ships by upgrading and/or phasing out existing ships.

(4) In its Resolution on a common policy on safe seas [5], the European Parliament welcomed the Commission communication and called in particular for action to be taken to improve tanker safety standards.

(5) By its Resolution of 8 June 1993 on a common policy on safe seas [6], the Council fully supported the objectives of the Commission communication.

(6) In its Resolution on the oil slick off the French coast adopted on 20 January 2000, the European Parliament welcomed any efforts by the Commission to bring forward the date by which oil tankers will be obliged to have a double-hull construction.

(7) The International Maritime Organisation (IMO) has established, in the International Convention for the Prevention of Pollution from Ships, 1973 and the Protocol of 1978 related thereto (MARPOL 73/78), internationally agreed pollution prevention rules affecting the design and operation of oil tankers. Member States are Parties to MARPOL 73/78.

(8) According to Article 3.3 of MARPOL 73/78, that Convention does not apply to warships, naval auxiliary or other ships owned or operated by a State and used only for government non-commercial services.

(9) Comparison of tanker age and accident statistics shows increasing accident rates for older ships. It has been internationally agreed that the adoption of the 1992 amendments to MARPOL 73/78 requiring the application of the double hull or equivalent design standards to existing single hull oil tankers when they reach a certain age will provide those tankers with a higher degree of protection against accidental oil pollution in the event of collision or stranding.

(10) It is in the Community's interest to adopt measures to ensure that oil tankers entering into ports and offshore terminals under the jurisdiction of Member States and that oil tankers flying the flags of Member States comply with Regulation 13G of Annex I of MARPOL 73/78 as revised in 2001 by Resolution MEPC 95(46) in order to reduce the risk of accidental oil pollution in European waters.

[1] OJ C 212 E, 25.7.2000, p. 121 and OJ C 154 E, 29.5.2001, p. 41.
[2] OJ C 14, 16.1.2001, p. 22.
[3] OJ C 22, 24.1.2001, p. 19.
[4] Opinion of the European Parliament of 30 November 2000 (OJ C 228, 13.8.2001, p. 140), Council Common Position of 7 August 2001 (OJ C 307, 31.10.2001, p. 41) and Decision of the European Parliament of 13 December 2001.
[5] OJ C 91, 28.3.1994, p. 301.
[6] OJ C 271, 7.10.1993, p. 1.

(11) Amendments to the MARPOL 73/78 Convention adopted by the IMO on 6 March 1992 entered into force on 6 July 1993. These measures impose double hull or equivalent design requirements for oil tankers delivered on or after 6 July 1996 aimed at preventing oil pollution in the event of collision or stranding. Within these amendments, a phasing-out scheme for single hull oil tankers delivered before that date took effect from 6 July 1995 requiring tankers delivered before 1 June 1982 to comply with the double hull or equivalent design standards not later than 25 years and, in some cases, 30 years after the date of their delivery. Such existing single hull oil tankers would not be allowed to operate beyond 2007 and, in some cases, 2012 unless they comply with the double hull or equivalent design requirements of Regulation 13F of Annex I of MARPOL 73/78. For existing single hull oil tankers delivered after 1 June 1982 or those delivered before 1 June 1982 and which are converted, complying with the requirements of MARPOL 73/78 on segregated ballast tanks and their protective location, this deadline will be reached at the latest in 2026.

(12) New important amendments to Regulation 13G of Annex I of MARPOL 73/78 were adopted on 27 April 2001 by the 46th session of the IMO Marine Environment Protection Committee (MEPC-46) by Resolution MEPC 95(46), entering into force on 1 September 2002, in which a new accelerated phasing-out scheme for single hull oil tankers was introduced. The respective final dates by which tankers must comply with Regulation 13F of Annex I of MARPOL 73/78 depend on the size and age of the ship. Oil tankers are therefore in that scheme divided into three categories according to their tonnage, construction and age. All these categories, including the lowest one (3), are important for intra-Community trade.

(13) The final date by which a single hull oil tanker is to be phased out is the anniversary of the date of delivery of the ship, according to a schedule starting in 2003 until 2007 for Category (1) oil tankers, and until 2015 for Category (2) and (3) oil tankers.

(14) The revised Regulation 13G of Annex I of MARPOL 73/78 maintains the requirements for Category (1) tankers, after 25 years, to have wingtanks or double bottoms in protective locations not used for the carriage of cargo or to operate only with hydrostatically balanced loading.

(15) That same Regulation introduces a requirement that Category (1) and (2) oil tankers may only continue to operate after the anniversary of the date of their delivery in 2005 and 2010 respectively subject to compliance with a Condition Assessment Scheme (CAS), adopted on 27 April 2001 by IMO in Resolution MEPC 94(46). The CAS imposes an obligation that the flag State administration issues a Statement of Compliance and is involved in the CAS survey procedures.

(16) Paragraph 5 of the said Regulation allows for an exception for Category (2) and (3) oil tankers to operate, under certain circumstances, beyond the time-limit of their phasing-out. Paragraph 8b of the same Regulation gives the right for Parties to the MARPOL 73/78 Convention to deny entry into the ports or offshore terminals under their jurisdiction of oil tankers allowed to operate under this exception. Member States have declared their intention to use the right. Decision to have recourse to this right has to be communicated to the IMO.

(17) It is important to ensure that the provisions in this Regulation do not endanger the safety of crew or oil tankers in search of a safe haven or a place of refuge.

(18) In order to allow shipyards in Member States to repair single hull oil tankers, Member States may make exceptions to allow entry into their ports of such vessels, provided they are not carrying any cargo.

(19) It should be possible to amend certain provisions of this Regulation so as to bring them into line with international instruments adopted, amended or entering into force after the entry into force of this Regulation without broadening its scope. Such amendments 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 [1].

(20) In view of the approaching deadline for single hull oil tankers which do not comply with the requirements of MARPOL 73/78 on segregated ballast tanks and their protective location, and given that this is most relevant for Category (1) tankers, there are no reasons to maintain the differential charging system for which Regulation (EC) No 2978/94 [2] provides between such oil tankers and oil tankers that comply with the said requirements beyond 2007, and therefore Regulation (EC) No 2978/94 should be repealed,

HAVE ADOPTED THIS REGULATION:

Article 1

Purpose

The purpose of this Regulation is to establish an accelerated phasing-in scheme for the application of the double hull or equivalent design requirements of the MARPOL 73/78 Convention to single hull oil tankers.

[1] OJ L 184, 17.7.1999, p. 23.
[2] Council Regulation (EC) No 2978/94 of 21 November 1994 on the implementation of IMO Resolution A.747(18) on the application of tonnage measurement of ballast spaces in segregated ballast oil tankers (OJ L 319, 12.12.1994, p. 1).

Article 2

Scope

1. This Regulation shall apply to oil tankers of 5 000 tons deadweight and above:

— entering into a port or offshore terminal under the jurisdiction of a Member State, irrespective of their flag, or

— flying the flag of a Member State.

2. This Regulation shall not apply to any warship, naval auxiliary or other ship, owned or operated by a State and used, for the time being, only on government non-commercial service. Member States shall, so far as is reasonable and practicable, endeavour to respect this Regulation for the ships referred to in this paragraph.

Article 3

Definitions

For the purpose of this Regulation, the following definitions shall apply:

1. 'MARPOL 73/78' shall mean the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto together with the amendments thereto, in force on 18 February 2002;

2. 'revised Regulation 13G of Annex I of MARPOL 73/78' shall mean the amendments to Regulation 13G of Annex I to MARPOL 73/78 and to the Supplement to the IOPP Certificate, as adopted by Resolution MEPC 94(46) of 27 April 2001 which enters into force on 1 September 2002;

3. 'oil tanker' shall mean an oil tanker as defined in Regulation 1(4) of Annex I of MARPOL 73/78;

4. 'deadweight' shall mean deadweight as defined in Regulation 1(22) of Annex I of MARPOL 73/78;

5. 'new oil tanker' shall mean a new oil tanker as defined in Regulation 1(26) of Annex I of MARPOL 73/78;

6. 'category (1) oil tanker' shall mean an oil tanker of 20 000 tons deadweight and above carrying crude oil, fuel oil, heavy diesel oil or lubricating oil as cargo, and of 30 000 tons deadweight and above carrying oil other than the above, which does not comply with the requirements for new oil tankers as defined in Regulation 1(26) of Annex I of MARPOL 73/78;

7. 'category (2) oil tanker' shall mean an oil tanker of 20 000 tons deadweight and above carrying crude oil, fuel oil, heavy diesel oil or lubricating oil as cargo, and of 30 000 tons deadweight and above carrying oil other than the above, which complies with the requirements for new oil tankers as defined in Regulation 1(26) of Annex I of MARPOL 73/78;

8. 'category (3) oil tanker' shall mean an oil tanker of 5 000 tons deadweight and above but less than that specified in definitions 6 and 7;

9. 'single hull oil tanker' shall mean an oil tanker not meeting the double hull or equivalent design requirements of Regulation 13F of Annex I of MARPOL 73/78;

10. 'double hull oil tanker' shall mean an oil tanker meeting the double hull or equivalent design requirements of Regulation 13F of Annex I of MARPOL 73/78;

11. 'age' shall mean the age of the ship, expressed in number of years after the date of its delivery;

12. 'heavy diesel oil' shall mean diesel oil as defined in revised Regulation 13G of Annex I of MARPOL 73/78;

13. 'fuel oil' shall mean heavy distillates or residues from crude oil or blends of such materials as defined in revised Regulation 13G of Annex I of MARPOL 73/78.

Article 4

Compliance with the double hull or equivalent design requirements by single hull oil tankers

1. No oil tanker shall be allowed to operate under the flag of a Member State, nor shall any oil tanker, irrespective of its flag, be allowed to enter into ports or offshore terminals under the jurisdiction of a Member State after the anniversary of the date of delivery of the ship in the year specified hereafter, unless such tanker is a double hull oil tanker:

(a) for category (1) oil tankers:

— 2003 for ships delivered in 1973 or earlier,

— 2004 for ships delivered in 1974 and 1975,

— 2005 for ships delivered in 1976 and 1977,

— 2006 for ships delivered in 1978, 1979 and 1980,

— 2007 for ships delivered in 1981 or later;

(b) for category (2) oil tankers:

— 2003 for ships delivered in 1973 or earlier,

— 2004 for ships delivered in 1974 and 1975,

— 2005 for ships delivered in 1976 and 1977,

— 2006 for ships delivered in 1978 and 1979,

— 2007 for ships delivered in 1980 and 1981,

— 2008 for ships delivered in 1982,

— 2009 for ships delivered in 1983,

— 2010 for ships delivered in 1984,

— 2011 for ships delivered in 1985,

— 2012 for ships delivered in 1986,

— 2013 for ships delivered in 1987,

— 2014 for ships delivered in 1988,

— 2015 for ships delivered in 1989 or later;

(c) for category (3) oil tankers:

— 2003 for ships delivered in 1973 or earlier,

— 2004 for ships delivered in 1974 and 1975,

— 2005 for ships delivered in 1976 and 1977,

— 2006 for ships delivered in 1978 and 1979,

— 2007 for ships delivered in 1980 and 1981,

— 2008 for ships delivered in 1982,

— 2009 for ships delivered in 1983,

— 2010 for ships delivered in 1984,

— 2011 for ships delivered in 1985,

— 2012 for ships delivered in 1986,

— 2013 for ships delivered in 1987,

— 2014 for ships delivered in 1988,

— 2015 for ships delivered in 1989 or later.

2. A Category (1) oil tanker of 25 years and over after the date of its delivery shall comply with either of the following provisions:

(a) it shall have wing tanks or double bottom spaces, not used for the carriage of oil and meeting the width and height requirements of Regulation 13E(4) of Annex I of MARPOL 73/78, cover at least 30 % of L_t, for the full depth of the ship on each side or at least 30 % or the projected bottom shell area within L_t where L_t is as defined in Regulation 13E(2) of Annex I of MARPOL 73/78, or

(b) it shall operate with hydrostatically balanced loading, taking into account the guidelines developed by the IMO Resolution MEPC 64(36).

Article 5

Compliance with the Condition Assessment Scheme for Category (1) and Category (2) ships

1. An oil tanker shall not be allowed to enter into ports or offshore terminals under the jurisdiction of a Member State beyond the anniversary of the date of delivery of the ship, in 2005 for Category (1) ships, and in 2010 for Category (2) ships, unless it complies with the Condition Assessment Scheme referred to in Article 6.

2. The competent authorities of a Member State may allow an oil tanker flying the flag of that Member State to continue operation beyond the anniversary of the date of delivery of the ship in 2005 for Category (1) ships and in 2010 for Category (2) ships, but only when subject to compliance with the Condition Assessment Scheme referred to in Article 6.

Article 6

Condition Assessment Scheme

For the purposes of Article 5, the Condition Assessment Scheme adopted by MEPC Resolution 94(46) of 27 April 2001 shall apply.

Article 7

Final date

After the anniversary of the date of delivery of the ship in 2015:

— the continued operation, in accordance with paragraph 5 of revised Regulation 13G of Annex I to MARPOL 73/78, of Category (2) and Category (3) oil tankers under the flag of a Member State, and

— the entry into the ports or offshore terminals under the jurisdiction of a Member State of other Category (2) and Category (3) oil tankers, irrespective of the fact that they continue to operate under the flag of a third State in accordance with paragraph 5 of revised Regulation 13G of Annex I to MARPOL 73/78,

shall no longer be allowed.

Article 8

Exemptions for ships in difficulty or for ships to be repaired

1. By way of derogation from Articles 4, 5 and 7, the competent authority of a Member State may, subject to national provisions, allow, under exceptional circumstances, an individual ship to enter the ports or offshore terminals under the jurisdiction of that Member State, when:

— an oil tanker is in difficulty and in search of a place of refuge,

— an unloaded oil tanker is proceeding to a port of repair.

2. Member States shall, in due time, but before 1 September 2002, communicate to the Commission the provisions of national law which they will apply in the circumstances referred to in paragraph 1. The Commission shall inform the other Member States thereof.

Article 9

Notification to the IMO

1. The Presidency of the Council, acting on behalf of the Member States, and the Commission shall jointly inform the IMO of the adoption of this Regulation, whereby reference shall be made to Article 211, paragraph 3 of the United Nations Convention on the Law of the Sea.

2. Each Member State shall inform the IMO of its decision to deny entry of oil tankers, pursuant to Article 7 of this Regulation, operating in accordance with the provisions of paragraph 5 of revised Regulation 13G of Annex I of MARPOL 73/78 into the ports or offshore terminals under its jurisdiction, on the basis of paragraph 8(b) of revised Regulation 13G of Annex I of MARPOL 73/78.

3. Each Member State shall notify the IMO if it allows, suspends, withdraws or declines the operation of a Category (1) or a Category (2) oil tanker entitled to fly its flag, in accordance with Article 5, on the basis of paragraph 8(a) of revised Regulation 13G of Annex I of MARPOL 73/78.

Article 10

Committee procedure

1. The Commission shall be assisted by the committee set up pursuant to Article 12(1) of Council Directive 93/75/EEC [1], 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 11

Amendment procedure

The references in the Articles of this Regulation to the regulations of Annex I of MARPOL 73/78 and to Resolutions MEPC 94(46) and 95(46) shall, if appropriate, be amended in accordance with the procedure referred to in Article 10(2), in order to bring the references into line with amendments to these regulations and resolutions adopted by the IMO, in so far as such amendments do not broaden the scope of this Regulation.

Article 12

Repeal

Council Regulation (EC) No 2978/94 is hereby repealed as from 31 December 2007.

Article 13

Entry into force

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

It shall apply from 1 September 2002.

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

Done at Brussels, 18 February 2002.

For the European Parliament
The President
P. COX

For the Council
The President
J. PIQUÉ I CAMPS

[1] Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods (OJ L 247, 5.10.1993, p. 19). Directive as last amended by Commission Directive 98/74/EC (OJ L 276, 13.10.1998, p. 7).

COMMISSION REGULATION (EC) No 418/2002

of 6 March 2002

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 7 March 2002.

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

Done at Brussels, 6 March 2002.

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 6 March 2002 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	196,3
	204	150,0
	212	129,8
	624	216,8
	999	173,2
0707 00 05	052	170,2
	068	150,3
	204	73,7
	624	135,7
	999	132,5
0709 90 70	052	146,6
	204	69,2
	999	107,9
0805 10 10, 0805 10 30, 0805 10 50	052	57,5
	204	46,9
	212	58,0
	220	41,2
	421	29,6
	600	59,5
	624	75,8
	999	52,6
0805 50 10	052	44,8
	600	50,5
	999	47,6
0808 10 20, 0808 10 50, 0808 10 90	060	40,7
	388	111,3
	400	112,3
	404	99,5
	508	98,3
	512	95,6
	524	83,8
	528	90,0
	720	123,8
	728	132,3
	999	98,8
0808 20 50	204	204,9
	388	81,9
	400	109,8
	512	81,1
	528	88,3
	999	113,2

(1) Country nomenclature as fixed by Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 419/2002

of 6 March 2002

amending Regulation (EC) No 2390/1999 laying down detailed rules for the application of Regulation (EC) No 1663/95 as regards the form and content of the accounting information that the Member States must hold at the disposal of the Commission for the purposes of the clearance of the EAGGF Guarantee Section accounts

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy [1], and in particular Article 4(8) thereof,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals [2], as last amended by Regulation (EC) No 1666/2000 [3], and in particular Article 21 thereof, and to the corresponding provisions of the other Regulations on the common organization of markets in agricultural products,

Whereas:

(1) Article 4(2) of Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section [4], as last amended by Regulation (EC) No 2025/2001 [5], requires the accounting information referred to in Article 4(1)(c) thereof to be sent to the Commission by 10 February of the year following the end of the financial year concerned. Commission Regulation (EC) No 2390/1999 [6], as last amended by Regulation (EC) No 1863/2001 [7], lays down the form and content of the accounting information that the Member States must hold at the disposal of the Commission for the purposes of the clearance of the EAGGF Guarantee Section accounts. It is necessary to amend Regulation (EC) No 2390/1999 in order to align it to Regulation (EC) No 1663/95.

(2) In order to allow the Commission to fulfil its role in the framework of the common agricultural policy, it must be in a position to monitor developments in the markets in agricultural products and to make financial forecasts relating to these markets. The common organisations of markets in agricultural products include a general obligation for Member States and the Commission to exchange the information necessary for the proper functioning of those organisations. For the monitoring and forecasting purposes it should be possible for use being made of the accounting information provided by Member States to the Commission under Article 4(2) of Regulation (EC) No 1663/95. Therefore, and without prejudice to the obligations on information exchange under the common organisations of markets, Regulation (EC) No 2390/1999 should be amended to allow for such use of the accounting information.

(3) The protection of individuals with regard to the processing of personal data is governed by Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies on the free movement of such data [8]. This Regulation is fully applicable in the context of Regulation (EC) No 2390/1999. Therefore, when making use of the accounting information referred to in Article 4(1)(c) of Regulation (EC) No 1663/95 for monitoring and forecast purposes in the agricultural domain, the Commission should lay down adequate safeguards as required by the rules of Regulation (EC) No 45/2001, in particular by aggregating and rendering data anonymous.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Fund Committee as well as of all the management committees concerned,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2390/1999 is amended as follows:

1. The title is replaced by the following:

   'Commission Regulation (EC) No 2390/1999 of 25 October 1999 laying down form and content of the accounting information to be submitted to the Commission for the purpose of the clearance of the EAGGF Guarantee Section accounts as well as for monitoring and forecasting purposes'.

2. In Article 1, 'Article 2(1) of Regulation (EC) No 1663/95' is replaced by 'Article 4(1)(c) of Regulation (EC) No 1663/95'.

[1] OJ L 160, 26.6.1999, p. 103.
[2] OJ L 181, 1.7.1992, p. 21.
[3] OJ L 193, 29.7.2000, p. 1.
[4] OJ L 158, 8.7.1995, p. 6.
[5] OJ L 274, 17.10.2001, p. 3.
[6] OJ L 295, 16.11.1999, p. 1.
[7] OJ L 259, 27.9.2001, p. 1.
[8] OJ L 8, 12.1.2001, p. 1.

3. Article 2 is replaced by the following:

'*Article 2*

1. The accounting information referred to in Article 4(1)(c) of Regulation (EC) No 1663/95 shall be used by the Commission for the sole purposes of:

(a) carrying out its functions in the context of the clearance of the EAGGF Guarantee section accounts pursuant to Regulation (EC) No 1258/1999;

(b) monitoring developments and providing forecasts in the agricultural sector.

2. If the accounting information referred to in paragraph 1 includes personal data protected by Regulation (EC) No 45/2001 of the European Parliament and the Council (*), the Commission shall lay down the necessary safeguards required under that Regulation. In particular, if accounting information is used by the Commission for the purpose referred to in paragraph 1(b), the Commission shall make such data anonymous and process it in aggregated form only.

3. The Commission shall ensure that the accounting information referred to in paragraph 1 is kept confidential and secure.

(*) OJ L 8, 12.1.2001, p. 1.'

Article 2

This Regulation shall enter into force on the seventh 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, 6 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 420/2002

of 6 March 2002

providing for a further allocation of import rights under Regulation (EC) No 1095/2001 for young male bovine animals for fattening

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1095/2001 of 5 June 2001 opening and providing for the administration of an import tariff quota for young male bovine animals for fattening (1 July 2001 to 30 June 2002) [1], and in particular Article 9(3) thereof,

Whereas:

Article 1 of Regulation (EC) No 1095/2001 provides for the opening for the period 1 July 2001 to 30 June 2002 of a tariff quota of 169 000 young male bovine animals of a weight not exceeding 300 kilograms and intended for fattening. Article 9 of that Regulation provides for a further allocation of quantities not covered by import licence applications by 22 February 2002,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities referred to in Article 9(1) of Regulation (EC) No 1095/2001 shall be 17 223 head.

Article 2

This Regulation shall enter into force on 7 March 2002.

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

Done at Brussels, 6 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 150, 6.6.2001, p. 25.

COMMISSION REGULATION (EC) No 421/2002

of 6 March 2002

fixing, for February 2002, the specific exchange rate for the amount of the reimbursement of storage costs 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 2799/98 of 15 December 1998 establishing agrimonetary arrangements for the euro [1],

Having regard to Commission Regulation (EEC) No 1713/93 of 30 June 1993 establishing special detailed rules for applying the agricultural conversion rate in the sugar sector [2], as last amended by Regulation (EC) No 1509/2001 [3], and in particular Article 1(3) thereof,

Whereas:

(1) Article 1 of Commission Regulation (EC) No 1878/2001 of 26 September 2001 laying down transitional measures in connection with the compensation system for storage costs for sugar [4], lays down that Article 8 of Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector [5], as amended by Commission Regulation (EC) No 1527/2000 [6], will continue to apply to sugars carried forward from the 2000/01 marketing year to the 2001/02 marketing year.

(2) Article 1(2) of Regulation (EEC) No 1713/93 provides that the amount of the reimbursement of storage costs referred to in Article 8 of Regulation (EC) No 2038/1999 is to be converted into national currency using a specific agricultural conversion rate equal to the average, calculated *pro rata temporis*, of the agricultural conversion rates applicable during the month of storage. That specific rate must be fixed each month for the previous month. However, in the case of the reimbursable amounts applying from 1 January 1999, as a result of the introduction of the agrimonetary arrangements for the euro from that date, the fixing of the conversion rate should be limited to the specific exchange rates prevailing between the euro and the national currencies of the Member States that have not adopted the single currency.

(3) Application of these provisions will lead to the fixing, for February 2002, of the specific exchange rate for the amount of the reimbursement of storage costs in the various national currencies as indicated in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The specific exchange rate to be used for converting the amount of the reimbursement of the storage costs referred to in Article 8 of Regulation (EC) No 2038/1999 into national currency for February 2002 shall be as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 7 March 2002.

It shall apply with effect from 1 February 2002.

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

Done at Brussels, 6 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 349, 24.12.1998, p. 1.
[2] OJ L 159, 1.7.1993, p. 94.
[3] OJ L 200, 25.7.2001, p. 19.
[4] OJ L 258, 27.9.2001, p. 9.
[5] OJ L 252, 25.9.1999, p. 1.
[6] OJ L 175, 14.7.2000, p. 59.

ANNEX

to the Commission Regulation of 6 March 2002 fixing, for February 2002, the specific exchange rate for the amount of the reimbursement of storage costs in the sugar sector

	Specific exchange rate	
EUR 1 =	7,42959	Danish kroner
	9,19024	Swedish kroner
	0,611821	Pound sterling

COMMISSION DIRECTIVE 2002/23/EC

of 26 February 2002

amending the Annexes to Council Directives 86/362/EEC, 86/363/EEC and 90/642/EEC as regards the fixing of maximum levels for pesticide residues in and on cereals, foodstuffs of animal origin and certain products of plant origin, including fruit and vegetables respectively

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 86/362/EEC of 24 July 1986 on the fixing of maximum levels for pesticide residues in and on cereals ([1]), as last amended by Commission Directive 2001/57/EC ([2]), and in particular Article 10 thereof,

Having regard to Council Directive 86/363/EEC of 24 July 1986 on the fixing of maximum levels for pesticide residues in and on foodstuffs of animal origin ([3]), as last amended by Directive 2001/57/EC, and in particular Article 10 thereof,

Having regard to Council Directive 90/642/EEC of 27 November 1990 on the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables ([4]), as last amended by Commission Directive 2002/5/EC ([5]), and in particular Article 7 thereof,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market ([6]), as last amended by Commission Directive 2001/103/EC ([7]), and in particular Article 4(1)(f) thereof,

Whereas:

(1) The new active substances flupyrsulfuron-methyl, pymetrozine, azoxystrobin and kresoxim-methyl (the active substances concerned) were included in Annex I to Directive 91/414/EEC by Commission Directives 2001/49/EC ([8]), 2001/87/EC ([9]), 98/47/EC ([10]) and 1999/1/EC ([11]), for use, respectively as a herbicide on cereals, insecticide on cereals, fruits, vegetables, pulses, oil seeds and hops, a fungicide without uses specified and a fungicide on cereals, pome fruit and vines.

(2) The inclusion in Annex I of the active substances concerned was based on the assessment of the information submitted concerning the proposed uses. Information relating to these uses has been submitted by certain Member States in accordance with Article 4(1)(f) of Directive 91/414/EEC. The information available has been reviewed and is sufficient to allow certain maximum residue levels (MRLs) to be fixed.

(3) Where no Community MRL or provisional MRL exists, Member States are to establish a national provisional MRL in accordance with Article 4(1)(f) of Directive 91/414/EEC before plant protection products containing these active substances may be authorised.

(4) With respect to the inclusion in Annex I to Directive 91/414/EEC of the active substances concerned, the related technical and scientific evaluations were finalised in the form of Commission review reports. The reports were finalised on 16 October 1998, 27 April 2001, 22 April 1998, 27 July 2001 in the case of kresoxim-methyl, flupyrsulfuron-methyl, azoxystrobin and pymetrozine, respectively. They fixed the acceptable daily intake (ADI) for kresoxim-methyl at 0,4 mg/kg bw/day, for flupyrsulfuron-methyl at 0,035 mg/kg bw/day, for azoxystrobin at 0,1 mg/kg bw/day and for pymetrozine at 0,03 mg/kg bw/day. The lifetime exposure of consumers of food products treated with the active substances concerned has been assessed and evaluated in accordance with Community procedures and practices, taking account of guidelines published by the World Health Organisation ([12]) and the opinion of the Scientific Committee for Plants ([13]) on the methodology employed and it is calculated that MRL accordingly proposed will not lead to those ADIs being exceeded.

(5) No acute toxic effects requiring the setting of an acute reference dose were noted during the evaluations and discussions preceding the inclusion of flupyrsulfuron-methyl, azoxystrobin and kresoxim-methyl in Annex I to Directive 91/414/EEC. The acute reference dose for pymetrozine was established at 0,1 mg/kg bw/day. According to the exposure assessment, the MRLs proposed will not lead to an unacceptable acute exposure of consumers.

([1]) OJ L 221, 7.8.1986, p. 37.
([2]) OJ L 208, 1.8.2001, p. 36.
([3]) OJ L 221, 7.8.1986, p. 43.
([4]) OJ L 350, 14.12.1990, p. 71.
([5]) OJ L 34, 5.2.2002, p. 7.
([6]) OJ L 230, 19.8.1991, p. 1.
([7]) OJ L 304, 21.11.2001, p. 14.
([8]) OJ L 176, 29.6.2001, p. 61.
([9]) OJ L 276, 19.10.2001, p. 17.
([10]) OJ L 191, 7.7.1998, p. 50.
([11]) OJ L 21, 28.1.1999, p. 21.

([12]) Guidelines for predicting dietary intake of pesticide residues (revised), prepared by the GEMS/Food Programme in collaboration with the Codex Committee on Pesticide Residues, published by the World Health Organisation 1997 (WHO/FSF/FOS/97.7).
([13]) Opinion of the Scientific Committee on Plants regarding questions relating to amending the Annexes to Council Directives 86/362/EEC, 86/363/EEC and 90/642/EEC (Opinion expressed by the Scientific Committee on Plants, 14 July 1998) (http://europa.eu.int/comm/dg24/health/sc/scp/out21_en.html).

(6) In order to ensure that the consumer is adequately protected from exposure to residues in or on products for which no authorisation has been granted, it is prudent to set provisional MRL at the lower limit of analytical determination for all such products covered by Directives 86/362/EEC, 86/363/EEC and 90/642/EEC. The setting at Community level of such provisional MRL does not prevent the Member States from establishing provisional maximum residue levels for flupyrsulfuron-methyl, pymetrozine, azoxystrobin and kresoxim-methyl in accordance with Article 4(1)(f) of Directive 91/414/EEC and Annex VI thereto. It is considered that a period of four years is sufficient to enable most further uses of the active substances concerned. The provisional MRL should then become definitive.

(7) The Community notified the draft Commission Directive to the World Trade Organisation and the comments received have been considered in finalising the Directive. MRLs for specific pesticide/crop combinations used in third countries could be examined by the Commission on the basis of the acceptable data submitted.

(8) Account has been taken of the opinions of the Scientific Committee for Plants, in particular of its advice and recommendations concerning the protection of consumers of food products treated with pesticides.

(9) This Directive is in accordance with the opinion of the Standing Committee on Plant Health,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The following pesticide maximum residue levels are added to part A of Annex II to Directive 86/362/EEC:

Pesticide residue	Maximum level (mg/kg)	
Flupyrsulfuron-methyl	0,02 (*) (P)	Cereals
Pymetrozine	0,02 (*) (P)	Cereals

(*) Indicates lower limit of analytical determination.
(P) Indicates provisional maximum residue level. For those agricultural products listed in Annex II to Directive 86/362/EEC, where the maximum residue levels for flupyrsulfuron-methyl and pymetrozine are indicated as '(P)', this shall mean that they are provisional in accordance with the provisions of Article 4(1)(f) of Directive 91/414/EEC.

By 1 December 2005, provisional maximum residue levels for flupyrsulfuron-methyl and pymetrozine shall cease to be provisional and shall become definitive in the sense of Article 4(1) of Directive 86/362/EEC.

Article 2

The following pesticide residues are added to part B of Annex II to Directive 86/363/EEC:

Pesticide residue	Maximum level (mg/kg)		
	Of meat, including fat, preparations of meat, offals and animal fats as listed in Annex I within CN codes 0201, 0202, 0203, 0204, 0205 00 00, 0206, 0207, ex 0208, 0209 00, 0210, 1601 00 and 1602,	For milk and milk products listed in Annex I wihin CN codes 0401, 0402, 0405 00 and 0406	Of shelled fresh eggs, for bird's eggs and egg yolks listed in Annex I within CN codes 0407 00 and 0408
Pymetrozine	0,01 (*) (P)	0,01 (*) (P)	0,01 (*) (P)

(*) Indicates lower limit of analytical determination.
(P) Indicates provisional maximum residue level. For those agricultural products listed in Annex II to Directive 86/363/EEC, where the maximum residue levels for pymetrozine are indicated as '(P)', this shall mean that they are provisional in accordance with the provisions of Article 4(1)(f) of Directive 91/414/EEC.

By 1 December 2005, provisional maximum residue levels for pymetrozine shall cease to be provisional and shall become definitive in the sense of Article 4(1) of Directive 86/363/EEC.

Article 3

The maximum pesticide residue levels for flupyrsulfuron-methyl and pymetrozine in the Annex to this Directive shall be added to Annex II to Directive 90/642/EEC. The maximum pesticide residue levels for azoxystrobin in the Annex to this Directive shall replace those in Annex II to Directive 90/642/EEC.

Article 4

The provisional maximum pesticide residue levels for kresoxim-methyl in Annex II to Directive 90/642/EEC shall be modified to 0,2 mg/kg (P) for strawberries. (P) indicates provisional maximum residue level.

For kresoxim-methyl provisional MRLs shall become definitive with effect of 19 October 2004.

Article 5

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 August 2002 at the latest. They shall forthwith inform the Commission thereof.

2. They shall apply these provisions as of 1 September 2002.

3. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 6

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

This Directive is addressed to the Member States.

Done at Brussels, 26 February 2002.

For the Commission

David BYRNE

Member of the Commission

ANNEX

Groups and examples of individual products to which the MRLs apply	Pesticide residues and maximum residue levels (mg/kg)		
	Flupyrsulfuron-methyl	Azoxystrobin	Pymetrozine
1. **Fruits, fresh, dried or uncooked, preserved by freezing, not containing added sugar; nuts**	0,02 (P) (*)		
(i) CITRUS FRUIT		1 (P)	0,3 (P)
Grapefruit			
Lemons			
Limes			
Mandarins (including clementines and other hybrids)			
Oranges			
Pomelos			
Others			
(ii) TREE NUTS (shelled or unshelled)		0,1 (P) (*)	0,02 (P) (*)
Almonds			
Brazil nuts			
Cashew nuts			
Chestnuts			
Coconuts			
Hazelnuts			
Macadamia			
Pecans			
Pine nuts			
Pistachios			
Walnuts			
Others			
(iii) POME FRUIT		0,05 (P) (*)	0,02 (P) (*)
Apples			
Pears			
Quinces			
Others			
(iv) STONE FRUIT		0,05 (P) (*)	
Apricots			0,05 (P)
Cherries			
Peaches (including nectarines and similar hybrids)			0,05 (P)
Plums			
Others			0,02 (P) (*)
(v) BERRIES AND SMALL FRUIT			0,02 (P) (*)
(a) Table and wine grapes		2	
Table grapes			
Wine grapes			
(b) Strawberries (other than wild)		2 (P)	
(c) Cane fruit (other than wild)		0,05 (P) (*)	
Blackberries			
Dewberries			
Loganberries			
Raspberries			
Others			

Groups and examples of individual products to which the MRLs apply	Pesticide residues and maximum residue levels (mg/kg)		
	Flupyrsulfuron-methyl	Azoxystrobin	Pymetrozine
(d) Other small fruit and berries (other than wild)		0,05 (P) (*)	
Bilberries			
Cranberries			
Currants (red, black and white)			
Gooseberries			
Others			
(e) Wild berries and wild fruit		0,05 (P) (*)	
(vi) MISCELLANEOUS			0,02 (P) (*)
Avocados			
Bananas		2	
Dates			
Figs			
Kiwi			
Kumquats			
Litchis			
Mangoes			
Olives			
Passion fruit			
Pineapples			
Pomegranate			
Others		0,05 (P) (*)	
2. **Vegetables, fresh or uncooked, frozen or dry**	0,02 (P) (*)		
(i) ROOT AND TUBER VEGETABLES			0,02 (P) (*)
Beetroot			
Carrots		0,2 (P)	
Celeriac			
Horseradish		0,2 (P)	
Jerusalem artichokes			
Parsnips		0,2 (P)	
Parsley root		0,2 (P)	
Radishes			
Salsify		0,2 (P)	
Sweet potatoes			
Swedes			
Turnips			
Yam			
Others		0,05 (P) (*)	
(ii) BULB VEGETABLES		0,05 (P) (*)	0,02 (P) (*)
Garlic			
Onions			
Shallots			
Spring onions			
Others			
(iii) FRUITING VEGETABLES			
(a) Solanacea			
Tomatoes		2 (P)	0,5 (P)
Peppers		2 (P)	1 (P)
Aubergines		2 (P)	0,5 (P)
Others		0,05 (P) (*)	0,02 (P) (*)

Groups and examples of individual products to which the MRLs apply	Pesticide residues and maximum residue levels (mg/kg)		
	Flupyrsulfuron-methyl	Azoxystrobin	Pymetrozine
(b) Cucurbits — edible peel		1 (P)	0,5 (P)
Cucumbers			
Gherkins			
Courgettes			
Others			
(c) Cucurbits — inedible peel		0,5 (P)	0,2 (P)
Melons			
Squashes			
Watermelons			
Others			
(d) Sweetcorn		0,05 (P) (*)	0,02 (P) (*)
(iv) BRASSICA VEGETABLES		0,05 (P) (*)	
(a) Flowering brassica			0,02 (P) (*)
Broccoli			
Cauliflower			
Others			
(b) Head brassica			
Brussels sprouts			
Head cabbage			0,05 (P)
Others			0,02 (P) (*)
(c) Leafy brassica			0,02 (P) (*)
Chinese cabbage			
Kale			
Others			
(d) Kohlrabi			0,02 (P) (*)
(v) LEAF VEGETABLES AND FRESH HERBS			
(a) Lettuce and similar		3 (P)	1 (P)
Cress			
Lamb's lettuce			
Lettuce			
Scarole			
Others			
(b) Spinach and similar		0,05 (P) (*)	0,02 (P) (*)
Spinach			
Beet leaves (chard)			
Others			
(c) Water cress		0,05 (P) (*)	0,02 (P) (*)
(d) Witloof		0,2 (P)	0,02 (P) (*)
(e) Herbs		0,05 (P) (*)	1 (P)
Chervil			
Chives			
Parsley			
Celery leaves			
Others			
(vi) LEGUME VEGETABLES (fresh)			0,02 (P) (*)
Beans (with pods)		1 (P)	
Beans (without pods)			
Peas (with pods)		0,5 (P)	

Groups and examples of individual products to which the MRLs apply	Pesticide residues and maximum residue levels (mg/kg)		
	Flupyrsulfuron-methyl	Azoxystrobin	Pymetrozine
Peas (without pods)		0,2 (P)	
Others		0,05 (P) (*)	
(vii) STEM VEGETABLES (fresh)			0,02 (P) (*)
Asparagus			
Cardoons			
Celery		5 (P)	
Fennel			
Globe artichokes		1 (P)	
Leek		0,1 (P)	
Rhubarb			
Others		0,05 (P) (*)	
(viii) FUNGI		0,05 (P) (*)	0,02 (P) (*)
(a) Cultivated mushrooms			
(b) Wild mushrooms			
3. **Pulses**	0,02 (P) (*)	0,1 (P)	0,02 (P) (*)
Beans			
Lentils			
Peas			
Others			
4. **Oils seeds**	0,05 (P) (*)	0,05 (P) (*)	
Linseed			
Peanuts			
Poppy seed			
Sesame seed			
Sunflower seed			
Rapeseed			
Soya bean			
Mustard seed			
Cotton seed			0,05 (P)
Others			0,02 (P) (*)
5. **Potatoes**	0,02 (P) (*)	0,05 (P) (*)	0,02 (P) (*)
Early potatoes			
Ware potatoes			
6. **Tea** (leaves and stems, dried, fermented or otherwise, of *Camellia sinensis*)	0,05 (P) (*)	0,1 (P) (*)	0,1 (P) (*)
7. **Hops** (dried), including hop pellets and unconcentrated powder	0,05 (P) (*)	20 (P)	5 (P)

(P) Indicates provisional maximum residue level. For those agricultural products listed in Annex II to Directive 90/642/EEC where the maximum residue levels for flupyrsulfuron-methyl, pymetrozine and azoxystrobin are indicated as '(P)', this shall mean that they are provisional in accordance with the provisions of Article 4(1)(f) of Directive 91/414/EEC.

By 1 December 2005, provisional maximum residue levels for flupyrsulfuron-methyl and pymetrozine shall cease to be provisional and shall become definitive in the sense of Article 3 of Directive 90/624/EEC. For azoxystrobin this shall be 1 August 2003.

(*) Indicates lower limit of analytical determination.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION
of 28 February 2002
concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*

(2002/192/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Article 4 of the Protocol integrating the Schengen *acquis* into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community (hereinafter referred to as 'the Schengen Protocol'),

Having regard to the request by the Government of Ireland, made in its letters to the President of the Council of 16 June 2000 and 1 November 2001, to participate in certain provisions of the Schengen *acquis*, as specified in these letters,

Having regard to the Commission's opinion of 14 September 2000 on the request,

Whereas:

(1) Ireland has a special position in respect of matters covered by Title IV of Part Three of the Treaty establishing the European Community, as recognised in the Protocol on the position of the United Kingdom and Ireland and in the Protocol on the application of certain aspects of Article 14 of the Treaty establishing the European Community to the United Kingdom and to Ireland, annexed by the Treaty of Amsterdam to the Treaty on European Union and to the Treaty establishing the European Community.

(2) The Schengen *acquis* was conceived and functions as a coherent ensemble to be fully accepted and applied by all States supporting the principle of the abolition of checks on persons at their common borders.

(3) The Schengen Protocol provides for the possibility for Ireland to participate in some of the provisions of the Schengen *acquis*, because of the said special position of Ireland.

(4) Ireland will assume the obligations of a Member State arising from the Articles of the 1990 Schengen Convention listed in this Decision.

(5) Having regard to the aforementioned special position of Ireland, Ireland will not participate by virtue of this Decision in those provisions of the 1990 Convention implementing the Schengen Agreement of 14 June 1985 (hereinafter referred to as the 'Schengen Convention') which concern borders.

(6) Taking account of the serious matters addressed by Articles 26 and 27 of the Schengen Convention, Ireland will apply these articles, together with the measures referred to in this Decision which build upon these articles.

(7) Ireland has requested to participate in the ensemble of the provisions of the Schengen *acquis* concerning the establishment and operation of the Schengen information system (hereinafter referred to as the 'SIS'), except in respect of the provisions concerning the alerts referred to in Article 96 of the Schengen Convention and the other provisions which relate to those alerts.

(8) It is the view of the Council that any partial participation by Ireland in the Schengen *acquis* must respect the coherence of the subject areas which constitute the ensemble of this *acquis*.

(9) The Council thus recognises the right of Ireland to make, in accordance with Article 4 of the Schengen Protocol, a request for partial participation, noting at the same time that it is necessary to consider the impact of such participation by Ireland in the provisions concerning the establishment and operation of the SIS on the interpretation of the other relevant provisions of the Schengen *acquis* and on its financial implications.

(10) The procedure set out in Article 2(1) of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway on the establishment of rights and obligations between Ireland and the United Kingdom of Great Britain and Northern Ireland, on the one hand, and the Republic of Iceland and the Kingdom of Norway, on the other, in areas of the Schengen *acquis* which apply to these States [1] has been observed,

[1] OJ L 15, 20.1.2000, p. 2.

HAS DECIDED AS FOLLOWS:

Article 1

Ireland shall participate in the following provisions of the Schengen *acquis*:

(a) in respect of the provisions of the Schengen Convention, its related Final Act and Joint Statements:

(i) Articles 26 and 27;

Article 39;

Article 44;

Articles 46 and 47, except for 47(2)(c);

Articles 48 to 51;

Articles 52 and 53;

Articles 54 to 58;

Article 59;

Articles 61 to 66;

Articles 67 to 69;

Articles 71 to 73;

Articles 75 and 76;

Articles 126 to 130 to the extent that they relate to the provisions in which Ireland participates by virtue of this subparagraph;

Joint Declaration 3 to the Final Act on Article 71(2);

(ii) the following provisions concerning the Schengen information system to the extent that they do not relate to Article 96:

Article 92;

Articles 93 to 95;

Articles 97 to 100;

Article 101, except paragraph 2 thereof;

Articles 102 to 108;

Articles 109 to 111, in respect of personal data registered in the national part of the SIS of Ireland;

Articles 112 and 113;

Article 114, in respect of personal data registered in the national part of the SIS of Ireland;

Articles 115 to 118;

(iii) other provisions concerning the Schengen information system:

Article 119;

(b) in respect of the provisions of the Agreements of Accession to the Schengen Convention, their Final Acts and Common Declarations:

(i) the Agreement signed on 27 November 1990 on Accession of the Italian Republic: Article 4;

(ii) the Agreement signed on 25 June 1991 on Accession of the Kingdom of Spain: Article 4 and Final Act, Part III, Declaration 2;

(iii) the Agreement signed on 25 June 1991 on Accession of the Portuguese Republic: Articles 4, 5 and 6;

(iv) the Agreement signed on 6 November 1992 on Accession of the Hellenic Republic: Articles 3, 4 and 5 and Final Act, Part III, Declaration 2;

(v) the Agreement signed on 28 April 1995 on Accession of the Republic of Austria: Article 4;

(vi) the Agreement signed on 19 December 1996 on Accession of the Kingdom of Denmark: Articles 4, and 6 and Final Act, Part II, Joint Declaration 3;

(vii) the Agreement signed on 19 December 1996 on Accession of the Republic of Finland: Articles 4 and 5 and Final Act, Part II, Joint Declaration 3;

(viii) the Agreement signed on 19 December 1996 on Accession of the Kingdom of Sweden: Articles 4 and 5 and Final Act, Part II, Joint Declaration 3;

(c) in respect of the provisions of the following Decisions of the Executive Committee established by the Schengen Convention, to the extent that they relate to the provisions in which Ireland participates by virtue of subparagraph (a):

(i) SCH/Com-ex (93) 14 (improving practical cooperation between the judicial authorities to combat drug trafficking);

SCH/Com-ex (94) 28 rev (certificate provided for in Article 75 for transport of drugs and/or psychotropic substances);

SCH/Com-ex (98) 26 def (setting up the Schengen implementing Convention Standing Committee), subject to an internal arrangement specifying the modalities of participation of Irish experts in missions carried out under the auspices of the relevant Council working party;

SCH/Com-ex (98) 51 rev 3 (cross border police cooperation in the area of crime prevention and detection when requested);

SCH/Com-ex (98) 52 (handbook on cross-border police cooperation);

SCH/Com-ex (99) 1 rev 2 (drugs situation);

SCH/Com-ex (99) 6 (telecommunication);

SCH/Com-ex (99) 8 rev 2 (payment to informers);

SCH/Com-ex (99) 11 rev 2 (agreement on cooperation in proceedings for road traffic offences);

SCH/Com-ex (99) 18 (improvement of police cooperation in preventing and detecting crimes);

(ii) SCH/Com-ex (97) 2 rev 2 (awarding the tender for the SIS II preliminary study);

SCH/Com-ex (97) 18 (contributions from Norway and Iceland to the CCIS operation costs);

SCH/Com-ex (97) 24 (future of SIS);

SCH/Com-ex (97) 35 (CCIS Financial Regulations);

SCH/Com-ex (98) 11 (CCIS with 15/18 connections);

SCH/Com-ex (99) 5 (Sirens Manual);

(d) in respect of the provisions of the following Declarations of the Executive Committee established by the Schengen Convention, to the extent that they relate to the provisions in which Ireland participates by virtue of subparagraph (a):

(i) SCH/Com-ex (96) decl 6 rev 2 (declaration on extradition);

(ii) SCH/Com-ex (97) decl 13 rev 2 (abduction of minors);

SCH/Com-ex (99) decl 2 rev (SIS structure).

Article 2

1. The competent Ministry referred to in the provision of Article 65(2) of the Schengen Convention shall be the Department of Justice, Equality and Law Reform.

2. Ireland shall participate in the following Council acts:

(a) Decision 2000/586/JHA of 28 September 2000 establishing a procedure for amending Articles 40(4) and (5), 41(7) and 65(2) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders [1] in so far as that Decision relates to Article 65(2) of the 1990 Convention;

(b) Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals [2];

(c) Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 [3].

Article 3

The delegation in the joint supervisory authority, set up under Article 115 of the Schengen Convention, representing the national supervisory authority of Ireland shall not be entitled to take part in voting procedures within the joint supervisory authority on matters relating to the application of provisions of the Schengen *acquis*, or building upon the Schengen *acquis*, in which Ireland does not participate.

Article 4

1. Without prejudice to Article 6(3), the provisions referred to in Article 1 shall be put into effect, between Ireland and the Member States and other States for which these provisions have already been put into effect when the preconditions for the implementation of those provisions have been fulfilled in all of these Member States and other States, by a decision taken by the Council. The Council may decide to set different dates for the putting into effect of different provisions by subject area.

2. Before the provisions referred to in Article 1 are put into effect in accordance with paragraph 1, the Council shall decide on the detailed legal and technical arrangements, including provisions relating to data protection, concerning the participation of Ireland in the provisions referred to in of Article 1(a)(ii) and (iii), (c)(ii) and (d)(ii).

3. Any decision under paragraphs 1 and 2 shall be taken by the Council, acting with the unanimity of its members referred to in Article 1 of the Schengen Protocol and of the representative of the Government of Ireland. The representative of the Government of the United Kingdom shall also participate in the decisions of the Council under this Article.

Article 5

1. Ireland shall be bound by the following Council acts:

(a) Decision 1999/323/EC of 3 May 1999 on the establishment of a Financial Regulation governing the budgetary aspects of the management by the Secretary-General of the Council of contracts concluded in his name, on behalf of certain Member States, relating to the installation and the functioning of the 'Help Desk Server' of the Management Unit and of the Sirens Network Phase II [4], and any amendments thereto;

(b) Decision 2000/265/EC of 27 March 2000 on the establishment of a Financial Regulation governing the budgetary aspects of the management by the Deputy Secretary-General of the Council, of contracts concluded in his name, on behalf of certain Member States, relating to the installation and the functioning of the communication infrastructure for the Schengen environment, 'Signet' [5], and any amendments thereto;

(c) Decision 2000/777/EC of 1 December 2000 on the application of the Schengen *acquis* in Denmark, Finland and Sweden, and in Iceland and Norway [6];

(d) Regulation (EC) No 2424/2001 of 6 December 2001 on the development of the second generation Schengen information system (SIS II) [7];

(e) Decision 2001/886/JHA of 6 December 2001 on the development of the second generation Schengen information system (SIS II) [8].

2. Ireland shall bear all the costs involved in the technical achievement of its partial participation in the operation of the SIS.

Article 6

1. This Decision shall be published in the *Official Journal of the European Communities*.

It shall take effect on 1 April 2002.

[1] OJ L 248, 3.10.2000, p. 1.
[2] OJ L 149, 2.6.2001, p. 34.
[3] OJ L 187, 10.7.2001, p. 45.
[4] OJ L 123, 15.5.1999, p. 51.
[5] OJ L 85, 6.4.2000, p. 12. Decision as last amended by Decision 2000/664/EC (OJ L 278, 31.10.2000, p. 24).
[6] OJ L 309, 9.12.2000, p. 24.
[7] OJ L 328, 13.12.2001, p. 4.
[8] OJ L 328, 13.12.2001, p. 1.

2. From the date of adoption of this Decision, Ireland shall be deemed irrevocably to have notified the President of the Council under Article 5 of the Schengen Protocol that it wishes to take part in all proposals and initiatives which build upon the Schengen *acquis* referred to in Article 1.

3. Measures building upon the Schengen *acquis* referred to in Article 1 which have been adopted prior to the adoption of the Council Decision referred to in Article 4(1), including the measures referred to in Article 2(2)(a) to (c), shall take effect for Ireland on the date or dates on which the Council decides, under Article 4, to put the *acquis* referred to in Article 1 into effect for Ireland unless the measure itself provides for a later date.

Done at Brussels, 28 February 2002.

For the Council

The President

A. ACEBES PANIAGUA

COUNCIL DECISION

of 28 February 2002

on the granting of exceptional national aid by the Government of the French Republic for the distillation of certain wine sector products

(2002/193/EC)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the request made by the Government of the French Republic on 21 January 2002,

Whereas:

(1) Article 29 of Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine [1] allows Community support for the distillation of wines in order to support the wine market and, as a consequence, facilitate the continuation of supplies of wine distillate.

(2) Article 30 of the above Regulation allows a crisis distillation measure if there is an exceptional case of wine market disturbance caused by serious surpluses and/or problems of quality.

(3) The 2000/01 wine year in France brought a further worsening of the market situation, with an increase in table wine stocks and a fall in the volumes sold compared with the 1999/2000 wine year. On 31 July 2001 stocks of this type of wine stood at approximately 17,5 million hectolitres, which is an increase of 62 % compared with the previous two years.

(4) This situation on the French market is attributable to more plentiful Community production over the last two wine years, in spite of the drop in French production in 2000/01, and to lower consumption of ordinary table wines; at the same time, local wines made from a single grape variety *(vins de pays de cépages)* are facing competition from new wine-producing countries.

(5) These are the circumstances responsible for the particularly dire situation in the 2001/02 wine year, which has led to a sharp fall in incomes and prices in the sector, down 18 % in 2001 and 25 % in 2002.

(6) Implementation of distillation arrangements under the said Article 29 did not succeed in restoring the balance of the French market, owing in particular to the relatively low take-up rate at the proposed price, with wine prices on the French market remaining higher than the distillation price, despite the worsened situation and owing to a high abatement rate in the contracts concluded at Community level.

(7) This imbalance on the table wine market has led the French Government to request a crisis distillation measure under Article 30 of the said Regulation for 4,5 million hectolitres of table wine. Opening of that crisis distillation measure involves a price to be paid to the producer. The price adopted previously was EUR 1,914 per % vol, per hectolitre, which the French Government considers quite insufficient to restore market balance.

(8) To deal with the situation, the French Government is planning, within the 4 million hectolitre quota approved on 8 February 2002 by the Management Committee for Wine and on a proposal from the Commission, to grant exceptional national aid to producers who supply wine for the distillation referred to in Article 30 of the said Regulation, so as to bring the price paid to the producer for distillation purposes to a level not exceeding EUR 2,744 per % vol, per hectolitre, subject to a maximum cost of this national measure of EUR 39,84 million.

(9) Exceptional circumstances therefore exist, making it possible to consider such aid, by way of derogation and to the extent strictly necessary to remedy the imbalance which has arisen, to be compatible with the common market on the terms specified in this Decision,

HAS ADOPTED THIS DECISION:

Article 1

Exceptional aid by the French Government for the distillation of 4 million hectolitres of table wine on French territory totalling not more than EUR 39,84 million, for the amount necessary to bring the price of wine up to EUR 2,744 per % vol per hectolitre in the context of the implementation of crisis distillation under Article 30 of Regulation (EC) No 1493/1999, shall be considered compatible with the common market.

[1] OJ L 179, 14.7.1999, p. 1. Regulation as last amended by Regulation (EC) No 2585/2001 (OJ L 345, 29.12.2001, p. 10).

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 28 February 2002.

For the Council
The President
A. ACEBES PANIAGUA

COUNCIL DECISION

of 28 February 2002

on the granting of exceptional national aid by the Government of the Italian Republic for the distillation of certain wine sector products

(2002/194/EC)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the request made by the Government of the Italian Republic on 31 January 2002,

Whereas:

(1) Article 29 of Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine [1] allows Community support for the distillation of wines in order to support the wine market and, as a consequence, facilitate the continuation of supplies of wine distillate.

(2) Article 30 of the above Regulation allows a crisis distillation measure if there is an exceptional case of wine market disturbance caused by serious surpluses and/or problems of quality.

(3) The 2001/02 wine year is characterised by a crisis situation which may be attributed to an imbalance between supply and demand. This is due not so much to surplus production as to abundant supply on the domestic market because of the growing volume of stocks and of imports of wines from third countries. In particular, the Italian market has experienced considerable surpluses, in particular regarding white table wines; thus the level of table wine stocks has exceeded the 1999 level by 70 %. Furthermore, the average price for this type of wine has fallen by 23 % as compared with the 1998/99 wine year, resulting in a significant reduction in producers' income.

(4) Voluntary distillation of table wine intended to supply the potable alcohol market provided for in Article 29 of Regulation (EC) No 1493/1999 has not made it possible to improve the situation on the Italian market, as the contracts concluded have attained a level equivalent to double the authorised volumes.

(5) This imbalance on the table wine market has led the Italian Government to request a crisis distillation measure under Article 30 of the said Regulation for 5 million hectolitres of table wine. Opening of that crisis distillation measure involves a price to be paid to the producer. The price adopted previously was EUR 1,914 per % vol, per hectolitre, which the Italian Government considers insufficient to bring about genuine improvement on the market.

(6) To deal with the situation, the Italian Government is planning, within the 4 million hectolitre quota approved on 8 February 2002 by the Management Committee for Wine and on a proposal from the Commission, to grant exceptional national aid to producers who supply wine for the distillation referred to in Article 30 of the said Regulation, so as to bring the price paid to the producer for distillation purposes to a level not exceeding EUR 2,12 per % vol per hectolitre, subject to a maximum cost of this national measure of EUR 8,27 million.

(7) Exceptional circumstances therefore exist, making it possible to consider such aid, by way of derogation and to the extent strictly necessary to remedy the imbalance which has arisen, to be compatible with the common market on the terms specified in this Decision,

HAS ADOPTED THIS DECISION:

Article 1

Exceptional aid by the Italian Government for the distillation of 4 million hectolitres of table wine on Italian territory totalling not more than EUR 8,27 million, for the amount necessary to bring the price of wine up to EUR 2,12 per % vol per hectolitre in the context of the implementation of crisis distillation under Article 30 of Regulation (EC) No 1493/1999, shall be considered compatible with the common market.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 28 February 2002.

For the Council

The President

A. ACEBES PANIAGUA

[1] OJ L 179, 14.7.1999, p. 1. Regulation as last amended by Regulation (EC) No 2585/2001 (OJ L 345, 29.12.2001, p. 10).

COMMISSION

COMMISSION DECISION

of 17 October 2001

on the aid scheme which Italy intends to implement for the production, processing and marketing of products listed in Annex I to the Treaty (Law 81 of the region of Sicily of 7 November 1995)

(notified under document number C(2001) 3060)

(Only the Italian text is authentic)

(2002/195/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine [1],

Having called on interested parties to submit their comments pursuant to the provision cited above,

Whereas:

I. PROCEDURE

(1) By letter dated 6 December 1995, the Italian authorities notified the Commission under Article 88(3) of the Treaty, of Regional Law No 81 of the region of Sicily of 7 November 1995 laying down financial provisions for 1995 (hereinafter called 'Law No 81/1995'), relating to the production, processing and marketing of products listed in Annex I to the Treaty. By letter dated 2 May 1996, those authorities notified Regional Law No 18 of 6 April 1996 (hereinafter called 'Law No 18/1996') 'on measures to assist entrepreneurs and young people's cooperatives. Fund for agricultural mechanisation (ESA). Amendments to the rules. Extension', which amends Article 10 of Regional Law No 81/1995.

(2) The aid measures provided for in Law No 81/1995, application of which has been suspended pending a Commission decision under Article 87 of the Treaty, were entered by the Secretariat-General of the Commission in the register of aid measures notified under numbers:

N 408/B/96: production, processing and marketing of products listed in Annex I to the Treaty, and

N 408/A/96: other sectors.

[1] OJ L 179, 14.7.1999, p. 1. See recital 36 of this Decision. The Regulation repeals Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of market in wine, which repealed Council Regulation (EEC) No 337/79 of 5 February 1979 on the common organisation of the market in wine, as amended by Council Regulation (EC) No 454/80.

(3) The Commission examined and authorised under Articles 87 and 88 of the Treaty (by letter SG(97) D/07189 of 20 August 1997) aid N 408/A/96, concerning the aid measures contained in Law No 81/1995, if and in so far as those measures applied to sectors other than agriculture, fisheries and aquaculture. Application of the said measures in agriculture, fisheries and aquaculture was examined by the Commission in the context of aid N 408/B/96.

This Decision does not concern aid N 408/A/96.

(4) Additional information was transmitted by letters No 5657 of 9 August 1996, No 7382 of 30 October 1996, No 7694 of 13 November 1996 and No 2694 of 12 April 1996. On the basis of the information supplied by the Italian authorities, it is clear that Articles 4 and 9 of Law No 81/1995 apply to agriculture, fisheries and aquaculture, while the authorities did not provide an exhaustive answer to the Commission's questions about the field of application of Article 8, and in particular whether it applied to the production, processing and marketing of products listed in Annex I to the Treaty.

(5) By letter dated 23 January 1997, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the aid.

(6) 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.

(7) The Italian authorities submitted comments by letters Nos 3155 and 3899, dated 8 May 1997 and 12 June 1997, respectively. The Commission received no comments from other interested parties.

(8) By letter No 9365 of 23 July 2001, recorded as received on 28 August 2001, the Italian authorities requested that Article 7(7) of Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([3]) be applied for Article 4 of Law No 81/1995, and that the Commission therefore take a decision within two months from the date of receipt of the request.

(9) This Decision concerns only the applicability of the aid measures in the sectors covered by Annex I to the Treaty (namely agriculture, meaning the primary production, processing and marketing of agricultural, fishery and aquaculture products).

II. **DESCRIPTION**

(10) The measures covered by this Decision are solely those provided for in Articles 4, 8 and 9 of Regional Law No 81/1995, described below in so far as they apply to the products listed in Annex I to the Treaty (agricultural and fishery products). In so far as the aid measures provided for by Law No 81/1995 apply to sectors other than agriculture, fisheries and aquaculture, they were examined and approved by the Commission, within the meaning of Articles 87 and 88 of the EC Treaty, by letter SG(97) D/07189 of 20 August 1997.

(11) *Article 4 of Regional Law No 81/1995*. Under this Article, the regional *Assessore* for agriculture is authorised 'to grant the aids provided for in Article 78 of Regional Law No 25/1993 to winegrowers who, having acquired a replanting right by virtue of Regulation (EEC) No 454/80 ([4]) and having suffered losses as a result of the drought in 1988 to 1990, submitted an application for the aid provided for in Regulation (EEC) No 1442/88 ([5]), on the same conditions'. For the purposes of this Article, ITL 2 000 million (approximately EUR 1 million) was earmarked for 1995.

([2]) OJ C 88, 19.3.1997, p. 17.
([3]) OJ L 83, 27.3.1999, p. 1.
([4]) See recital 36 of this Decision.
([5]) See recital 36 of this Decision.

In order to qualify for the aid concerned, winegrowing holdings must meet all three of the conditions laid down in that Article, in other words:

(i) they must have replanting rights within the meaning of Regulation (EEC) No 454/80 [6];

(ii) they must have been unable to use those rights because of the drought during 1988 to 1990;

(iii) they must have applied for the premium provided for in Regulation (EEC) No 1442/88 for the permanent abandonment of winegrowing areas.

These beneficiaries can obtain the contributions provided for in Article 78 of Regional Law No 25/93, which stipulates that winegrowing holdings which have applied to grub up and replant and which suffered losses as a result of the drought in 1988 to 1990 qualify for the aid provided for in Regulation (EEC) No 1442/88.

In substance, the aid is intended to compensate the winegrowers concerned for the fact that they were unable, because of the drought, to use replanting rights which expired during the years of the drought, by instead granting them premiums for the permanent abandonment of wine-growing areas.

(12) With regard to Article 4, in its letter dated 23 January 1997 initiating the procedure, the Commission set out the arguments reproduced in full in recitals 13 to 16 below.

(13) Regulation (EEC) No 1442/88 [7] on the granting, for the 1988/89 to 1997/98 wine years, of permanent abandonment premiums in respect of winegrowing areas [8] provides for the grant of aid (financed by the EAGGF Guarantee Section) to wine growers who permanently abandon production in accordance with the conditions laid down in the Regulation. The amount of the premium varies (see the third recital of the Regulation) according to the productivity of the areas concerned, and is designed to cover the cost of the grubbing-up operations, the loss of replanting rights and the loss of future income. It is clear that the first condition to be met is that the vineyard must be grubbed up (Article 4(2) of the Regulation: 'The grant of the premium shall be subject to a written declaration in which the applicant undertakes to grub up the vines on the areas in respect of which the premium has been applied for or to have them grubbed up'; Article 6: 'The amount of the permanent abandonment premium shall be paid [...] provided the applicant has furnished proof that grubbing up has in fact taken place'). In the case of the aid in question, it would seem that the aim of the regional authorities is not to encourage the permanent abandonment of areas currently under vines (the objective of Regulation (EEC) No 1442/88) but rather to compensate wine growers for not using a replanting right. The Sicilian legislation provides for aid of the same type as that referred to in Regulation (EEC) No 1442/88 (the purpose of which is to encourage the grubbing up of vineyards, the amount being calculated on the basis of the estimated loss incurred from such an operation) as a response to an operative event bearing no resemblance to the event giving rise to the aid part-financed by the Community. Having regard to the rules for calculating the aid referred to in the Community Regulation and the different nature of the events giving rise to aid in the case of Regulation (EEC) No 1442/88, on the one hand, and the Regional Law in question, on the other, the latter would undoubtedly lead to over-compensation of the cost borne by the beneficiaries.

(14) In the light of the foregoing, it is not possible to support the view that the Sicilian provision has a 'similar' objective to that of the Community scheme within the meaning of Article 19 of the Regulation in question: 'This Regulation shall not impede the granting of aid provided for by national rules designed to achieve objectives similar to those sought by this Regulation. The granting of such aid […] shall be subject to review on the basis of Articles 92, 93 and 94 of the Treaty'. The above considerations apply where the replanting rights under consideration are valid.

[6] The wording of Article 4 of the Regional Law contains inexact legal references: among the conditions laid down in that Article is possession of replanting rights acquired within the meaning of Regulation (EEC) No 454/80. At the time the Law was published, the provisions inserted by Regulation (EEC) No 454/80 in Regulation (EEC) No 337/79 had not been in force since 1 April 1987 (the date of entry into force of Regulation (EC) No 822/87 on the common organisation of the market in wine). In fact, the replanting rights had been acquired under Regulation (EEC) No 337/79.

[7] See recital 36 of this Decision.

[8] OJ L 132, 28.5.1998, p. 3. The period of validity of the Regulation was extended until the 1997/98 wine year by Regulation (EC) No 1595/96 (OJ L 206, 16.8.1996, p. 36).

(15) In the case in point, the replanting rights referred to in the regional provision in question (acquired under Regulation (EEC) No 337/79) are not even valid (since their period of validity was set at eight years by the previous common market organisation, so the 'last' replanting right acquired on the basis of that legislation expired at the latest eight years after 31 March 1987). In substance it seems that the regional aid in question is designed to grant the aid provided for in Regulation (EEC) No 1442/88 (for farmers who grub up their vineyards) to Sicilian wine growers who had acquired replanting rights pursuant to Regulation (EEC) No 337/79 and who, by reason of the weather in 1988 to 1990, were unable to exercise those rights. It would thus be a matter of retrospectively compensating them for the 'loss' of replanting rights which are no longer usable.

(16) Consequently, if in the case of a valid replanting right the grant of a Regulation (EEC) No 1442/88 type aid would have the effect of overcompensating for the cost to the winegrower, where a replanting right did not legally exist, the aid would simply be 'free' in the sense that it did not compensate for anything and would have to be regarded as an operating aid which was fundamentally incompatible with the common market. The aid in question relates to a sector covered, even as regards abandonment of production, by provisions deriving from the common organisation of the market. These provisions, according to the consistent case law of the Court of Justice, are complete and exhaustive in nature and prevent the Member States from adopting measures which might jeopardise them. In the light of the foregoing, the regional aid in question would appear to constitute an infringement of the Community provisions on the common organisation of the market in wine (Regulation (EEC) No 822/87); it would not therefore qualify for any of the exemptions provided for in Article 87(2) and (3) (ex Article 92(2) and (3)) of the Treaty.

(17) *Article 8 of Regional Law No 81/1995* provides for an ITL 10 000 million increase in the working capital of the CRIAS (Cassa regionale per il credito alle imprese artigiane) to be used to grant subsidised short-term loans to craft undertakings.

(18) In its letter of 23 January 1997 initiating the procedure, the Commission based its arguments on the detailed considerations set out in recitals 19 and 20 below.

(19) It is not possible to rule out the possibility that craft undertakings engaged in producing, processing and marketing products listed in Annex I to the Treaty fall within the scope of this Article. By letter No 23927 of 17 June 1996, the Commission asked the Italian authorities to specify what sectors of activity were covered by the definition of craft undertaking and, in particular, whether it included the production, processing and marketing of agricultural products. In their reply No 7382 of 30 October 1996, the Italian authorities admitted that, while agricultural holdings producing agricultural products did not qualify for such loans, in the region concerned the term craft undertaking had sometimes been interpreted in ad hoc legislative texts in such a way as to include some processing and marketing activities (for investments in the dairy sector, for instance), and that it was therefore necessary to refer to national Law No 443 of 8 August 1985 (framework law on craft activities) to interpret the scope of the Article concerned. That national Law excludes agricultural undertakings engaged in production from the definition of craft undertakings. In the light of the foregoing, it is not possible to rule out that the subsidised short-term loans granted by the CRIAS also relate to craft undertakings engaged in processing and/or marketing agricultural products. This measure, being a new aid scheme remaining in force after 1 January 1996 ([9]), should be assessed under the guidelines on national aids in the form of subsidised short-term loans ([10]), but in the absence of any further information, these measures cannot usefully be assessed in the light of those guidelines. Consequently, the Commission decided to initiate the procedure laid down in Article 88(2) (ex Article 93(2)) of the Treaty in respect of the aid provided for in Article 8 of Regional Law No 81/1995, in so far as it is applicable to the production and/or processing and/or marketing of products listed in Annex I to the Treaty (i.e. to the extent that the exclusion of the 'agricultural sector' from its scope does not cover all these activities).

([9]) This is the date set by the Commission for the application of the new set of rules on national aids in the form of subsidised short-term loans to aid which is not 'existing' within the meaning of Article 88 (ex 93(1)) of the Treaty.
([10]) OJ C 44, 16.2.1996.

(20) *Article 9 of Regional Law No 81/1995*. Article 9 of Regional Law No 81/1995 authorises the expenditure referred to in heading 05 of the Regional Ministry for Cooperation and increases regional budget heading No 75826 by ITL 3 000 million. The Italian authorities specified that the expenditure referred to in Article 9 of Regional Law No 81/1995 is for the refinancing of aid provided for in Regional Law No 26 of 27 May 1987, examined under Cases C-3/87 (approved by decision of 21 October 1987) and C-45/87 (approved by Decision SG(88) D/12824 of 8 November 1988). Law No 26 of 27 May 1987 was extended and some of its provisions amended by Regional Law No 25/90, which was examined and approved by the Commission in aid Case NN 27/92 (decision SG(92) D/15059 of 3 November 1992).

(21) The Commission decided to initiate the procedure provided for in Article 88(2) on the basis of the considerations set out in recital 22.

(22) The various laws listed above, which implement aid in the fisheries sector, were examined in the light of the guidelines for the assessment of State aids in the fisheries sector ([11]) which referred to compliance with the conditions set out in Council Regulation (EEC) No 4028/86 on Community measures to improve and adapt structures in the fisheries and aquaculture sector ([12]). The Commission does not have sufficient information at its disposal to assess whether the aid granted in the fisheries sector under Regional Law No 81/1995 is compatible with the rules in force at the time of notification, i.e. the guidelines for the examination of State aids to fisheries and aquaculture ([13]), which refer to compliance with the conditions set out in Council Regulation (EC) No 3699/93 of 21 December 1993 laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector and the processing and marketing of its products ([14]).

III. **COMMENTS FROM ITALY**

(23) By letters No 3155 of 8 May 1997 and No 3899 of 12 June 1997, the Italian authorities commented only on Articles 4 and 8 of Law No 81/1995. Regarding Article 4 in particular, they pointed out the following facts.

(24) The winegrowers in question were unable to use replanting rights already acquired because those rights expired during the years in which the drought occurred. Under the arrangements provided for in Law No 25/93 it would be possible to compensate farmers for the loss of an acquired replanting right and for lack of future income, in consideration of the fact that the objective sought by Regulation (EEC) No 1442/88 ([15]), namely reduction of winegrowing potential, was achieved in any event, albeit for reasons independent of the will of the farmer.

(25) The winegrowers really did grub up their vineyards, and bore the grubbing costs, but received no State assistance. The authorities are therefore proposing to calculate the aid using the production average of the five wine years preceding the grubbing operation to grant the level provided for in Regulation (EEC) No 1442/88, paying the premium at the ECU value of the reference wine year.

(26) The Regional Law stipulates that the premium may be paid only where a replanting right existed which was valid during the five wine years following the grubbing operations, and provided no grubbing premiums were paid.

(27) Regarding Article 8 in particular, the Italian authorities specified that the working capital and the available funds, abolished by that same Article, were paid into a single, separately-managed fund, with a view to providing assistance to craft undertakings as provided for in Article 64 of Regional Law No 6/97. At the time the ITL 10 billion (approximately EUR 5 million) referred to in Article 8 were transferred, the competent regional *Assessorato* had advised the transfer but recommended that the CRIAS should not permit craft undertakings engaged in producing, processing or marketing agricultural products to qualify for the aid.

([11]) OJ C 269, 19.10.1985.
([12]) OJ L 376, 31.12.1986, p. 7.
([13]) OJ C 260, 17.9.1994, p. 3.
([14]) OJ L 346, 31.12.1993, p. 1. Consolidated version in Regulation (EC) No 2468/98 (OJ L 312, 20.11.1998).
([15]) See recital 36 of this Decision.

(28) The Italian authorities have submitted no comments regarding Article 9 of Law No 81/1995.

IV. **ASSESSMENT OF THE AID**

(a) **Article 4 of Law No 81/1995**

(29) Article 4 of Law No 81/1995 provides for aid to winegrowers who, having acquired replanting rights under Regulation (EEC) No 454/80/EEC ([16]) and suffered damage as a result of the drought of 1988 to 1990, applied for the aid provided for in Regulation (EEC) No 1442/88 ([17]), on the same conditions.

(30) Article 87(1) of the Treaty stipulates that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market. The Commission considers that in the case in point the conditions are met for applying Article 87(1) in respect of all the measures concerned. Article 71 of Council Regulation (EC) No 1493/1999 stipulates that Articles 87, 88 and 89 of the Treaty apply to production of and trade in the products covered by it.

(31) Article 4 of the Law under examination provides for aid intended to compensate winegrowers for damage suffered because they were unable to use a replanting right acquired under Regulation (EEC) No 337/79, provided they had applied for the aid provided in Regulation (EEC) No 1442/88 for permanent abandonment. The winegrowers receiving this State aid enjoy economic advantages which they would not otherwise enjoy in the normal course of their business and they thereby improve their competitive position in relation to other farmers in the Community who do not receive the same aid.

(32) This aid affects competition and trade between Member States. The beneficiaries carry out an economic activity in a sector which is the subject of trade between the Member States, namely the wine sector. In 1995, intra-Community trade in the wine sector amounted to 31 346 000 hl and 152 848 000 hl was produced in the Community of 12, including 58 776 000 hl by Italy (i.e. 38 % of total production in the Community of 12). In addition, Italy accounted for 34,1 % of world trade in the wine sector. Sicily is a wine-producing region; in 1995 it accounted for 18 % of wine production in Italy (on approximately 164 000 ha). The measure in question is therefore a State aid within the meaning of Article 87(1) of the Treaty.

(33) The prohibition on granting State aid is not unconditional. In this case, the exceptions provided for in Article 87(2) of the Treaty clearly do not apply and the Italian authorities did not even invoke them. According to the information available, the drought cannot be considered an exceptional occurrence within the meaning of Article 87(2)(b). Given the nature of the notified scheme, the only exemption which could be applied is that provided for in Article 87(3). It is therefore necessary to ascertain whether application of the proposed measures can benefit from this exemption.

(34) Article 4 of Law No 81/1995 provides for the grant of aid to winegrowers who, having acquired replanting rights under Regulation (EEC) No 454/80 but been unable to use them because of the drought in 1988 to 1990, applied for the aid provided for by Regulation (EEC) No 1442/88. The rights to which the Italian authorities refer, and which constitute the prerequisite for the grant of aid, were acquired under Regulation (EEC) No 337/79 on the common organisation of the market in wine.

([16]) See recital 36 of this Decision.
([17]) See recital 36 of this Decision.

(35) Since the Italian authorities correctly informed the Commission of the Law in question as provided for in Article 88(3) of the Treaty, it is to be assessed in accordance with the rules set out in the Community guidelines for State aid in the agricultural sector ([18]) (hereinafter called 'the guidelines'). Point 23.3 of the guidelines states that these guidelines are to apply to new State aids, including aids notified by Member States but on which a Commission decision is still pending, with effect from 1 January 2000.

(36) Regulation (EC) No 1493/1999 repealed previous Regulations (EEC) No 822/87 on the common organisation of the market in wine, which itself repealed Regulations (EEC) No 337/79, and (EEC) No 1442/88 on the granting of permanent abandonment premiums in respect of winegrowing areas. Article 4 of Regulation (EC) No 1493/1999 referred to above concerns replanting rights and Articles 8, 9 and 10 cover permanent abandonment premiums.

(37) Under Article 4 of Regulation (EC) No 1493/1999, replanting rights can be acquired in two ways: either they can be similar rights acquired under prior Community or national legislation, or they are granted by the Member States to producers who undertake to grub up an area of vines before the end of the third year after the year in which the area was planted. The replanting rights concerned had actually been acquired under prior Community legislation. The wording of Article 4 of Law No 81/1995 is quite clear on this point (the aid may be granted only to winegrowers who, 'having acquired a replanting right under Regulation (EEC) No 454/80 and suffered damage as a result of the drought of 1988 to 1990, applied for the aid provided for in Regulation (EEC) No 1442/88, on the same conditions'). It must therefore be proved that these rights are still valid and that they can be converted into permanent abandonment premiums.

(38) The winegrowing holdings in question bore the grubbing costs in exchange for the possibility of exercising replanting rights on the grubbed or equivalent surfaces. In the case in point, the replanting rights (acquired under Regulation (EEC) No 337/79 ([19])) are no longer valid. Annex IVa(C) to Regulation (EEC) No 337/79 (Annex inserted by Regulation (EEC) No 454/80) defines replanting rights as 'the right, under the conditions laid down in this Regulation, to plant vines, during the eight years following the year in which regularly declared grubbing took place, on a pure cultivation area equivalent to that in which vines were grubbed'. As these producers did not use their replanting rights before the expiry date (the Italian authorities have stated that the rights concerned expired in 1988 to 90), they were no longer valid at the time when the Law under examination was notified and *a fortiori* they are not valid within the meaning of the first indent of Article 4 of Regulation (EC) No 1493/1999.

(39) Since replanting rights acquired under Regulation (EEC) No 337/79 have expired, any aid to compensate for those rights would be retrospective aid incompatible with point 3.6 of the guidelines, which stipulates that aid granted retrospectively in respect of activities which have already been undertaken by the beneficiary cannot be considered to contain the necessary incentive element, and must be considered to constitute operating aid which is simply intended to relieve the beneficiary of a financial burden. Except in the case of aid schemes which are compensatory in nature, all aid schemes should therefore provide that no aid may be granted in respect of work begun or activities undertaken before an application for aid has been properly submitted to the competent authority concerned.

(40) The only case in which retrospective aid could be granted in the light of the guidelines, once it had been found to be compatible with the rules of the relevant common market organisation, is that of schemes which are compensatory in nature. In the case in point, it must therefore be ascertained whether point 11 of the guidelines, concerning 'aids to compensate for damage to agricultural production or the means of agricultural production', in this specific case aid intended to compensate farmers for losses resulting from bad weather (the drought in 1988 to 90), is applicable. In fact, in their letter No 3899 of 12 June 1997, the Italian authorities linked the failure to use the replanting

([18]) OJ C 28, 1.2.2000, p. 2.
([19]) As amended by Regulation (EEC) No 454/80.

rights (and therefore the losses suffered) with the drought. Point 11.1.2 of the guidelines nevertheless stipulates that, in order to avoid a risk of distorting the conditions of competition, the Commission considers it important to ensure that, subject to administrative and budgetary constraints, aid to compensate farmers for damage caused to agricultural production is paid as soon as possible after the occurrence of the adverse event concerned. Where aid is paid only several years after the occurrence of the event in question, there is a real danger that the payment of such aid will produce the same economic effects as operating aid. This is particularly the case where aid is paid retrospectively in respect of claims which were not properly documented at the time. Therefore, in the absence of a specific justification, resulting for example from the nature and extent of the event, or the delayed or continuing nature of the damage, the Commission will not approve proposals for aid which are submitted more than three years after the occurrence of the event. In the case in point, that period has expired and the authorities have provided no information with which to analyse the nature and extent of the event, or the delayed or continuing effect of the damage, which could justify extending the three-year deadline laid down in the guidelines.

(41) The aid cannot even be considered to be aid for closing production capacity within the meaning of point 9 of the guidelines. Indeed, if this aid is not to be considered as pure operating aid in favour of the holdings concerned, it must be demonstrated to be in the interest of the sector as a whole. This premium compensates the Sicilian producers in question for grubbing up carried out almost 13 years before the aid was notified and therefore it in no way serves as an incentive to benefit the sector and must accordingly be considered as pure operating aid.

(42) Moreover, an essential requirement for the grant of any State aid in the agricultural sector is that it does not interfere with the mechanisms of the common organisation of the market for the product concerned. But beneficiaries under Article 4 of Law No 81/1995 do not qualify for the permanent abandonment premium under Regulation (EC) No 1493/1999. Chapter II of Title II of Regulation (EC) No 1493/1999 (Articles 8 and 9) states that the premium may be granted in return for the permanent abandonment of winegrowing on a particular area. The premium may be granted, subject to the provisions of this Chapter, to producers of winegrowing areas cultivated for the production of wine grapes. The winegrowers in question were unable to apply for the permanent abandonment premiums under Regulation (EC) No 1493/1999 because the areas had not been cultivated since the 1981/82 wine year (final date for grubbing). Any aid granted to those winegrowers would therefore be incompatible with the rules of the common organisation of the market.

(43) Even if Articles 87, 88 and 89 are fully applicable to the sectors covered by the common organisations of the markets, their application nevertheless remains subject to the provisions of the relevant Regulations. In other words, recourse by a Member State to Articles 87, 88 and 89 cannot override the provisions of the Regulation governing the market organisation concerned. Under no circumstances, therefore, can the Commission approve aid which is incompatible with the provisions governing a common organisation of the market or which would impair the smooth operation of that organisation. Granting the aid provided for in Article 4 of Law No 81/1995 would contravene the rules of the common organisation of the market in wine laid down in Regulation (EC) No 1493/1999, as demonstrated in the previous point, and cannot therefore benefit from any of the exemptions provided for in Article 87(3) of the Treaty.

(44) Even an assessment of this aid in the light of the Community rules applicable prior to the entry into force of Regulation (EC) No 1493/1999, quoted in Article 4 of Law No 81/1995 (the rules under which the rights had been acquired), shows that none of the exemptions provided for in Article 87(3) of the Treaty apply.

(45) The purpose of Article 4 of the Law in question is to grant aid to winegrowers who acquired replanting rights within the meaning of Regulation (EEC) No 337/79 (rights which expired during the 1988 to 90 wine years, as stated by the Italian authorities) and who applied for premiums for the permanent abandonment of wine-growing areas, with a view to compensating them for the objective impossibility of exercising those rights. The Community legislator had provided for two different options:

— the possibility of definitively grubbing up the vineyards, compensated by the premiums provided for in Regulation (EEC) No 1442/88, or

— the possibility of grubbing up vineyards and obtaining replanting rights for an area equivalent to that grubbed up, as provided for in Regulation (EEC) No 337/79.

The producers in question originally chose the second option and obtained replanting rights in return for grubbing up.

(46) Under Article 19 of Regulation (EEC) No 1442/88, the grant of subsequent national aid is permitted provided such aid is designed to achieve objectives similar to those sought by that Regulation. The grant of such aid is subject to review on the basis of Articles 87, 88 and 89 (ex Articles 92, 93 and 94) of the Treaty. Additional State aid could therefore be granted only if the aid scheme and Regulation (EEC) No 1442/88 shared common objectives. The Law under examination provides for compensating replanting rights which the wine growers had acquired, but which they had not been able to use owing to the drought. The objective of the Law therefore does not correspond to that of Regulation (EEC) No 1442/88, since not using a replanting right cannot be considered the same as permanent abandonment carried out for the purposes of and under the terms of Regulation (EEC) No 1442/88. In addition, the detailed rules for implementing Regulation (EEC) No 1442/88 are not complied with, since at least one of the conditions sine qua non for receiving permanent abandonment premiums is not met. In fact, under Article 1(1) of the above Regulation, to qualify for permanent abandonment premiums, producers must hold cultivated winegrowing areas for the production of: wine, table grapes or grapes for drying, or cultivated winegrowing areas used as root-stock nurseries provided that the root-stock varieties are listed in the classification of vine varieties. The Sicilian wine growers clearly do not come in this category, since the areas for which they applied for the premiums were not cultivated at the time they submitted their applications within the meaning of Regulation (EEC) No 1442/88 (since the grubbing-up of the vineyards, the essential requirement for being granted replanting rights, had already been carried out).

(47) Moreover, as stated in recital 39 above, the replanting rights had expired in the 1988 to 1990 wine years and were therefore no longer valid, even at the time the measure in question was notified. Since the objective of the aid provided for in Article 4 of Law No 81/1995 is to compensate winegrowers for the loss of replanting rights they no longer had when the Law was adopted, it constitutes retrospective aid in breach of the rules on the common organisation of the market in wine, including Regulation (EEC) No 337/79, as amended by Regulation (EEC) No 454/80. The Commission must conclude that the measure cannot benefit from the exemptions provided for in Article 87(3) of the EC Treaty.

(b) **Article 8 of Regional Law No 81/1995**

(48) Article 8 of Regional Law No 81/1995 provides for an ITL 10 000 million increase in the working capital of the CRIAS (Cassa regionale per il credito alle imprese artigiane) to be used to grant subsidised short-term loans to craft undertakings.

(49) Article 8 of Law No 81/1995 provides for aid, in the form of subsidised short-term loans, intended for craft undertakings. These public funds are granted without any reciprocal action on the part of the undertakings which, thanks to these loans, improve their competitive position in relation to other farmers in the Community who do not receive the same aid. On the basis of the information received, it is impossible to rule out that this aid is also intended for undertakings engaged in processing and marketing products listed in Annex I to the Treaty. Article 51 of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations [20] stipulates that Articles 87 to 89 of the Treaty apply to aid granted by the Member States for measures to support rural development.

[20] OJ L 160, 26.6.1999, p. 80.

(50) The prohibition on granting State aid is not unconditional. In this case, the exceptions provided for in Article 87(2) of the Treaty clearly do not apply and the Italian authorities did not even invoke them. Given the nature of the notified scheme, the only exemption which could be applied is that provided for in Article 87(3).

(51) Since these are subsidised short-term loans, they must be assessed in the light of the Commission communication on State aids dealing with subsidised short-term loans in agriculture ([21]) and State aid discipline relating to subsidised short-term loans in agriculture ([22]). In their comments the Italian authorities did not provide sufficient information to rule out once and for all the possibility that this Article also applies to craft undertakings engaged in processing and marketing products listed in Annex I to the Treaty. Article 64 of Law No 6/97, which repeals Article 8, provides for a direct transfer of the resources intended for subsidised short-term loans to craft undertakings, without subsequently specifying the categories of craft undertakings to which the Law refers.

(52) In their letter No 3155 of 8 May 1997, the Italian authorities stated that when the transfer was made they had advised the CRIAS to debar from the aid craft undertakings engaged in producing, processing or marketing agricultural products.

(53) Such advice is of dubious value. In the first place, the very fact that such a recommendation might be appropriate clearly arises from the possibility of granting subsidised short-term loans to undertakings operating in the agricultural sector. Moreover, the Italian authorities have not denied that this possibility exists: in their letter No 7382 of 30 October 1996, while excluding undertakings operating in the primary production sector from the list of potential beneficiaries of the aid, they confirmed that in Sicily the term craft undertaking had sometimes been interpreted in ad hoc legislative texts in such a way as to include some processing and marketing activities (for investments in the dairy sector, for instance). In the case in point, according to the Italian authorities it is necessary to refer to national framework Law No 443 of 8 August 1985, Article 3 of which defines craft undertakings as […] those having as a predominant objective the production of goods and services, even semi-finished products, or the supply of services, excluding agricultural activities […]. The wording of the Law does not permit the conclusion that such exclusion also covers agricultural craft undertakings engaged in processing and/or marketing agricultural products.

(54) Once it is accepted that subsidised short-term loans can be granted to undertakings engaged in processing and/or marketing agricultural products under Article 8, the legal force of the 'recommendation' by the regional authorities must be analysed, that is, it must be determined whether such a recommendation could provide sufficient guarantee to be able to conclude with certainty that no undertakings engaged in producing, processing and/or marketing products listed in Annex I to the Treaty can qualify for loans under Article 8. In the abovementioned letter, it appears that at the time the funds were transferred, the competent regional *Assessorato* advised the transfer but recommended that craft undertakings engaged in producing, processing or marketing agricultural products should be excluded from eligibility for the aid. This formulation suggests that such a recommendation has no binding effect.

(55) In view of the foregoing, it cannot be ruled out that the scheme applies to craft undertakings engaged in processing and/or marketing agricultural products. Accordingly, the Article must be assessed in the light of the guidelines, the Commission communication on State aids: subsidised short-term loans in agriculture, and State aid discipline relating to subsidised short-term loans in agriculture. In particular, the Commission clearly states, in point A of its communication on State aids: subsidised short-term loans in agriculture, that subsidised short-term loans are operating aids and acceptable only in exceptional circumstances because of their potential to distort competition. The grant of such aid is therefore strictly conditional on compliance with the requirements laid down in the abovementioned documents.

([21]) OJ C 44, 16.2.1996, p. 2.
([22]) SG(97) D/10801, 19.12.1997.

(56) The abovementioned Community rules on subsidised short-term loans clearly show that these loans are operating aids, the grant of which must be subject to appropriate rules. In particular, according to points B and C of the abovementioned Commission communication, subsidised short-term loans must be made available to all operators in the region on a non-discriminatory basis irrespective of the agricultural activity for which the operator needs a short-term loan. The State must clearly identify the financing disadvantages of the sector, in terms of the gap between the interest rate paid by operators in the agricultural sector and the rate paid in the rest of the economy of the Member State concerned for short-term loans of a similar amount, not linked with investments. Under no circumstances may the amount of the loans exceed the cash-flow requirements arising from the fact that production costs are incurred before income from output sales is received. In no case may the aid be linked to particular marketing or production operations. Compliance with these conditions is essential if subsidised short-term loans are to be granted. The Italian authorities have given no information about these aspects.

(57) Under the terms set out above, the aid provided for in Article 8 must be seen as an operating aid. Where the production, processing and marketing of products listed in Annex I to the Treaty is concerned, point 3.5 of the guidelines states that in order to be considered compatible with the common market, any aid measure must contain some incentive element or require some counterpart on the part of the beneficiary. Unless exceptions are expressly provided for in Community legislation or in these guidelines, unilateral State aid measures which are simply intended to improve the financial situation of producers but which in no way contribute to the development of the sector, and in particular aids which are granted solely on the basis of price, quantity, unit of production or unit of the means of production are considered to constitute operating aids which are incompatible with the common market. Furthermore, by their very nature, such aids are also likely to interfere with the mechanisms of the common organisations of the markets.

(58) Since this measure concerns subsidised short-term loans which are by nature operating aids, the Commission must conclude that it cannot benefit from any of the exemptions provided for in Article 87(3) of the Treaty, in so far as it is applicable to undertakings engaged in producing, processing and marketing products listed in Annex I to the Treaty.

(c) **Article 9 of Law No 81/1995**

(59) Article 9 of Regional Law No 81/1995 authorises the expenditure referred to in heading 05 of the Regional Ministry for Cooperation and increases regional budget heading No 75826 by ITL 3 000 million.

(60) The regional aid in question is granted for the refinancing of expenditure already allocated and approved by the Commission in the context of the aid provided for in Regional Law No 26 of 27 May 1987, examined under Cases C-3/87 (approved by decision of 21 October 1987) and C-45/87 (approved by Decision SG(88) D/12824 of 8 November 1988). The existence of State aid had been checked in the context of these two aids.

(61) The prohibition on granting State aid is not unconditional. In this case, the exceptions provided for in Article 87(2) of the Treaty do not apply and the Italian authorities did not even invoke them. Given the nature of the notified scheme, the only exemption which could be applied is that provided for in Article 87(3).

(62) The aid provided for in Article 9 must be assessed on the basis of the guidelines published in OJ C 19 of 20 January 2001, which refer to Council Regulation (EC) No 2792/1999 laying down the detailed rules and arrangements for Community structural assistance in the fisheries sector. The Commission still does not have the information needed to assess the aid provided for in this Article. Italy must therefore be ordered to provide the information necessary to assess these aid measures so that the Commission can take its decision in full knowledge of the facts. Should Italy fail to comply, under Article 13 of Regulation (EC) No 659/1999 the Commission will take its decision on the basis of the information available.

V. **CONCLUSIONS**

(63) Under Article 7(7) of Regulation (EC) No 659/1999, should the Member State concerned so request, the Commission will, within two months, take a decision on the basis of the information available to it. If appropriate, where the information provided is not sufficient to establish compatibility, the Commission will take a negative decision.

(64) In the light of the foregoing, the Commission can conclude that the aid measures provided for in Articles 4 and 8 of the Regional Law under examination, in so far as they apply to agriculture, constitute State aid within the meaning of Article 87(1), which cannot benefit from any of the exemptions provided for in Article 87(3),

HAS ADOPTED THIS DECISION:

Article 1

The aid which Italy is planning to grant on the basis of Articles 4 and 8 of Law No 81 of the region of Sicily of 7 November 1995 for the production, processing and marketing of the products listed in Annex I to the Treaty, not including the fisheries and aquaculture sector, 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 with it.

Article 3

With regard to the fisheries and aquaculture sector, the Commission gives Italy notice, in accordance with Article 10(3) of Regulation (EC) No 659/1999, to provide it with the following information within one month:

— a list and the description of the aid measures provided for by Regional Law No 26 of 27 May 1987 to be refinanced under Article 9 of Regional Law No 81 of 8 November 1995,

— the precise terms on which this aid is granted: its exact nature, rate, rules regarding aggregation with other aid schemes, etc.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 17 October 2001.

For the Commission

Franz FISCHLER

Member of the Commission

CORRIGENDA

Corrigendum to Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community ('Overseas Association Decision')

(Official Journal of the European Communities L 314 of 30 November 2001)

On page 23, Article 62, first sentence:

for: 'Before 31 December 2007, the Council …',

read: 'Before 31 December 2011, the Council …'.