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Legislation

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(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1202/2002

of 4 July 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 5 July 2002.

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

Done at Brussels, 4 July 2002.

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

[1] OJ L 337, 24.12.1994, p. 66.
[2] OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 4 July 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	35,8
	070	52,8
	999	44,3
0707 00 05	052	97,2
	999	97,2
0709 90 70	052	71,4
	999	71,4
0805 50 10	388	65,1
	528	53,8
	999	59,4
0808 10 20, 0808 10 50, 0808 10 90	388	88,6
	400	104,7
	404	75,2
	508	81,0
	512	87,3
	524	72,9
	528	75,6
	720	91,2
	804	100,7
	999	86,4
0808 20 50	388	97,9
	512	85,4
	528	80,0
	800	65,2
	804	89,0
	999	83,5
0809 10 00	052	175,3
	064	154,9
	999	165,1
0809 20 95	052	353,2
	060	175,5
	068	140,2
	400	298,8
	999	241,9
0809 40 05	624	234,4
	999	234,4

(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 1203/2002

of 4 July 2002

fixing the representative prices and the additional import duties for molasses in the sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the market in sugar [1], as amended by Commission Regulation (EC) No 680/2002 [2],

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

Whereas:

(1) Regulation (EC) No 1422/95 stipulates that the cif import price for molasses, hereinafter referred to as the 'representative price', should be set in accordance with Commission Regulation (EEC) No 785/68 [4]. That price should be fixed for the standard quality defined in Article 1 of the above Regulation.

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

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

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

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

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 5 July 2002.

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[1] OJ L 178, 30.6.2001, p. 1.
[2] OJ L 104, 20.4.2002, p. 26.
[3] OJ L 141, 24.6.1995, p. 12.
[4] OJ L 145, 27.6.1968, p. 12.

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

Done at Brussels, 4 July 2002.

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

ANNEX

to the Commission Regulation of 4 July 2002 fixing the representative prices and additional import duties to imports of molasses in the sugar sector

(in EUR)

CN code	Amount of the representative price in 100 kg net of the product in question	Amount of the additional duty in 100 kg net of the product in question	Amount of the duty to be applied to imports in 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 (2)
1703 10 00 (1)	8,40	—	0
1703 90 00 (1)	12,07	—	0

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

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

COMMISSION REGULATION (EC) No 1204/2002

of 4 July 2002

fixing the export refunds on white sugar and raw sugar exported in its unaltered state

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector [1], amended by Commission Regulation (EC) No 680/2002 [2], and in particular the second subparagraph of Article 27(5) thereof,

Whereas:

(1) Article 27 of Regulation (EC) No 1260/2001 provides that the difference between quotations or prices on the world market for the products listed in Article 1(1)(a) of that Regulation and prices for those products within the Community may be covered by an export refund.

(2) Regulation (EC) No 1260/2001 provides that when refunds on white and raw sugar, undenatured and exported in its unaltered state, are being fixed account must be taken of the situation on the Community and world markets in sugar and in particular of the price and cost factors set out in Article 28 of that Regulation. The same Article provides that the economic aspect of the proposed exports should also be taken into account.

(3) The refund on raw sugar must be fixed in respect of the standard quality. The latter is defined in Annex I, point II, to Regulation (EC) No 1260/2001. Furthermore, this refund should be fixed in accordance with Article 28(4) of Regulation (EC) No 1260/2001. Candy sugar is defined in Commission Regulation (EC) No 2135/95 of 7 September 1995 laying down detailed rules of application for the grant of export refunds in the sugar sector [3]. The refund thus calculated for sugar containing added flavouring or colouring matter must apply to their sucrose content and, accordingly, be fixed per 1 % of the said content.

(4) The world market situation or the specific requirements of certain markets may make it necessary to vary the refund for sugar according to destination.

(5) In special cases, the amount of the refund may be fixed by other legal instruments.

(6) The refund must be fixed every two weeks. It may be altered in the intervening period.

(7) It follows from applying the rules set out above to the present situation on the market in sugar and in particular to quotations or prices for sugar within the Community and on the world market that the refund should be as set out in the Annex hereto.

(8) Regulation (EC) No 1260/2001 does not make provision to continue the compensation system for storage costs from 1 July 2001. This should accordingly be taken into account when fixing the refunds granted when the export occurs after 30 September 2001.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 5 July 2002.

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

Done at Brussels, 4 July 2002.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 178, 30.6.2001, p. 1.
[2] OJ L 104, 20.4.2002, p. 26.
[3] OJ L 214, 8.9.1995, p. 16.

ANNEX

to the Commission Regulation of 4 July 2002 fixing the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Destination	Unit of measurement	Amount of refund
1701 11 90 9100	A00	EUR/100 kg	42,04 (1)
1701 11 90 9910	A00	EUR/100 kg	41,08 (1)
1701 11 90 9950	A00	EUR/100 kg	(2)
1701 12 90 9100	A00	EUR/100 kg	42,04 (1)
1701 12 90 9910	A00	EUR/100 kg	41,08 (1)
1701 12 90 9950	A00	EUR/100 kg	(2)
1701 91 00 9000	A00	EUR/1 % of sucrose × net 100 kg of product	0,4570
1701 99 10 9100	A00	EUR/100 kg	45,70
1701 99 10 9910	A00	EUR/100 kg	44,66
1701 99 10 9950	A00	EUR/100 kg	44,66
1701 99 90 9100	A00	EUR/1 % of sucrose × net 100 kg of product	0,4570

(1) Applicable to raw sugar with a yield of 92 %; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 28(4) of Council Regulation (EC) No 1260/2001.

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

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

The numeric destination codes are set out in Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6).

COMMISSION REGULATION (EC) No 1205/2002

of 4 July 2002

fixing the maximum export refund for white sugar for the 45th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1430/2001

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector [1], as amended by Commission Regulation (EC) No 680/2002 [2], and in particular Article 27(5) thereof,

Whereas:

(1) Commission Regulation (EC) No 1430/2001 of 13 July 2001 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar [3], as amended by Regulation (EC) No 693/2002 [4], for the 2001/2002 marketing year, requires partial invitations to tender to be issued for the export of this sugar.

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

(3) Following an examination of the tenders submitted in response to the 45th partial invitation to tender, the provisions set out in Article 1 should be adopted.

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 45th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1430/2001 the maximum amount of the export refund is fixed at 47,739 EUR/100 kg.

Article 2

This Regulation shall enter into force on 5 July 2002.

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

Done at Brussels, 4 July 2002.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 178, 30.6.2001, p. 1.
[2] OJ L 104, 20.4.2002, p. 26.
[3] OJ L 192, 14.7.2001, p. 3.
[4] OJ L 107, 24.4.2002, p. 5.

COMMISSION REGULATION (EC) No 1206/2002
of 4 July 2002
prohibiting fishing for cod by vessels flying the flag of Spain

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy [1], as last amended by Regulation (EC) No 2846/98 [2], and in particular Article 21(3) thereof,

Whereas:

(1) Council Regulation (EC) No 2555/2001 of 18 December 2001 fixing for 2002 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where limitations in catch are required [3], lays down quotas for cod for 2002.

(2) In order to ensure compliance with the provisions relating to the quantity limits on catches of stocks subject to quotas, the Commission must fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated.

(3) According to the information received by the Commission, catches of cod in the waters of ICES divisions VIIb-k, VIII, IX, X CECAF 34.1.1 (EC waters) by vessels flying the flag of Spain or registered in Spain have exhausted the quota allocated for 2002. Spain has prohibited fishing for this stock from 26 June 2002. This date should be adopted in this Regulation also,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of cod in the waters of ICES divisions VIIb-k, VIII, IX, X CECAF 34.1.1 (EC waters) by vessels flying the flag of Spain or registered in Spain are hereby deemed to have exhausted the quota allocated to Spain for 2002.

Fishing for cod in the waters of ICES divisions VIIb-k, VIII, IX, X CECAF 34.1.1 (EC waters) by vessels flying the flag of Spain or registered in Spain is hereby prohibited, as are the retention on board, transhipment and landing of this stock caught by the above vessels after the date of application of this Regulation.

Article 2

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

It shall apply from 26 June 2002.

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

Done at Brussels, 4 July 2002.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 261, 20.10.1993, p. 1.
[2] OJ L 358, 31.12.1998, p. 5.
[3] OJ L 347, 31.12.2001, p. 1.

COMMISSION REGULATION (EC) No 1207/2002

of 4 July 2002

fixing the final amount of aid for dried fodder for the 2001/02 marketing year

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 603/95 of 21 February 1995 on the common organisation of the market in dried fodder [1], as last amended by Regulation (EC) No 1347/95 [2], and in particular Article 18 thereof,

Whereas:

(1) Article 3(2) and (3) of Regulation (EC) No 603/95 fix the amounts of aid to be paid to processors for dehydrated fodder and sun-dried fodder produced during the 2001/02 marketing year up to the maximum guaranteed quantities laid down in Article 4(1) and (3) of that Regulation.

(2) The information forwarded to the Commission by the Member States under the second indent of Article 15(a) of Commission Regulation (EC) No 785/95 of 6 April 1995 laying down detailed rules for the application of Council Regulation (EC) No 603/95 on the common organisation of the market in dried fodder [3], as last amended by Regulation (EC) No 1413/2001 [4], indicates that the maximum guaranteed quantity for dehydrated fodder has been exceeded, and that the maximum guaranteed quantity for sun-dried fodder has not been exceeded.

(3) It should therefore be laid down that the aid provided for in Regulation (EC) No 603/95 for dehydrated fodder should be reduced in accordance with Article 5 of that Regulation. The aid for sun-dried fodder should be paid to recipients in full.

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

HAS ADOPTED THIS REGULATION:

Article 1

The aid for dehydrated fodder and sun-dried fodder provided for in Article 3(2) and (3) respectively of Regulation (EC) No 603/95 shall be paid as follows for the 2001/02 marketing year:

(a) the amount of aid for dried fodder shall be reduced to EUR 68,70 per tonne in all the Member States;

(b) the aid for sun-dried fodder shall be paid in full.

Article 2

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

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

Done at Brussels, 4 July 2002.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 63, 21.3.1995, p. 1.
[2] OJ L 131, 15.6.1995, p. 1.
[3] OJ L 79, 7.4.1995, p. 5.
[4] OJ L 191, 13.7.2001, p. 8.

COMMISSION REGULATION (EC) No 1208/2002

of 4 July 2002

fixing the rates of the refunds applicable to certain cereal and rice-products exported in the form of goods not covered by Annex I to the Treaty

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ([1]), as last amended by Regulation (EC) No 1666/2000 ([2]), and in particular Article 13(3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ([3]), as last amended by Commission Regulation (EC) No 411/2002 ([4]), and in particular Article 13(3) thereof,

Whereas:

(1) Article 13(1) of Regulation (EEC) No 1766/92 and Article 13(1) of Regulation (EC) No 3072/95 provide that the difference between quotations of prices on the world market for the products listed in Article 1 of each of those Regulations and the prices within the Community may be covered by an export refund.

(2) Commission Regulation (EC) No 1520/2000 of 13 July 2000 laying down common implementing rules for granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds ([5]), as last amended by Regulation (EC) No 1052/2002 ([6]), specifies the products for which a rate of refund should be fixed, to be applied where these products are exported in the form of goods listed in Annex B to Regulation (EEC) No 1766/92 or in Annex B to Regulation (EC) No 3072/95 as appropriate.

(3) In accordance with the first subparagraph of Article 4(1) of Regulation (EC) No 1520/2000, the rate of the refund per 100 kilograms for each of the basic products in question must be fixed for each month.

(4) The commitments entered into with regard to refunds which may be granted for the export of agricultural products contained in goods not covered by Annex I to the Treaty may be jeopardised by the fixing in advance of high refund rates. It is therefore necessary to take precautionary measures in such situations without, however, preventing the conclusion of long-term contracts. The fixing of a specific refund rate for the advance fixing of refunds is a measure which enables these various objectives to be met.

(5) Now that a settlement has been reached between the European Community and the United States of America on Community exports of pasta products to the United States and has been approved by Council Decision 87/482/EEC ([7]), it is necessary to differentiate the refund on goods falling within CN codes 1902 11 00 and 1902 19 according to their destination.

(6) Pursuant to Article 4(3) and (5) of Regulation (EC) No 1520/2000 provides that a reduced rate of export refund has to be fixed, taking account of the amount of the production refund applicable, pursuant to Council Regulation (EEC) No 1722/93 ([8]), as last amended by Commission Regulation (EC) No 1786/2001 ([9]), for the basic product in question, used during the assumed period of manufacture of the goods.

(7) Spirituous beverages are considered less sensitive to the price of the cereals used in their manufacture. However, Protocol 19 of the Act of Accession of the United Kingdom, Ireland and Denmark stipulates that the necessary measures must be decided to facilitate the use of Community cereals in the manufacture of spirituous beverages obtained from cereals. Accordingly, it is necessary to adapt the refund rate applying to cereals exported in the form of spirituous beverages.

(8) It is necessary to ensure continuity of strict management taking account of expenditure forecasts and funds available in the budget.

(9) The Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The rates of the refunds applicable to the basic products appearing in Annex A to Regulation (EC) No 1520/2000 and listed either in Article 1 of Regulation (EEC) No 1766/92 or in Article 1(1) of Regulation (EC) No 3072/95, exported in the form of goods listed in Annex B to Regulation (EEC) No 1766/92 or in Annex B to amended Regulation (EC) No 3072/95 respectively, are hereby fixed as shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 5 July 2002.

([1]) OJ L 181, 1.7.1992, p. 21.
([2]) OJ L 193, 29.7.2000, p. 1.
([3]) OJ L 329, 30.12.1995, p. 18.
([4]) OJ L 62, 5.3.2002, p. 27.
([5]) OJ L 177, 15.7.2000, p. 1.
([6]) OJ L 160, 18.6.2002, p. 16.
([7]) OJ L 275, 29.9.1987, p. 36.
([8]) OJ L 159, 1.7.1993, p. 112.
([9]) OJ L 242, 12.9.2001, p. 3.

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

Done at Brussels, 4 July 2002.

For the Commission
Erkki LIIKANEN
Member of the Commission

ANNEX

to the Commission Regulation of 4 July 2002 fixing the rates of the refunds applicable to certain cereals and rice products exported in the form of goods not covered by Annex I to the Treaty

(EUR/100 kg)

CN code	Description of products (1)	Rate of refund per 100 kg of basic product	
		In case of advance fixing of refunds	Other
1001 10 00	Durum wheat:		
	– on exports of goods falling within CN codes 1902 11 and 1902 19 to the United States of America	—	—
	– in other cases	—	—
1001 90 99	Common wheat and meslin:		
	– on exports of goods falling within CN codes 1902 11 and 1902 19 to the United States of America	—	—
	– in other cases:		
	– – where Article 4(5) of Regulation (EC) No 1520/2000 applies (2)	—	—
	– – where goods falling within subheading 2208 (3) are exported	—	—
	– – in other cases	—	—
1002 00 00	Rye	1,666	1,666
1003 00 90	Barley		
	– where goods falling within subheading 2208 (3) are exported	—	—
	– in other cases	—	—
1004 00 00	Oats	—	—
1005 90 00	Maize (corn) used in the form of:		
	– starch:		
	– – where Article 4(5) of Regulation (EC) No 1520/2000 applies (2)	2,897	2,897
	– – where goods falling within subheading 2208 (3) are exported	1,149	1,149
	– – in other cases	2,897	2,897
	– glucose, glucose syrup, maltodextrine, maltodextrine syrup of CN codes 1702 30 51, 1702 30 59, 1702 30 91, 1702 30 99, 1702 40 90, 1702 90 50, 1702 90 75, 1702 90 79, 2106 90 55 (4):		
	– – where Article 4(5) of Regulation (EC) No 1520/2000 applies (2)	2,173	2,173
	– – where goods falling within subheading 2208 (3) are exported	0,862	0,862
	– – in other cases	2,173	2,173
	– where goods falling within subheading 2208 (3) are exported	1,149	1,149
	– other (including unprocessed)	2,897	2,897
	Potato starch of CN code 1108 13 00 similar to a product obtained from processed maize:		
	– where Article 4(5) of Regulation (EC) No 1520/2000 applies (2)	2,897	2,897
	– – where goods falling within subheading 2208 (3) are exported	1,149	1,149
	– in other cases	2,897	2,897

(EUR/100 kg)

CN code	Description of products (1)	Rate of refund per 100 kg of basic product	
		In case of advance fixing of refunds	Other
ex 1006 30	Wholly-milled rice:		
	– round grain	8,000	8,000
	– medium grain	8,000	8,000
	– long grain	8,000	8,000
1006 40 00	Broken rice	2,000	2,000
1007 00 90	Sorghum	—	—

(1) As far as agricultural products obtained from the processing of a basic product or/and assimilated products are concerned, the coefficients shown in Annex E of amended Commission Regulation (EC) No 1520/2000 shall be applied (OJ L 177, 15.7.2000, p. 1).
(2) The goods concerned fall under CN code 3505 10 50.
(3) Goods listed in Annex B of Council Regulation (EEC) No 1766/92 or referred to in Article 2 of Regulation (EEC) No 2825/93.
(4) For syrups of CN codes NC 1702 30 99, 1702 40 90 and 1702 60 90, obtained from mixing glucose and fructose syrup, the export refund may be granted only for the glucose syrup.

COMMISSION REGULATION (EC) No 1209/2002
of 4 July 2002
on the issuing of export licences for wine-sector products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 883/2001 of 24 April 2001, laying down detailed rules for implementing Council Regulation (EC) No 1493/1999 as regards trade with third countries in products in the wine sector [1], as last amended by Regulation (EC) No 812/2002 [2], and in particular Article 7 and Article 9(3) thereof,

Whereas:

(1) Article 63(7) of Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine [3], as last amended by Regulation (EC) No 2585/2001 [4], limits the grant of export refunds for wine-sector products to the volumes and expenditure contained in the Agreement on Agriculture concluded during the Uruguay Round multilateral trade negotiations.

(2) Article 9 of Regulation (EC) No 883/2001 lays down the conditions under which the Commission may take specific measures to prevent an overrun of the quantity laid down or the budget available under the said Agreement.

(3) On the basis of information on export licence applications available to the Commission on 3 July 2002, the quantity still available for the period until 31 August 2002, for destination zones 1: Africa and 3: eastern Europe, referred to in Article 9(5) of Regulation (EC) No 883/2001, could be exceeded unless the issue of export licences with advance fixing of the refund is restricted. Therefore, a single percentage for the acceptance of applications submitted from 26 June to 2 July 2002 should be applied and the submission of applications and the issue of licences suspended for these zones until 16 September 2002,

HAS ADOPTED THIS REGULATION:

Article 1

1. Export licences with advance fixing of the refund for wine-sector products for which applications are submitted from 26 June to 2 July 2002 under Regulation (EC) No 883/2001 shall be issued for 18,300 % of the quantities requested for zone 1: Africa and issued in concurrence with 6,687 % of the quantities requested for zone 3: eastern Europe.

2. The issue of export licences for wine-sector products referred to in paragraph 1 for which applications are submitted from 3 July 2002 and the submission of export licence applications from 5 July 2002 for destination zones 1: Africa and 3: eastern Europe shall be suspended until 16 September 2002.

Article 2

This Regulation shall enter into force on 5 July 2002.

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

Done at Brussels, 4 July 2002.

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

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[1] OJ L 128, 10.5.2001, p. 1.
[2] OJ L 132, 17.5.2002, p. 14.
[3] OJ L 179, 14.7.1999, p. 1.
[4] OJ L 345, 29.12.2001, p. 10.

COMMISSION REGULATION (EC) No 1210/2002

of 4 July 2002

concerning tenders notified in response to the invitation to tender for the export of barley issued in Regulation (EC) No 901/2002

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals [3], as last amended by Regulation (EC) No 1163/2002 [4], and in particular Article 4 thereof,

Whereas:

(1) An invitation to tender for the refund for the export of barley to all third countries except the United States of America, Canada, Estonia and Latvia was opened pursuant to Commission Regulation (EC) No 901/2002 [5].

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 28 June to 4 July 2002 in response to the invitation to tender for the refund for the export of barley issued in Regulation (EC) No 901/2002.

Article 2

This Regulation shall enter into force on 5 July 2002.

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

Done at Brussels, 4 July 2002.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 181, 1.7.1992, p. 21.
[2] OJ L 193, 29.7.2000, p. 1.
[3] OJ L 147, 30.6.1995, p. 7.
[4] OJ L 170, 29.6.2002, p. 46.
[5] OJ L 127, 9.5.2002, p. 11.

COMMISSION REGULATION (EC) No 1211/2002

of 4 July 2002

fixing the maximum export refund on rye in connection with the invitation to tender issued in Regulation (EC) No 900/2002

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ([3]), as last amended by Regulation (EC) No 1163/2002 ([4]), and in particular Article 7 thereof,

Whereas:

(1) An invitation to tender for the refund for the export of rye to all third countries except for Estonia, Lithuania and Latvia was opened pursuant to Commission Regulation (EC) No 900/2002 ([5]).

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

(3) The application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1.

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 28 June to 4 July 2002, pursuant to the invitation to tender issued in Regulation (EC) No 900/2002, the maximum refund on exportation of rye shall be EUR 44,99/t.

Article 2

This Regulation shall enter into force on 5 July 2002.

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

Done at Brussels, 4 July 2002.

For the Commission

Franz FISCHLER

Member of the Commission

([1]) OJ L 181, 1.7.1992, p. 21.
([2]) OJ L 193, 29.7.2000, p. 1.
([3]) OJ L 147, 30.6.1995, p. 7.
([4]) OJ L 170, 29.6.2002, p. 46.
([5]) OJ L 142, 31.5.2002, p. 14.

COMMISSION REGULATION (EC) No 1212/2002

of 4 July 2002

concerning tenders notified in response to the invitation to tender for the export of common wheat issued in Regulation (EC) No 899/2002

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ([3]), as last amended by Regulation (EC) No 602/2001 ([4]), and in particular Article 4 thereof,

Whereas:

(1) An invitation to tender for the refund for the export of common wheat to all third countries, with the exclusion of Poland, Estonia, Lithuania and Latvia was opened pursuant to Commission Regulation (EC) No 899/2002 ([5]).

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 28 June to 4 July 2002 in response to the invitation to tender for the refund for the export of common wheat issued in Regulation (EC) No 899/2002.

Article 2

This Regulation shall enter into force on 5 July 2002.

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

Done at Brussels, 4 July 2002.

For the Commission

Franz FISCHLER

Member of the Commission

([1]) OJ L 181, 1.7.1992, p. 21.
([2]) OJ L 193, 29.7.2000, p. 1.
([3]) OJ L 147, 30.6.1995, p. 7.
([4]) OJ L 170, 29.6.2002, p. 46.
([5]) OJ L 133, 16.5.2001, p. 3.

COMMISSION REGULATION (EC) No 1213/2002
of 4 July 2002
fixing the export refunds on products processed from cereals and rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals [1], as last amended by Regulation (EC) No 1666/2000 [2], and in particular Article 13(3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice [3], as last amended by Commission Regulation (EC) No 411/2002 [4], and in particular Article 13(3) thereof,

Whereas:

(1) Article 13 of Regulation (EEC) No 1766/92 and Article 13 of Regulation (EC) No 3072/95 provide that the difference between quotations or prices on the world market for the products listed in Article 1 of those Regulations and prices for those products within the Community may be covered by an export refund.

(2) Article 13 of Regulation (EC) No 3072/95 provides that when refunds are being fixed account must be taken of the existing situation and the future trend with regard to prices and availabilities of cereals, rice and broken rice on the Community market on the one hand and prices for cereals, rice, broken rice and cereal products on the world market on the other. The same Articles provide that it is also important to ensure equilibrium and the natural development of prices and trade on the markets in cereals and rice and, furthermore, to take into account the economic aspect of the proposed exports, and the need to avoid disturbances on the Community market.

(3) Article 4 of Commission Regulation (EC) No 1518/95 [5], as amended by Regulation (EC) No 2993/95 [6], on the import and export system for products processed from cereals and from rice defines the specific criteria to be taken into account when the refund on these products is being calculated.

(4) The refund to be granted in respect of certain processed products should be graduated on the basis of the ash, crude fibre, tegument, protein, fat and starch content of the individual product concerned, this content being a particularly good indicator of the quantity of basic product actually incorporated in the processed product.

(5) There is no need at present to fix an export refund for manioc, other tropical roots and tubers or flours obtained therefrom, given the economic aspect of potential exports and in particular the nature and origin of these products. For certain products processed from cereals, the insignificance of Community participation in world trade makes it unnecessary to fix an export refund at the present time.

(6) The world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination.

(7) The refund must be fixed once a month. It may be altered in the intervening period.

(8) Certain processed maize products may undergo a heat treatment following which a refund might be granted that does not correspond to the quality of the product; whereas it should therefore be specified that on these products, containing pregelatinized starch, no export refund is to be granted.

(9) The Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(1)(d) of Regulation (EEC) No 1766/92 and in Article 1(1)(c) of Regulation (EC) No 3072/95 and subject to Regulation (EC) No 1518/95 are hereby fixed as shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 5 July 2002.

[1] OJ L 181, 1.7.1992, p. 21.
[2] OJ L 193, 29.7.2000, p. 1.
[3] OJ L 329, 30.12.1995, p. 18.
[4] OJ L 62, 5.3.2002, p. 27.
[5] OJ L 147, 30.6.1995, p. 55.
[6] OJ L 312, 23.12.1995, p. 25.

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

Done at Brussels, 4 July 2002.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

to the Commission Regulation of 4 July 2002 fixing the export refunds on products processed from cereals and rice

Product code	Destination	Unit of measurement	Refunds
1102 20 10 9200 (1)	C11	EUR/t	40,56
1102 20 10 9400 (1)	C11	EUR/t	34,76
1102 20 90 9200 (1)	C11	EUR/t	34,76
1102 90 10 9100	C14	EUR/t	0,00
1102 90 10 9900	C14	EUR/t	0,00
1102 90 30 9100	C15	EUR/t	0,00
1103 19 40 9100	C16	EUR/t	0,00
1103 13 10 9100 (1)	C14	EUR/t	52,15
1103 13 10 9300 (1)	C14	EUR/t	40,56
1103 13 10 9500 (1)	C14	EUR/t	34,76
1103 13 90 9100 (1)	C14	EUR/t	34,76
1103 19 10 9000	C16	EUR/t	16,66
1103 19 30 9100	C14	EUR/t	0,00
1103 20 60 9000	C16	EUR/t	0,00
1103 20 20 9000	C14	EUR/t	0,00
1104 19 69 9100	C14	EUR/t	0,00
1104 12 90 9100	C13	EUR/t	0,00
1104 12 90 9300	C13	EUR/t	0,00
1104 19 10 9000	C13	EUR/t	0,00
1104 19 50 9110	C14	EUR/t	46,35
1104 19 50 9130	C14	EUR/t	37,66
1104 29 01 9100	C14	EUR/t	0,00
1104 29 03 9100	C14	EUR/t	0,00
1104 29 05 9100	C14	EUR/t	0,00
1104 29 05 9300	C14	EUR/t	0,00
1104 22 20 9100	C13	EUR/t	0,00
1104 22 30 9100	C13	EUR/t	0,00
1104 23 10 9100	C14	EUR/t	43,46
1104 23 10 9300	C14	EUR/t	33,32
1104 29 11 9000	C13	EUR/t	0,00
1104 29 51 9000	C13	EUR/t	0,00
1104 29 55 9000	C13	EUR/t	0,00
1104 30 10 9000	C13	EUR/t	0,00
1104 30 90 9000	C14	EUR/t	7,24
1107 10 11 9000	C13	EUR/t	0,00
1107 10 91 9000	C13	EUR/t	0,00
1108 11 00 9200	C10	EUR/t	0,00
1108 11 00 9300	C10	EUR/t	0,00
1108 12 00 9200	C10	EUR/t	46,35
1108 12 00 9300	C10	EUR/t	46,35
1108 13 00 9200	C10	EUR/t	46,35
1108 13 00 9300	C10	EUR/t	46,35
1108 19 10 9200	C10	EUR/t	30,40
1108 19 10 9300	C10	EUR/t	30,40
1109 00 00 9100	C10	EUR/t	0,00
1702 30 51 9000 (2)	C10	EUR/t	45,41
1702 30 59 9000 (2)	C10	EUR/t	34,76
1702 30 91 9000	C10	EUR/t	45,41
1702 30 99 9000	C10	EUR/t	34,76
1702 40 90 9000	C10	EUR/t	34,76
1702 90 50 9100	C10	EUR/t	45,41
1702 90 50 9900	C10	EUR/t	34,76
1702 90 75 9000	C10	EUR/t	47,58
1702 90 79 9000	C10	EUR/t	33,03
2106 90 55 9000	C10	EUR/t	34,76

(1) No refund shall be granted on products given a heat treatment resulting in pregelatinisation of the starch.

(2) Refunds are granted in accordance with Council Regulation (EEC) No 2730/75 (OJ L 281, 1.11.1975, p. 20), as amended.

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

The numeric destination codes are set out in Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6).

The other destinations are as follows:

C10: All destinations except for Estonia,

C11: All destinations except for Estonia, Hungary, and Poland,

C12: All destinations except for Estonia, Hungary, Latvia and Poland,

C13: All destinations except for Estonia, Hungary and Lithuania,

C14: All destinations except for Estonia and Hungary,

C15: All destinations except for Estonia, Hungary, Latvia, Lithuania and Poland,

C16: All destinations except for Estonia, Hungary, Latvia and Lithuania.

DIRECTIVE 2002/39/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 10 June 2002

amending Directive 97/67/EC with regard to the further opening to competition of Community postal services

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2), Article 55 and Article 95 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) In its Resolution of 7 February 1994 on the development of Community postal services [5], the Council identified as one of the main objectives of Community postal policy the reconciliation of the furtherance of the gradual, controlled liberalisation of the postal market and that of a durable guarantee of the provision of universal service.

(2) Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service [6] established a regulatory framework for the postal sector at Community level, including measures to guarantee a universal service and the setting of maximum limits for the postal services which Member States may reserve to their universal service provider(s) with a view to the maintenance of the universal service, and a timetable for decision-making on the further opening of the market to competition, for the purposes of creating a single market in postal services.

(3) Article 16 of the Treaty highlights the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion. It goes on to state that care should be taken that such services operate on the basis of principles and conditions which enable them to fulfil their missions.

(4) The European Parliament's Resolutions of 14 January 1999 [7] and 18 February 2000 [8] on European postal services highlight the social and economic importance of postal services and the need to maintain a high quality of universal service.

(5) The measures in this area should be designed in such a way that the social tasks of the Community pursuant to Article 2 of the Treaty, namely, a high level of employment and of social protection, are also achieved as objectives.

(6) The rural postal network *inter alia* in mountain and island regions plays an essential role in integrating businesses into the national/global economy and in maintaining cohesion in social and employment terms in rural mountain and island regions. Furthermore, rural post offices in mountain and island regions can provide an essential infrastructure network affording universal access to new telecommunications technologies.

(7) The European Council, meeting in Lisbon, on 23 and 24 March 2000, set out in its Presidency conclusions two decisions applying to postal services, whereby action was requested of the Commission, the Council and the Member States in accordance with their respective powers. The requested actions are: first, to set out by the end of 2000 a strategy for the removal of barriers to postal services, and secondly, to speed up liberalisation in areas such as postal services, the stated aim being to achieve a fully operational market in such services.

(8) The Lisbon European Council also considered it essential that, in the framework of the internal market and of a knowledge-based economy, full account is taken of the Treaty provisions relating to services of general economic interest and to the undertakings entrusted with operating such services.

(9) The Commission has undertaken a thorough review of the Community postal sector, including the commissioning of studies on the economic, social and technological developments in the sector, and has consulted extensively with interested parties.

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[1] OJ C 337 E, 28.11.2000, p. 220 and OJ C 180 E, 26.6.2001, p. 291.
[2] OJ C 116, 20.4.2001, p. 99.
[3] OJ C 144, 16.5.2001, p. 20.
[4] Opinion of the European Parliament of 14 December 2000 (OJ C 232, 17.8.2001, p. 287), Council Common Position of 6 December 2001 (OJ C 110 E, 7.5.2002, p. 37) and Decision of the European Parliament of 13 March 2002 (not yet published in the Official Journal). Council Decision of 7 May 2002.
[5] OJ C 48, 16.2.1994, p. 3.
[6] OJ L 15, 21.1.1998, p. 14.
[7] OJ C 104, 14.4.1999, p. 134.
[8] OJ C 339, 29.11.2000, p. 297.

(10) The Community postal sector requires a modern regulatory framework which aims in particular at enhancing the internal market for postal services. Increased competitiveness should enable the postal sector to be integrated with alternative methods of communication and allow the quality of the service provided to ever-more demanding users to be improved.

(11) The basic aim of safeguarding the durable provision of a universal service matching the standard of quality defined by the Member States in accordance with Article 3 of Directive 97/67/EC on a consistent basis throughout the Community can be secured if, in this area, the possibility of reserving services is maintained and, at the same time, conditions of high efficiency ensured by a sufficient degree of freedom to provide services.

(12) The increase in demand within the postal sector as a whole, predicted for the medium term, could help to offset the loss of market share that the universal service providers may incur as a result of further market-opening and would thereby further safeguard the universal service.

(13) Amongst the factors which bring about change affecting employment in the postal sector, technological development and market pressure for efficiency gains are the most important; of the remaining factors for change, market-opening will play a less prominent part. Market-opening will help to expand the overall size of the postal markets, and any reductions in staff levels among the universal service providers due to such measures (or their anticipation) are likely to be offset by the resulting growth in employment among private operators and new market entrants.

(14) It is appropriate to provide at Community level a timetable for a gradual and controlled opening of the letters market to competition which allows all universal service providers sufficient time to put in place the further measures of modernisation and restructuring required to ensure their long-term viability under the new market conditions. An appropriate period of time is also needed to enable Member States to adapt their regulatory systems to a more open environment. It is therefore appropriate to provide for a step-by-step approach to further market-opening, consisting of intermediate steps representing significant but controlled opening of the market, followed by a review and proposal confirming, if appropriate, the date of 2009 for the full accomplishment of the internal market for postal services or determining a relevant alternative step towards it in the light of the review results.

(15) It is appropriate to ensure that the next phases of market-opening are both substantial in nature and achievable in practice for the Member States whilst also ensuring the continuing of universal service.

(16) General reductions to 100 grams in 2003 and 50 grams in 2006 in the weight limit of the services which may be reserved to the universal service providers, combined with opening outgoing cross-border mail fully to competition with possible exceptions to the extent necessary to ensure the provision of universal service, represent relatively simple and controlled further phases which are nevertheless significant.

(17) In the Community, items of ordinary correspondence weighing between 50 grams and 350 grams represent on average approximately 16 % of the total postal revenues of the universal service providers, out of which 9 % correspond to items of ordinary correspondence weighing between 100 grams and 350 grams, whilst items of outward cross-border correspondence below the 50-gram weight limit represent a further 3 % or so, on average, of the total postal revenues of the universal service providers.

(18) Price limits for the services capable of being reserved, of respectively three in 2003 and two-and-a-half times in 2006 the public tariff for an item of correspondence in the first weight step of the fastest standard category, are appropriate in combination with 100-gram and 50-gram weight limits where applicable.

(19) Direct mail already represents in most Member States a dynamic and growing market with substantial growth prospects while in the remaining Member States there is considerable potential for growth. Direct mail is already largely open to competition in six Member States. The improvements in service flexibility and pricing resultant from competition would improve the position of direct mail versus alternative communications media, which, in turn, would be likely to lead to new postal items as an additional spin-off and strengthen the position of the postal industry as a whole. Nevertheless, to the extent necessary to ensure the provision of universal service, it should be provided that direct mail may continue to be reserved within the above weight and price limits.

(20) Outgoing cross-border mail represents on average 3 % of total postal revenues. Opening this part of the market in all Member States, with exceptions that would be necessary to ensure the provision of universal service, would allow different postal operators to collect, sort and transport all outgoing cross-border mail.

(21) Opening incoming cross-border mail to competition would allow circumvention of the 100-gram in 2003 and 50-gram in 2006 limits through relocation of the posting of a proportion of bulk domestic mail, thereby

making its effects unpredictable. Identifying the origins of items of correspondence could present additional enforcement difficulties. 100-gram and 50-gram weight limits for items of ordinary incoming cross-border correspondence and direct mail, as for ordinary domestic correspondence, are practical as they do not present a risk of circumvention either in this way or through an artificial increase in the weight of individual items of correspondence.

(22) Setting a timetable now, aimed at further steps towards the full accomplishment of the internal market for postal services, is important for both the long-term viability of the universal service and the continued development of modern and efficient posts.

(23) It is appropriate to continue to provide for the possibility for Member States to reserve certain postal services to their universal service provider(s). These arrangements will enable the universal service providers to complete the process of adapting their operations and human resources to conditions of greater competition without upsetting their financial equilibrium and thus without jeopardising the safeguarding of universal service.

(24) It is appropriate both to define the new weight and price limits and the services to which they may apply and to provide for a further review and decision confirming, if appropriate, the date of 2009 for the full accomplishment of the internal market for postal services, or determining a relevant alternative step towards it in the light of the review results.

(25) Measures adopted by a Member State, including the establishment of a compensation fund or any change in its operation or any implementation of, or payment from, it, may involve aid granted by a Member State or through State resources in any form whatsoever within the meaning of Article 87(1) of the Treaty necessitating prior notification to the Commission pursuant to Article 88(3) thereof.

(26) The concept of licensing competitors in the universal service area can be combined with requirements obliging such licensees to contribute to the provision of universal service.

(27) Directive 97/67/EC established that Member States are to designate one or more national regulatory authorities for the postal sector that are legally separate from, and operationally independent of, the postal operators. In view of the dynamics of the European Postal markets, the important role national regulatory authorities play should be acknowledged and furthered, in particular concerning the task of ensuring that the reserved services are respected, except in Member States where there are no reserved services. Article 9 of Directive 97/67/EC allows Member States to go beyond the objectives of that Directive.

(28) It might be appropriate for national regulatory authorities to link the introduction of licences to requirements that consumers of the licensees' services are to have transparent, simple and inexpensive procedures available to them for dealing with their complaints, regardless of whether they relate to the services of the universal service provider(s) or to those of operators holding authorisations, including individual licence-holders. It might be further appropriate for these procedures to be available to users of all postal services, whether or not they are universal services. Such procedures should include procedures for determining responsibility in case of loss of, or damage to, mail items.

(29) The universal service providers normally provide services, for example to business customers, consolidators of mail for different customers and bulk mailers, enabling them to enter the mail stream at different points and under different conditions by comparison with the standard letters service. In doing this, the universal service providers should comply with the principles of transparency and non-discrimination, both as between different third parties and as between third parties and universal service providers supplying equivalent services. It is also necessary for such services to be available to private customers who post in similar conditions, given the need for non-discrimination in the provision of services.

(30) In order to keep the European Parliament and the Council informed on the development of the internal market for postal services, the Commission should regularly submit reports to those institutions on the application of this Directive.

(31) It is appropriate to postpone until 31 December 2008 the date for the expiry of Directive 97/67/EC. Authorisation procedures established in Member States in compliance with the Directive 97/67/EC should not be affected by this date.

(32) Directive 97/67/EC should therefore be amended accordingly.

(33) This Directive is without prejudice to the application of the Treaty rules on competition and on the freedom to provide services, as explained in particular in the Notice from the Commission on the application of the competition rules to the postal sector and on the assessment of certain State measures relating to postal services [1],

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 97/67/EC is hereby amended as follows:

1. Article 7 shall be replaced by the following:

'*Article 7*

1. To the extent necessary to ensure the maintenance of universal service, Member States may continue to reserve services to universal service provider(s). Those services shall be limited to the clearance, sorting, transport and delivery of items of domestic correspondence and incoming cross-border correspondence, whether by accelerated delivery or not, within both of the following weight and price limits.

[1] OJ C 39, 6.2.1998, p. 2.

The weight limit shall be 100 grams from 1 January 2003 and 50 grams from 1 January 2006. These weight limits shall not apply as from 1 January 2003 if the price is equal to, or more than, three times the public tariff for an item of correspondence in the first weight step of the fastest category, and, as from 1 January 2006, if the price is equal to, or more than, two and a half times this tariff.

In the case of the free postal service for blind and partially sighted persons, exceptions to the weight and price restrictions may be permitted.

To the extent necessary to ensure the provision of universal service, direct mail may continue to be reserved within the same weight and price limits.

To the extent necessary to ensure the provision of universal service, for example when certain sectors of postal activity have already been liberalised or because of the specific characteristics particular to the postal services in a Member State, outgoing cross-border mail may continue to be reserved within the same weight and price limits.

2. Document exchange may not be reserved.

3. The Commission shall finalise a prospective study which will assess, for each Member State, the impact on universal service of the full accomplishment of the postal internal market in 2009. Based on the study's conclusions, the Commission shall submit by 31 December 2006 a report to the European Parliament and the Council accompanied by a proposal confirming, if appropriate, the date of 2009 for the full accomplishment of the postal internal market or determining any other step in the light of the study's conclusions.';

2. the following indents shall be added to Article 12:

'— whenever universal service providers apply special tariffs, for example for services for businesses, bulk mailers or consolidators of mail from different customers, they shall apply the principles of transparency and non-discrimination with regard both to the tariffs and to the associated conditions. The tariffs shall take account of the avoided costs, as compared to the standard service covering the complete range of features offered for the clearance, transport, sorting and delivery of individual postal items and, together with the associated conditions, shall apply equally both as between different third parties and as between third parties and universal service providers supplying equivalent services. Any such tariffs shall also be available to private customers who post under similar conditions,

— cross-subsidisation of universal services outside the reserved sector out of revenues from services in the reserved sector shall be prohibited except to the extent to which it is shown to be strictly necessary to fulfil specific universal service obligations imposed in the competitive area; except in Member States where there are no reserved services, rules shall be adopted to this effect by the national regulatory authorities who shall inform the Commission of such measures.';

3. the first and second subparagraphs of Article 19 shall be replaced by the following:

'Member States shall ensure that transparent, simple and inexpensive procedures are drawn up for dealing with users' complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality standards (including procedures for determining where responsibility lies in cases where more than one operator is involved).

Member States may provide that this principle is also applied to beneficiaries of services which are:

— outside the scope of the universal service as defined in Article 3, and

— within the scope of the universal service as defined in Article 3, but which are not provided by the universal service provider.

Member States shall adopt measures to ensure that the procedures referred to in the first subparagraph enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation.';

4. the third subparagraph of Article 22 shall be replaced by the following:

'The national regulatory authorities shall have as a particular task ensuring compliance with the obligations arising from this Directive and shall, where appropriate, establish controls and specific procedures to ensure that the reserved services are respected. They may also be charged with ensuring compliance with competition rules in the postal sector.'

5. Article 23 shall be replaced by the following:

'*Article 23*

Without prejudice to Article 7, every two years, on the first occasion no later than 31 December 2004, the Commission shall submit a report to the European Parliament and the Council on the application of this Directive, including the appropriate information about developments in the sector, particularly concerning economic, social, employment and technological aspects, as well as about quality of service. The report shall be accompanied where appropriate by proposals to the European Parliament and the Council.';

6. Article 27 shall be replaced by the following:

'*Article 27*

The provisions of this Directive, with the exception of Article 26, shall expire on 31 December 2008 unless otherwise decided in accordance with Article 7(3). The authorisation procedures described in Article 9 shall not be affected by this date.'

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 31 December 2002. They shall forthwith inform the Commission thereof.

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

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Luxembourg, 10 June 2002.

For the European Parliament	*For the Council*
The President	*The President*
P. COX	J. PIQUÉ I CAMPS

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 9 April 2002
concerning the use of State aid to the French coal industry for 1994 to 1997

(notified under document number C(2002) 1329)

(Only the French text is authentic)

(Text with EEA relevance)

(2002/541/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Commission Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry [1],

Having invited the interested parties to submit their comments pursuant to Article 88 of the ECSC Treaty [2], and having regard to those comments,

Whereas:

I. PROCEDURE

(1) On 26 August 1997, five French undertakings, Thion & Cie, Maison Balland Brugneaux, Société Nouvelle Vinot Postry, Etablissements Lekieffre, and Charbogard (the complainants) submitted a complaint to the Commission about the undertaking Charbonnages de France.

(2) The complaint concerns the alleged misuse of State aid which France grants on an annual basis to Charbonnages de France, after authorisation by the Commission, in the framework of Decision No 3632/93/ECSC. It is alleged that the Charbonnages de France group is selling coal at a price generally lower than that on the world market, thus precluding all competition. This price is allegedly made possible only by making use, for unauthorised purposes, of State aid granted by France to Charbonnages de France to support its coal production. According to the complainants, this practice distorts competition on the French market in imported coal intended for the industrial, residential and tertiary sectors. The complainants base their argument more particularly on the provisions of Decision No 3632/93/ECSC.

[1] OJ L 329, 30.12.1993, p. 12.
[2] OJ C 99, 10.4.1999, p. 9.

(3) Following this complaint, and to assess whether it is justified, the Commission asked the complainants for further information. On 19 February 1998 and 19 October 1998, the complainants submitted two annexes to the complaint.

(4) The appropriate Commission department has held talks with Charbonnages de France and the French authorities. Meetings took place on 22 January, 15 September and 2 October 1998. By letter dated 26 November 1998, France was also informed of possible infringements of Community law arising from elements of the complaint.

(5) The information provided by the French authorities did not invalidate the complainants' allegations. On 9 February 1999, the Commission therefore sent the French Government a letter of formal notice setting out the elements of the complaint and the legal principles which might have been infringed ([3]). The Commission asked France to put forward relevant arguments which, where appropriate, might enable it to be concluded that the aid given to Charbonnages de France is compatible. France replied to the Commission's letter of formal notice by letter of 8 April 1999.

(6) The Commission's letter of formal notice concerned aid to the French coal industry authorised by Commission Decisions 95/465/ECSC ([4]), 95/519/ECSC ([5]) and 96/458/ECSC ([6]) for 1994, 1995 and 1996, respectively. The Commission also assessed the amount of aid presumed to be incompatible for 1997. The aid for that year, notified by France on 31 July 1997, was authorised by Commission Decision 2001/85/ECSC ([7]), except as regards a sum of FRF 35 million on which the Commission must take a decision after examining the complaint which is the subject of this Decision. The total amount of aid presumed to be incompatible for these four years has been evaluated at FRF 209,9 million. This sum is without prejudice to the possible incompatibility of certain amounts of aid which France has paid or intends to pay to Charbonnages de France for subsequent years. Furthermore, the Commission Decision is totally without prejudice to any proceedings which the complainants may have brought before the national courts or any other bodies in respect of the actions of the Charbonnages de France group which are the subject of this Decision or any other actions which may concern the years before 1994. The Decision states whether the use made of State aid to the coal industry within the Charbonnages de France group is compatible with the provisions of Decision No 3632/93/ECSC.

(7) In its letter of formal notice to France, the Commission also invited the other Member States and interested third parties to submit their comments. In reply to this consultation, the United Kingdom sent a series of comments by letter of 7 May 1999. These comments have been forwarded to France.

II. **DESCRIPTION**

II.1. **The parties concerned**

(8) The complainants import coal and resell it on the French market.

(9) Charbonnages de France is a group consisting in particular of three public industrial and commercial undertakings. These are the industrial and commercial public undertaking Charbonnages de France (EPIC CdF), Houillères du Bassin de Lorraine (HBL) and Houillères de Bassin du Centre et du Midi (HBCM).

(10) EPIC CdF was created by a Nationalisation Act of 17 May 1946. The Act created a monopoly for the mining of mineral fuels by EPIC CdF, HBL and HBCM. Decree No 59-1036 of 14 September 1959 defines the functions of these bodies. According to Article 27 of the Decree, EPIC CdF is a

([3]) OJ C 99, 10.4.1999, p. 9.
([4]) OJ L 267, 9.11.1995, p. 46.
([5]) OJ L 299, 12.12.1995, p. 18.
([6]) OJ L 191, 1.8.1996, p. 45.
([7]) OJ L 29, 31.1.2001, p. 45.

management, coordinating, monitoring and participatory body. It is responsible for the overall management of HBL and HBCM and lays down the general rules for them to perform their task. It defines and implements the legal and financial structures and represents HBL and HBCM vis-à-vis the public authorities and any bodies with authority at national and international level. Under Article 39 of the Decree, HBL and HBCM are production, mining and sales bodies responsible in particular for running the nationalised undertakings and mines and for mining operations. HBL and HBCM are required to ensure that their mining activities are in financial balance and may in this framework issue loans under the control and authority of EPIC CdF.

(11) The other bodies in the Charbonnages de France group are subject to various legal systems under private law. The group includes in particular an economic interest grouping, GIE CdF Energie (CdF Energie), and Société Industrielle pour le Développement de l'Energie charbon et de la Cogénération (Sidec).

(12) CdF Energie has a monopoly for the sale of coal by the Charbonnages de France group. In practice, the grouping is more especially responsible, as part of the further business activity of its members, for the sale in France and abroad of all the solid mineral fuels produced by its members and the sale of all other solid mineral fuels which the members place on the French market. It is responsible or delegates responsibility for all purchases of imported coal which is used or sold in France by its members and the directly or indirectly controlled subsidiaries. HBL, HBCM, EPIC CdF and a subsidiary wholly owned by the Charbonnages de France group, Filianor, have holdings of 45,19 %, 25,95 %, 22,66 % and 6,20 %, respectively, in CdF Energie's capital. According to the information sent by the French authorities on 8 April 1999, a new company, CdF Energie SA, was set up at the beginning of 1999, and the winding-up of CdF Energie was set in motion at the same time.

(13) Sidec is a limited company which funds projects relating to mainly coal-fired steam and electricity production units and which operates these installations. During the period considered in this Decision, Charbonnages de France held a 56 % share in Sidec's capital, partly through a subsidiary of the group.

II.2. **The market concerned**

(14) According to the complainants, the alleged misuse of aid paid to Charbonnages de France to cover the losses related to coal mining disrupts competition on the market for the distribution and sale of coal to consumers in the industrial, residential and tertiary sectors, except as regards internal consumption by the Charbonnages de France group and supplies to the undertaking Electricité de France and the steel industry. The internal consumption by Charbonnages de France, especially for the production of electricity by Société Nationale d'Electricité et de Thermique (SNET), is a market to which the complainants do not have access. Likewise, dealers operating in France do not supply coal to the steel industry and Electricité de France, which obtain supplies directly from producers or through traders operating internationally. The market described by the complainants, within the steam coal market, is therefore a market sector governed by its own conditions as far as competition is concerned.

(15) In 1995, this market amounted to 4 million tonnes of coal. Sales to the various sectors of the market referred to in paragraph 14 can be broken down as follows:

(million tonnes)

	Coal produced in France	Imported coal
Residential and tertiary	0,66	0,52
Industry (*)	0,93	1,87
Total	1,59	2,39

(*) Excluding the steel industry, Electricité de France, and consumption by Charbonnages de France.

(16) All sales of coal produced in France were handled by CdF Energie, which is the sole agent for the marketing of solid mineral fuels produced by the Charbonnages de France group. Out of 2,4 million tonnes of coal from third countries, 1 million tonnes was sold by CdF Energie and 1,4 million tonnes by various dealers, including the complainants. In 1997, the market fell slightly to 3,7 million tonnes, this being 1,9 million tonnes of French coal and 1,8 million tonnes of coal from third countries.

II.3. **The measures in dispute**

II.3(a) *Lowest price guarantee*

(17) Sidec provides its industrial customers with coal-fired heating systems. The contract provides that Sidec is responsible for the financing, construction, operation and running of these systems for the production of steam or heat. The systems remain Sidec's property until the expiry of the contract, which runs for ten or 12 years and may be renewed for a further five years, this period normally enabling the cost of the investment to be recovered. In addition to providing the systems for its contractors, Sidec also supplies the coal, which is provided by CdF Energie, which has the exclusive right within the Charbonnages de France group to distribute coal.

(18) Sidec charges its customers for the energy produced on the basis of the thermal units consumed. The selling price of the thermal units is calculated by reference to various factors, in particular: depreciation, business tax, insurance, maintenance, operation, and the storage and cost of the fuel supplied, this being coal supplied by CdF Energie.

(19) In addition to these services, the contract between Sidec and its industrial customers provides for a 'guaranteed concession price'. The purpose of this clause is to guarantee that, throughout the duration of the contract, users of energy produced from coal will have a competitive price calculated by reference to competing fuels, mainly fuel oil. In other words, Sidec guarantees its customers that the selling price of the thermal unit produced from coal will always be no more than that of the thermal unit produced from fuel oil. The contracts include a method for calculating this reference price.

(20) According to the complainants, the Charbonnages de France group, through this mechanism, has acquired a large share of the market in imported coal intended for industry. This commercial policy is also alleged to have guaranteed customer loyalty through the conclusion of long-term contracts. In this way, Sidec is alleged to have secured for itself a market worth almost one billion francs in combustion plants.

(21) The guarantee originally presupposed that prices on the world market in coal and heavy fuel oil were comparable, but advantageous to coal. The first contracts date back to the early 1980s, a period characterised by high oil prices. Following the repercussions of the oil crisis in 1986, the sharp fall in the price of oil products obliged Sidec to apply the guaranteed concession price mechanisms permanently since the price of the thermal unit from fuel oil became more competitive. According to the terms of the contracts concluded by Sidec, the application of the guaranteed concession price clause involved reducing the variable factors in the price of the thermal unit produced from coal, chiefly the price of that fuel.

(22) CdF Energie supports the application of this guaranteed concession price, as a result of which Sidec reduces the price of the thermal unit produced from coal charged to its customers. CdF Energie's profit and loss accounts show that it grants substantial reductions on its charges for coal, some of them to the benefit of Sidec. The annexes to Sidec's balance sheets and profit and loss accounts expressly state that the company invariably gives customers who buy steam guaranteed concessions on the prices of coal/oil and gas which are fully counter-guaranteed by CdF Energie, except as regards a few contracts where Sidec itself bears the cost of applying the guaranteed concession price.

(in FRF)

	1994	1995	1996	1997
Reductions/discounts/refunds granted by CdF Energie	54 219 281	58 015 980	25 354 968	18 602 297

(23) As a result of the substantial discounts granted to Sidec, CdF Energie sells domestic and imported coal at a price lower than the international rates for industrial coal of the same type sold on the competitive market (see recital 35). These discounts therefore mean that CdF Energie sells coal to Sidec at below the cost at which it buys imported coal.

(24) EPIC CdF, in turn, refunds to CdF Energie the amount of the discounts granted to Sidec through the application of the guaranteed concession price. These amounts appear in CdF Energie's profit and loss accounts as compensation from CdF for guaranteed concession prices. These amounts are more specifically recorded as operating income, which demonstrates the recurrent, invariable nature of this practice. In EPIC CdF's profit and loss accounts, the amounts appear as special costs. The annexes specify that these amounts relate to the cover by CdF of guaranteed concession prices granted to the group's customers in the framework of coal loyalty contracts (when the price of competing sources of energy has fallen) ([8]).

(in FRF)

	1994	1995	1996	1997
Compensation for EPIC Cdf for guaranteed concession price	22 466 500	35 016 000	11 000 000	10 011 701

II.3(b) *Advance payments for commercial investments*

(25) CdF Energie provides some of its customers with free services, such as the installation of dust extraction systems or coal storage facilities. These services are linked to these customers' commitment to buy coal from CdF Energie and are therefore a customer loyalty scheme.

(26) These free services were financed by EPIC CdF through advance payments to CdF Energie amounting, in 1994, to FRF 33 139 626 ([9]). They continued to be paid to CdF Energie during subsequent years.

(27) It should also be noted that 'model heating systems' are made available free of charge to CdF Energie's customers. These systems are the property of CdF Energie and are financed by EPIC CdF.

II.3(c) *Permanent advances*

(28) CdF Energie's members contribute financially to the economic interest grouping's functioning through permanent advances. At the beginning of 1994, these advances amounted to FRF 20 446 728, this being FRF 53 586 354, the total amount of advances from CdF Energie members, minus FRF 33 139 626, the amount of advances for commercial investments. These advances continued to be paid within CdF Energie during the years that followed. The permanent advances have been made by CdF Energie's members in proportion to their shareholding in the grouping.

(29) Other amounts were entered, as from 1994, in the 'advances from members' account in CdF Energie's balance sheet. According to France, these were, however, amounts related to maintaining CdF Energie's profitable situation. Under CdF Energie's legal structure, profits belong to the founder members. Most of the undertaking's income was therefore found to be recorded not in the normal manner as reserves, but as advances from members.

([8]) EPIC CdF: Balance sheet and profit and loss account for 1995, notes on the profit and loss account, p. 19.
([9]) CdF Energie: Balance sheet; profit and loss account and annex of 31 December 1995, pp. 28 and 29.

II.3(d) *The costs of coal dealer*

(30) CdF Energie is involved in two activities which the undertaking considers to be separate, in particular in its accounts. Firstly, CdF Energie sells solid mineral fuels produced by the Charbonnages de France group, for which it receives commissions which are charged to the subsidiaries in the group and recorded as such in the profit and loss account ([10]). Secondly, CdF Energie is a coal dealer. This is recorded as 'purchases of goods' and 'sales of goods' in CdF Energie's profit and loss account. It mainly concerns dealing in imported coal. CdF Energie's profit and loss account is drawn up so as to show these two main activities of commission agent and dealer ([11]).

(31) Analysis of the costs related to these two activities ([12]) shows that the activity as a coal dealer does not include the share of operating costs which would arise in the case of any other operator. Certain costs do not appear as such but are entered in full as 'other operating costs' under the activity as commission agent, in particular the following costs for 1995:

(in FRF)

	1995
Electricity, water, gas, supply of minor equipment, office supplies	543 535
Rental of offices and parking space	3 023 546
Outside staff	3 358 696
Salaries and wages, social contributions	37 549 460

This method of recording CdF Energie's costs results, for 1995, in a substantial loss on the activity as a commission agent and a profit on the activity as a dealer

(in FRF)

	Revenue	Costs	Outturn
Activity as dealer	447 845 758	420 483 327	27 362 431
Activity as Commission agent	39 618 956	62 410 011	– 22 791 055

II.4. **Basis of the letter of formal notice**

(32) After examining the complaint submitted to it, the Commission considered in its letter of formal notice of 9 February 1999 that the contested measures described in recitals 17 to 31 could have been financed through the State aid granted by France to support coal production. According to the Commission, EPIC CdF would not have been able to pay the compensation for the guaranteed concession price and to finance commercial investments through advances if it had not received French State aid. Both EPIC CdF's accounts and the consolidated accounts of the Charbonnages de France group show losses of several billion francs a year. Only public support enables the books to be formally balanced.

([10]) Commissions were charged, in 1995, to HBL, HBCM, Cokes de Drocourt, Agglonord, Agglocentre and CTBR (CdF Energie: Accounts, profit and loss account and annex as of 31 December 1995, p. 43).
([11]) See also recital 16.
([12]) CdF Energie: Accounts, profit and loss account and annex as of 31 December 1995, pp. 37 to 42.

(33) With regard to the permanent advances from the members of CdF Energie, the Commission considers that these contribute financially to the operation of the grouping. They are likely to have been financed at least partially through the State aid granted for coal production, given that members of CdF Energie, more particularly the two mining companies, receive State subsidies every year through EPIC CdF. The aid intended to cover the mining companies' operating losses was therefore probably partially used to finance CdF Energie's annual operating costs.

(34) Article 3 of Decision No 3632/93/ECSC lays down a lower price limit which must be taken into account when calculating the aid intended to cover the losses relating to coalmining, namely the price of coal on the international markets. The Decision also states that the aid is solely for the production of Community coal. It would seem that Sidec has obtained from CdF Energie supplies of both Community coal and imported coal at a price lower than that on the international market. This practice was probably possible only thanks to the State aid granted for the production of coal. The Commission therefore considers that there may have been a double infringement of Community law, more especially through the use of the guaranteed concession price mechanism. This mechanism is likely not only to have enabled coal to be served on the French market at a price below that on the international market, but also to have subsidised imported coal.

(35) The Commission's assumption that the prices of coal sold by CdF Energie to Sidec in 1994 and during subsequent years were lower than the prices of coal on the international markets is based in particular on an analysis of the data for 1993:

(a) the Commission has based its position in particular on the special report of Sidec's accountants which, for the financial year ending on 31 December 1993, showed that 'supplies from CdF Energie of the coal needed for industrial production by Sidec were charged at FRF 164 896 299';

(b) the complaint submitted by the complainants indicates that the quantities of coal supplied by CdF Energie to Sidec were likely to have been about 700 000 tonnes in 1993. In its letter of 8 April 1999, France stated that these supplies amounted to 722 300 tonnes in 1994, 741 200 tonnes in 1995 and 720 400 tonnes in 1996. These data therefore confirm the volume, as estimated by the complainants, of these deliveries in 1993;

(c) in the light of the data in paragraphs (a) and (b), it can be estimated that the average price charged by CdF Energie to Sidec in 1993 was about FRF 235,56 per tonne of coal (FRF 164 896 299 for 700 000 tonnes of coal). This average price was much lower than the prices prevailing on the international markets for steam coal, which were on average FRF 252,85 in 1993 ([13]). The complainants come to the same conclusion by comparing the prices of coal charged by CdF Energie to Sidec with, in particular, the average prices published by the Comité Professionnel du Pétrole and INSEE (Institut national français de statistiques et d'études économiques).

(36) The Commission also states that the State aid may distort competition and cause discrimination within the Community. For 1993, the Commission found that EPIC CdF had paid CdF Energie the sum of FRF 50 680 000 as compensation for guaranteed concession prices ([14]). Given the volume of sales of coal invoiced by CdF Energie to Sidec, the compensation paid to CdF Energie for the guaranteed concession prices can be estimated at about FRF 72,40 FRF per tonne (FRF 50 680 000 for 700 000 tonnes of coal; see figures in recital 35). It must therefore be concluded that the price which would have been charged by CdF Energie if no discounts had been given to Sidec under the guaranteed concession price mechanism would have been FRF 307,96 per tonne, that is to say FRF 235,56 (the amount actually charged to Sidec, see recital 35) plus FRF 72,40 (amount of discount for the guaranteed concession price). This price of FRF 307,96 is much higher than the average prices of FRF 252,85 which prevailed on the international markets in 1993. Consequently, the aid which enabled the disputed measures to be financed, in particular the compensation for the guaranteed concession price, would have given a competitive advantage to the subsidiaries of the Charbonnages de France group as compared with the coal-importing complainants.

([13]) Price of steam coal imported from third countries. EU average calculated on the basis of free-at-border cif prices notified to the Commission under Decisions 77/707/ECSC (OJ L 292, 16.11.1977, p. 11) and 85/161/ECSC (OJ L 63, 2.3.1985, p. 20).

([14]) CdF Energie: Accounts, profit and loss account and annex as of 31 December 1993, p. 3.

(37) In view of the situation on the coal and energy market, in France and worldwide, the Commission considers that there are strong indications that the conclusions it reached concerning the prices charged by CdF Energie in 1993 also to apply to 1994 and the years thereafter.

III. **COMMENTS BY FRANCE**

(38) According to the French authorities, the State aid granted for the production of coal was allocated in accordance with the Commission's authorising decisions. The measures in dispute were said to have been financed from the income on the activities of the Charbonnages de France group which produce profits or dividends and which contribute to the group's consolidated results.

(39) Furthermore, the operations carried out by EPIC CdF, CdF Energie and Sidec 'have been economically rational and do not seem to invite criticism as regards the rules on State aid'. As regards providing coal buyers with various items of equipment free of charge, this was said to be the provision of commercial services which were related to the operators' main services and were part of normal commercial practice. The permanent advances of funds made by the CdF Energie members were said to be a normal procedure for an economic interest grouping, which is an entity without capital. The French authorities also take the view that the provision of a guaranteed concession price is not in itself disputable. 'When the contracts were concluded, the high price of fuel oil made the guaranteed concession price look symbolic and not a central factor for the choice of provider'. 'This dossier needs to be seen in the light of the situation in the early 1980s, which were marked by high oil prices and the desire to diversify energy resources'. In addition, when energy prices started to pick up again in 1988, CdF Energie is said to have tried to renegotiate the contracts so that the group would be at less of a disadvantage.

(40) Finally, the French authorities stress that, contrary to the Commission's claims, the effects of the measures on competition have been very limited. To back up this argument, France believes that the consumer market for the industrial, residential and tertiary sectors, excluding consumption by the Charbonnages de France group itself and deliveries to the undertaking Electricité de France and the steel industry, is not the market to consider. The market should be broadened to include steam coal and limited not only to the French market since this product, which has no specific characteristics, can be used throughout the world. According to France, the market considered should also be broadened to include other energy sources which can be used for the same purposes as steam coal, namely gas and fuel oil. CdF Energie's market shares in such a broadened market were said in fact to be very limited.

IV. **COMMENTS BY THE UNITED KINGDOM**

(41) The UK authorities emphasise the lack of transparency in the financing of the Charbonnages de France group's activities. The relations, more especially between EPIC CdF, HBL, HBCM, CdF Energie, Filianor and Sidec, allow cross-subsidising of the group's various activities, either through direct financing or the provision of free services.

(42) According to the United Kingdom, the factors set out in the Commission's letter of formal notice of 9 February 1999 tend to confirm that part of the aid intended in principle to support coal production is being misused for purposes not in conformity with Decision No 3632/93/ECSC and the Commission's decisions authorising the aid.

V. **ASSESSMENT**

V.1. **Assessment of the nature of the State aid in the measures in question**

(43) In its letter of formal notice of 9 February 1999, the Commission asked France to submit 'a report on the functioning of the commercial and financial mechanisms' implemented by Charbonnages de France. The report should include in particular the following elements:

(a) the origin of the advances from the members of CdF Energie;

(b) the origin of the funds that enabled EPIC CdF to pay CdF Energie compensation for the guaranteed concession price since 1994.

(44) The French authorities have indicated that the advances from members do not come from the State aid or subsidies, which were 'specifically allocated', but from the profits of the subsidiaries of the Charbonnages de France group. The French authorities' reply is the same as regards EPIC CdF's cover of the guaranteed concession price: 'Operations relating to these contracts are recorded by EPIC CdF as "exceptional profits" and were funded from the profits of EPIC's subsidiaries'.

(45) The Commission finds that France has not put forward anything to back up its claim that, firstly, the aid authorised by the Commission to support coal production has been 'specifically allocated' for that purpose and, secondly, that the funds which financed the disputed measures came from the profits of Charbonnages de France's subsidiaries. With regard to the aid authorised by the Commission for the coal sector, France merely gives a breakdown based on the aid categories in Decision No 3632/93/ECSC. This breakdown, which is used by France in its annual notifications of State aid to the coal industry and in the Commission's authorising decisions, does not, however, provide any information as to the actual use made of the aid by the beneficiary.

(46) In accordance with Article 4 of Decision No 3632/93/ECSC, the French authorities state that the aid to the coal industry was granted, partly, 'to cover the difference between the production cost and the selling price of tonnages of mined coal'. The guaranteed concession price mechanism is a contributory factor in determining how big this difference is since, if discounts and refunds are given, it helps to reduce the selling price of the coal mined by Charbonnages de France. However, there is nothing which would show that part of the difference is covered by the State aid granted by France, while another part, equivalent to the reduction in the price of coal achieved by applying the guaranteed concession price mechanism, is covered by the profits of certain subsidiaries in the Charbonnages de France group. On the contrary, it is quite consistent to consider that all of the losses related to mining in France, including losses related to the reduction in the selling price of coal due to the application of the guaranteed concession price mechanism, were covered by State aid.

(47) It should be recalled that the permanent advances from the members of CdF Energie are paid by the members of the grouping in proportion to each member's shareholding. In other words, the two coalfields, HBL and HBCM, alone contribute 71,14 % of the amount of these advances. It is not understood how these two entities which mine coal in France, an activity which gives rise to several billion francs in losses each year, could have financed the advances made to CdF Energie unless they were financed from State aid granted specifically to support coal production.

(48) France puts forward the argument that Charbonnages de France is an industrial group whose consolidated accounts include other activities, in addition to mining, which produce profits or dividends. It is claimed that the guaranteed concession price was funded from the profits on these activities, which contribute to the consolidated results of the Charbonnages de France group of more than FRF 500 million a year.

(49) The Commission considers that, if consolidation is relied upon to present the results of a group of companies as if they were just one single entity, the results of the profitable activities should firstly be set off against the results for the group's loss-making activities. Consequently, if France's argument is followed, any analysis of the State aid needed to cover the mining losses should take account of the consolidated result obtained after setting the consolidated group's total income off against its total outgoings. France's position is inconsistent in this respect. According to France, consolidation of the accounts, and hence the setting-off of some subsidiaries' losses against others' profits, should apply, as far as coal production losses are concerned, only to losses resulting from compensation for the guaranteed concession price supported by EPIC CdF.

(50) Moreover, as stated in the Commission's letter of formal notice, the Charbonnages de France group's accounts clearly show that EPIC CdF would not have been able to pay the compensation for the guaranteed concession price and to finance commercial investments through advances if it had not received State aid from France. Both EPIC CdF's accounts and the consolidated accounts of the Charbonnages de France group show losses of several billion francs a year. The accounts for the 1995 financial year clearly show that the books can only be formally balances thanks to public financial support. In 1995, the Charbonnages de France group achieved a consolidated turnover of FRF 8 270 billion. The consolidated overall net result of the group as a whole was a loss of FRF 4 167 billion, more than half of the turnover. According to Charbonnages de France, the gradual reduction in State aid 'meant that the group, which had stabilised its financial debt over the last two years, was unable to continue with that progress. In 1995, the debt burden increased markedly, exceeding 29 billion francs and leading to additional financial costs which impacted upon the result'. The Commission therefore considers that Charbonnages de France's further activities and the survival of the group are dependent on the payment of State aid by France to the coal industry. The mechanisms referred to above must therefore have been funded from the aid.

(51) Against this background, the Commission believes that the amounts totalling FRF 78 494 201 which were paid by EPIC CdF to CdF Energie as compensation for guaranteed concession prices and paid on by CdF Energie to Sidec came from the State aid paid by France each year to support losses due to coalmining.

(52) The Commission also considers that the amounts of commercial investments financed through advances given by EPIC CdF to CdF Energie, namely FRF 33 139 626 FRF, come from the State aid paid by France each year to cover losses related to coalmining. Given that these are permanent advances to CdF Energie, the amount of FRF 33 139 626 must be regarded, in full, as coming from the aid paid each year by France.

(53) Lastly, the Commission considers that the permanent advances paid to CdF Energie by EPIC CdF, on the one hand, and by the two coalfields HBL and HBCM, on the other, also come from the State aid paid by France to cover losses related to coalmining. The members of CdF Energie contribute to the grouping's operation in proportion to their shareholding. The advances paid by EPIC CdF, HBL and HBCM correspond to 93,8 % of the total advances paid by the members of CdF Energie, a total of FRF 19 179 031. Given that these are permanent advances to CdF Energie, the amount of FRF 19 179 031 must be regarded, in full, as coming from the aid paid each year by France.

V.2. **Assessment of the compatibility of the State aid**

V.2(a) *Aid to the French coal industry*

(54) In accordance with Article 8 of Decision No 3632/93/ECSC, on 9 December 1994 France sent the Commission an activity-reduction plan in line with the options agreed under the National Coal Pact signed between the undertaking Charbonnages de France and the trade unions. The activity-reduction plan provides for the gradual stoppage of mining by 2005. The severity of the social and regional problems meant that the French authorities were unable to keep to the date of 2002 laid down by Decision No 3632/93/ECSC as the deadline for the closure plan. Spreading the closures over a period of ten years should make it possible to reduce the particularly acute social and regional problems in regions which have been affected by the decline in mining for a number of years. In Decision 95/465/ECSC, the Commission took the view that the plan complied with the conditions and criteria laid down in Decision No 3632/93/ECSC.

(55) In accordance with Article 9 of Decision No 3632/93/ECSC, France notified the Commission of the amount of aid which it intended to grant to the coal industry each year. For 1994 to 1997, the Commission authorised ([15]) the granting of aid for the reduction of activity pursuant to Article 4 of Decision No 3632/93/ECSC and of aid to cover exceptional costs pursuant to Article 5 of the Decision. In addition, for 1994 to 1996, the Commission authorised the granting of aid for research and development pursuant to Article 6 of Decision No 3632/93/ECSC. In its assessment, the Commission evaluated the conformity of the measures with the activity-reduction plan notified to the Commission on 9 December 1994.

(56) It is therefore necessary to examine whether the aid allocated in the context of the application of the guaranteed concession price mechanism, commercial investments and permanent advances to CdF Energie comply with the conditions and criteria laid down in Decision No 3632/93/ECSC, and more particularly the terms of Decisions 95/465/ECSC, 95/519/ECSC, 96/458/ECSC and 2001/85/ECSC. If this is not the case, the Commission will have to conclude that the aid, or part of the aid, was allocated by Charbonnages de France for purposes contrary to the applicable provisions.

(57) It would seem that the aid allocated under the disputed mechanisms in dispute does not fully comply with the conditions laid down for the grant of aid to cover exceptional costs. It does not correspond to any of the categories of costs referred to in the Annex to Decision No 3632/93/ECSC, or more especially to the costs expressly referred to in the Commission's decisions authorising the grant of aid each year by France to the coal industry. The aid provided for in Article 5 of Decision No 3632/93/ECSC is strictly limited to cover costs which are not related to current production (inherited liabilities). It is also obvious that the aid granted under these mechanisms does not comply with the aims and criteria laid down in Article 6 of the Decision for the grant of aid for research and development.

(58) It is therefore necessary to examine whether the aid allocated by Charbonnages de France in the context of the application of the guaranteed concession price, commercial investments and permanent advances may be considered to be compatible with Article 4 of Decision No 3632/93/ECSC and to have been allocated by Charbonnages de France pursuant to that provision.

V.2(b) *Coal prices on the world market*

(59) In accordance with Article 4(1) of Decision No 3632/93/ECSC, which refers to the provisions of Article 3(1) of that Decision, aid for the reduction of activity is intended to cover the difference between production costs and the selling price of coal freely agreed between the contracting parties in the light of the conditions prevailing on the world market. Article 3(1) of the above Decision therefore determines the maximum amount of permissible aid. As indicated in recital 23, the substantial discounts granted to Sidec meant that CdF Energie sold coal at a price below those prevailing on the international markets. These discounts were therefore financed by aid, some of which exceeded the permissible ceiling laid down in Article 3(1) of Decision No 3632/93/ECSC.

(60) The Commission notes in this respect that France has not put forward any argument to contradict the facts which led the Commission to consider, in its letter of formal notice, that from 1994 to 1997 CdF Energie supplied Sidec with Community and imported coal at a price below that on the international market. On the contrary, in their letter of 8 April 1999 the French authorities appear to acknowledge the assumption reached by the Commission in its letter of formal notice. Referring to 'the effects of a mechanism which was no longer timely', France stated in particular that 'when energy prices started to pick up again in 1988, the management of Charbonnages de France asked CdF Energie to try to renegotiate contracts so that they would put the group at less of a disadvantage. At CdF Energie's request, Sidec proposed that its customers should reconsider the clauses in the contracts. A large number of customers refused, but some agreed to start discussions'.

(61) The Commission draws attention in this regard to its letter of formal notice, which states: 'On the basis of the information at its disposal, the Commission considers that for the budget years 1994, 1995 and 1996, the grouping effectively supplied (Community and imported coal) on the Community market at a price below the world market price and could do so thanks to the aid

([15]) See recital 6.

granted by CdF under the conditions set out above. If the French authorities do not refute the complainants' allegations in a manner which enables the Commission to conclude that the complaint is without foundation, the Commission will conclude that there has been a misuse of State aid originally authorised by the Commission to cover the production costs of Community coal (Article 4: Aid for the reduction of activity)'. It is also clear from the letter of formal notice that the arguments which led the Commission to consider that the prices charged to Sidec were below the prices of coal on the international markets were set out and analysed in a very detailed manner in that letter. It has to be said that France has not provided any information about prices charged, in 1994 and during the following years, for coal supplied by CdF Energie to Sidec. On the contrary, as already indicated in recital 60, France tacitly acknowledges in its letter of 8 April 1999 that CdF Energie effectively sold coal to Sidec at prices below those prevailing on the international market. Rather, France tries to justify this practice, stating in particular that it was not likely to have distorted competition in a manner which would harm the complainants.

(62) The Commission would point out that its departments were themselves unable, as they did for 1993, to calculate the average annual price of coal sold by CdF Energie to Sidec for 1994 and the following years. No special auditors' report has been submitted to the registry of the commercial court in Paris for those years concerning Sidec's activities. This being so, in view of the situation on the coal and energy market, in France and worldwide, it has to be considered that the Commission's conclusions concerning the prices charged by CdF Energie during 1993 also apply to the years from 1994 to 1997 (see recitals 35 to 37). It should be noted in this respect that the various commercial and financial practices in 1994 and during the following years, as set out in the financial documents and business reports of the Charbonnages de France group, were the same as those during previous years. It must therefore be concluded that, in 1994 and during the years which followed, CdF Energie sold coal to Sidec at a price below the international rates for industrial coal of the same type sold on the competitive market.

(63) Furthermore, it must be considered that not only the aid used by CdF Energie to cover the discounts related to the guaranteed concession price, but also the aid allocated for commercial investments and for permanent advances to CdF Energie meant that the Charbonnages de France group charged delivered prices for coal below those for coal of a similar quality from third countries. All these mechanisms implemented together and financed by means of State aid enabled CdF Energie to charge prices lower than the reference prices for coal on the international markets. However, Article 3(1), third indent, of Decision No 3632/93/ECSC lays down that the amount of operating aid may not cause delivered prices for Community coal to be lower than those for coal of a similar quality from third countries. It must therefore be considered that the aid allocated for all the disputed mechanisms was paid in breach of that provision.

V.2(c) *Aid to imported coal*

(64) Most of the coal supplied to Sidec is imported by CdF Energie from third countries. Following the signing of the National Coal Pact in 1994, which provides for the gradual stoppage of mining by 2005, national production has continued to fall. CdF Energie has therefore only been able to supply coal to Sidec by increasingly adding imported coal to national coal. According to the letter from France of 8 April 1999, the volumes of Community and imported coal sold by CdF Energie to Sidec are as follows:

(1 000 tonnes)

	1994	1995	1996	1997
National coal	216,0	226,5	228,5	144,1
Imported coal	506,3	514,7	491,9	428,5
Total	722,3	741,2	720,4	572,6

(65) The compensation paid by EPIC CdF under the guaranteed concession price was therefore paid to CdF Energie for sales to Sidec of both national coal and imported coal. Similarly, the aid allocated for commercial investments and the aid allocated for permanent advances to CdF Energie enabled both of the undertaking's two activities to be equally supported, namely its activity as a commission agent for the marketing of fuel produced within the Charbonnages de France group and its activity as a coal dealer relating chiefly to the sale of imported coal.

(66) The fact that, according to the annexes to CdF Energie's profit and loss account, the activity as a dealer did not produce a profit, while that as a commission agent produced a substantial loss (see recitals 30 and 31) does not in any way indicate that the aid was allocated solely to the latter loss-making activity, and thus to national coal. It is clear from the annexes to the profit and loss statement that the activity as a dealer does not include the share of operating costs which would be incurred by any other operator, and that as a result the outturn for that activity is increased in a way which does not reflect reality. In addition, it should be noted that the compensation for the guaranteed concession price appears specifically, in the annexes to the profit and loss statement, under a heading relating to activity as a dealer.

(67) There is no doubt that the aid which may be granted by the Member States in accordance with Decision No 3632/93/ECSC is intended solely for Community coal. In this respect, the second recital of that Decision should be noted which states that 'added to the competition from crude oil and natural gas, there has been growing pressure from coal imported from outside the Community'. These terms exclude any idea of subsidising coal produced in a third country. It would also be contrary to the *ratio legis* of Decision No 3632/93/ECSC not to object to aid from government funds subsidising imported coal, which is already more competitive than Community coal.

(68) It is also clear from the activity-reduction plan notified to the Commission by France in 1994 and the State aid notified to the Commission each year since that date that the aid granted by France to the coal industry is for national production. The aid allocated by the Charbonnages de France group for activity as a dealer was therefore not allocated in conformity with the provisions of Decision No 3632/93/ECSC, whatever the price of the imported coal charged to Sidec.

(69) Furthermore, aid granted under Article 4 of Decision No 3632/93/ECSC must, pursuant to the second indent of Article 2(1) of the Decision, help to solve the social and regional problems created by total or partial reductions in the activity of production units. However, the aid allocated as compensation for the guaranteed concession price and the aid allocated to commercial investments and permanent advances is, on the contrary, related to the development of CdF Energie's commercial activities. Given that mining in France has been gradually reducing since 1994, the aid in question has more particularly helped to develop CdF Energie's business as a dealer in imported coal. The Commission therefore finds that some of the aid paid by France to Charbonnages de France has not been allocated in accordance with the objectives for which the aid was authorised by the Commission.

V.2(d) *Distortions of competition*

(70) In accordance with the fourth recital in paragraph I of Decision No 3632/93/ECSC, aid to the coal industry must not disturb the functioning of the common market. The fourth and fifth recitals of paragraph III of the Decision also specify that the Community must ensure the establishment, maintenance and observance of normal competitive conditions. In this context, the Community must ensure that aid does not discriminate between coal producers, purchasers or users in the Community.

(71) The finding therefore is that the guaranteed concession price mechanism itself, the application of which is found to have been financed by means of State aid, was likely to distort competition contrary to the common market. The mechanism was likely to, and in fact did, encourage CdF Energie to charge prices for coal which were lower than those generally charged on the international markets. Detailed analysis of some of the data for 1993, which in particular led the Commission to send a letter of formal notice to France, shows very clearly the quantitative advantage which this mechanism gave the Charbonnages de France group as compared with competition (see recital 35).

As the complainants were unable to offer to supply coal to the same customers on terms as favourable as those of the Charbonnages de France group, they were therefore denied a substantial share of the relevant market, as described in recitals 14 to 16.

(72) CdF Energie's profit and loss accounts also show that that entity would have sustained substantial losses if the compensation for the guaranteed concession price had not been paid by EPIC CdF. The amounts paid as compensation for the guaranteed concession price therefore enabled CdF Energie to remain viable and even to build up reserves which have not been paid back to its founder members. CdF Energie therefore had its own funds enabling it to finance part of its activities without the need to seek outside funding.

(in FRF)

	1994	1995	1996	1997
Compensation from EPIC CdF for the guaranteed concession price	22 466 500	35 016 000	11 000 000	10 011 701
CdF Energie's operating result	19 166 016	7 630 970	9 131 843	12 272 171
CdF Energie's result for the financial year	15 282 831	4 571 376	8 066 887	12 627 687

(73) The guaranteed concession price mechanism, together with the advances for commercial investments and the permanent advances for members, therefore enabled CdF Energie to expand its activities related to the distribution of imported coal in France, enabling the undertaking to acquire a share of 61 % of the relevant market in 1997. As far as the commercial investments in particular are concerned, it seems that these were allowed for coal consumers whose needs were not such that they justified the conclusion of contracts related to a guaranteed concession price.

(74) Furthermore, the contracts between Sidec and its customers provide for a sole right to supply coal for a period of 10 or 12 years, and even 15 years if the contract is extended. This customer loyalty policy, which enabled Charbonnages de France to gain a large share of the relevant market, would certainly not have worked if Sidec's customers had not been guaranteed that the price of the thermal unit from coal would never be more than the price of the thermal unit from fuel oil throughout the duration of the contract. These advantages may of course make customers sign up for such a period in times when they would not normally sign up for more than one year.

(75) France cannot effectively rely on the argument that these contracts were not intended to enable CdF Energie to acquire the market in the sale of coal, but to combat the domination of oil. The Commission is required merely to establish the effects of these practices on competition between dealers in imported coal, the Charbonnages de France group's intentions being irrelevant in this respect. Furthermore, it is obvious that, by offering Sidec's customers advantageous conditions in order to compete with oil, the Charbonnages de France group was *ipso facto* putting pressure on CdF Energie's competitors which also supply coal to the relevant market.

(76) The French authorities are trying to minimise the dominant position acquired by CdF Energie by relying on the argument that the market in industrial heating systems is too small and should be extended to include the steam coal market and even other sources of energy (see recital 40). It is argued that the Commission's analysis should cover more than France since coal is used throughout the world. The Commission cannot accept this argument. Some French customers, notably SNET and Electricité de France, are captive markets which are not *de facto* open to competition and therefore cannot be included in the relevant market. Furthermore, France does not in any way state to what extent this definition of the relevant market would be likely to affect the assessment of any distortions of competition caused by Charbonnages de France to the complainants.

VI. **CONCLUSION**

(77) In the light of the foregoing, the Commission believes that the compensation for the guaranteed concession price paid by EPIC CdF to CdF Energie, the advances paid by EPIC CdF for commercial investments and the permanent advances from the CdF Energie members were financed through the State aid granted by France to Charbonnages de France for coal production. The amount of financial support for 1994 amounts to FRF 74 785 157, including FRF 22 466 500 FRF as compensation for the guaranteed concession price, FRF 33 139 626 for advances for commercial investments and FRF 19 179 031 for permanent advances. The amounts of financial support paid by way of compensation for the guaranteed concession price for 1995, 1996 and 1997 amount to FRF 35 016 000, FRF 11 000 000 and FRF 10 011 701, respectively. The total amount of aid concerned therefore amounts to FRF 130 812 858.

(78) This aid must be regarded as incompatible with the provisions of Decision No 3632/93/ECSC as it does not comply with the criteria and conditions provided for in that Decision to be compatible with the functioning of the common market. More especially, the aid was not granted in strict compliance, firstly, with the Commission decision approving the activity-reduction plan submitted by the French authorities in the framework of the National Coal Pact and, secondly, the decisions authorising the aid which France pays to the coal industry each year. It must therefore be concluded that this aid was misused in terms of the purpose for which it was able to be, and was, authorised pursuant to Decision No 3632/93/ECSC.

(79) Consequently, the amounts of aid for 1994, 1995 and 1996, for which years the Commission authorised all the aid notified by France totalling FRF 120 801 157 (EUR 18 416 018), must be repaid by the Charbonnages de France group to the French Government. In accordance with Article 9(5) of Decision No 3632/93/ECSC, the sums to be repaid by Charbonnages de France must be considered an unfair advantage in the form of an unjustified cash advance and, as such, are liable to charges at the market rate payable by the recipient. The interest is calculated from the date on which the State aid granted each year by France, which includes the amounts to be reimbursed by Charbonnages de France, was paid to the recipient undertaking.

(80) The aid for 1997 was authorised by the Commission, except as regards a provisional amount of FRF 35 million (EUR 5 335 716) on which the Commission had to take a decision after examining the complaints which are the subject of this Decision. In the light of the above, the Commission is able to authorise aid amounting to FRF 24 988 299 (EUR 3 809 442), the balance of FRF 10 011 701 (EUR 1 526 274) covering the compensation for the guaranteed concession price for that year having to be regarded as incompatible with the provisions of Decision No 3632/93/ECSC. If the latter amount was paid to Charbonnages de France before the Commission decision authorising it was taken, it must be considered an unfair advantage in the form of an unjustified cash advance and, as such, must be repaid by the beneficiary at the market rate. Any interest will be calculated from the date on which the aid, which includes the compensation paid to cover the guarantee concession price, was paid to the recipient undertaking.

(81) With regard to the years 1998 to 2001, the Commission authorised the aid notified by France for the coal industry, except as regards a provisional amount of FRF 45 million (EUR 6 860 206) for each of the years from 1998 to 2000 in accordance with Decisions 2001/85/ECSC [16] and 2001/58/ECSC [17], and of FRF 10 million (EUR 1 524 490) for 2001 in accordance with Decision 2001/678/ECSC [18]. In accordance with those decisions, the Commission has to take a decision on these amounts in the light of the outcome of the examination of the complaint which is the subject of this Decision. On the basis of the above, it must be considered that part of these amounts of aid was intended to be allocated, or was allocated before a Commission decision was taken, as compensation for the guarantee concession price paid by EPIC CdF to CdF Energie and by CdF Energie to Sidec for those years. The letter of 8 April 1999 from the French authorities shows that 13 contracts providing for a guaranteed concession price were still in force on that date. France is therefore asked to notify to the Commission the amounts of compensation for the guaranteed concession price paid by EPIC CdF to CdF Energie and by CdF Energie to Sidec for those years. On the basis of that information, the Commission will be able to take a final decision on the amounts of aid notified by France for the years 1998 to 2001 which have not been authorised.

[16] OJ L 29, 31.1.2001, p. 45.
[17] OJ L 21, 23.1.2001, p. 12.
[18] OJ L 239, 7.9.2001, p. 35.

(82) The Commission requests France to take the measures necessary to comply with this Decision. In this respect, the letter of 8 April 1999 from the French authorities shows that the latest date of expiry of the contracts which include a guaranteed concession price clause is 2006. The various mechanisms identified in this Decision, in particular the guaranteed concession price mechanism under which compensation was paid by EPIC CdF to CdF Energie and by CdF Energie to Sidec, has distorted competition (see recitals 70 to 76). France is therefore requested to take the measures necessary to abolish these mechanisms, which are financed through State aid granted to Charbonnages de France for coal production,

HAS ADOPTED THIS DECISION:

Article 1

The State aid granted by France to the coal industry which has been allocated or is to be allocated as compensation for the guaranteed concession price and advances for investment paid by the industrial and commercial public undertaking Charbonnages de France (l'EPIC CdF) to the economic interest grouping CdF Energie (CdF Energie), and as permanent advances from the members of CdF Energie, totalling EUR 19 942 292, is incompatible with the common market.

Article 2

1. France shall take all necessary measures to recover the aid for the years 1994, 1995 and 1996 referred to in Article 1 above, totalling EUR 18 416 018, from the Charbonnages de France group.

2. Recovery shall be immediate and in accordance with the procedures laid down in French law, provided that these permit the immediate and effective implementation of this Decision. The amounts to be repaid must include interest from the date the aid was made available to the beneficiary to its actual recovery.

Article 3

1. France is authorised to grant to the French coal industry, for 1997, aid for the reduction of activity, in addition to that authorised by Decision 2001/85/ECSC, totalling EUR 3 809 442. The balance of the amount of aid on which the Commission had to take a decision in accordance with Article 1(a) of that Decision, namely EUR 1 526 274, therefore cannot be used.

2. If France has already paid the sum of EUR 1 526 274 referred to in paragraph 1 above to the Charbonnages de France group before a Commission decision has been taken, it shall be recovered as specified in Article 2(2).

Article 4

The grant of aid declared to be incompatible by virtue of this Decision shall stop upon notification of the Decision to France.

Article 5

1. The French Government shall inform the Commission within two months of the date of notification of this Decision of the measures taken to comply.

2. With regard to the aid to the coal industry for 1998, 1999, 2000 and 2001, France shall notify to the Commission, within 15 working days of notification of this Decision, the amounts of compensation for the guaranteed concession price paid by EPIC CdF to CdF Energie for those years.

Article 6

This Decision is addressed to the French Republic.

Done at Brussels, 9 April 2002.

For the Commission
Loyola DE PALACIO
Vice-President

COMMISSION DECISION

of 4 July 2002

amending Decision 96/482/EC as regards the length of the isolation period for imports of live poultry and hatching eggs from third countries and the animal health measures to be applied after such importation

(notified under document number C(2002) 2492)

(Text with EEA relevance)

(2002/542/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 90/539/EEC of 15 October 1990 on animal health conditions governing intra-Community trade in, and imports from third countries, of poultry and hatching eggs [1], as last amended by Commission Decision 2001/867/EC [2], and in particular Article 26 thereof,

Whereas:

(1) Under Commission Decision 96/482/EC of 12 July 1996 laying down animal health conditions and veterinary certificates for the importation of poultry and hatching eggs other than ratites and eggs thereof from third countries including animal health measures to be applied after such importation [3], as last amended by Decision 2002/183/EC [4] breeding and productive poultry are to be isolated after importation on the holding of destination for at least six weeks and examined by an authorised veterinarian.

(2) Member States have reported difficulties with the duration of the isolation period for poultry intended for restocking supplies of wild game, because of increased aggressiveness and cannibalism leading to increased losses.

(3) It is therefore opportune to shorten the duration of the isolation period. However, compulsory testing for avian influenza and Newcastle disease should be carried out to maintain equivalent animal health guarantees.

(4) Decision 96/482/EC should therefore be amended accordingly.

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

HAS ADOPTED THIS DECISION:

Article 1

Decision 96/482/EC is amended as follows:

1. In Article 3(1), the following subparagraph is added:

   'By way of derogation from the first subparagraph the period of six weeks for keeping breeding and productive poultry including poultry intended for restocking supplies of wild game on the holding of destination can be reduced to 21 days provided testing according to the sampling and testing procedures described in Annex III has been carried out with favourable results.'

2. A new Annex III, the text of which is set out in the Annex to this Decision, is added.

Article 2

All costs incurred by the application of the present Decision shall be borne by the importer.

Article 3

This Decision shall apply as from the seventh day after its publication in the *Official Journal of the European Communities*.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 4 July 2002.

For the Commission

David BYRNE

Member of the Commission

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[1] OJ L 303, 31.10.1990, p. 6.
[2] OJ L 323, 7.12.2001, p. 29.
[3] OJ L 196, 7.8.1996, p. 13.
[4] OJ L 61, 2.3.2002, p. 56.

ANNEX

'ANNEX III

Sampling and testing procedures for Newcastle disease and avian influenza after importation

During the period foreseen in the second subparagraph of Article 3(1) the official/authorised veterinarian shall take samples for virological examination from the imported poultry, which shall be tested as follows:

— Cloacal swabs have to be taken from all birds, if the consignment is less than 60, or from 60 birds of larger consignments, between the seventh and the 15th day of the isolation period.

— All testing of samples for avian influenza and Newcastle disease must be carried out in official laboratories designated by the competent authority, and using diagnostic procedures in accordance with the terms of Annex III of Council Directive 92/66/EEC and of Annex III of Council Directive 92/40/EEC.

— Pooling of samples, up to a maximum of five samples of individual birds in one pool, is allowed.

— Virus isolates must be submitted without delay to the National Reference laboratory.'

COMMISSION DECISION

of 4 July 2002

amending Decision 2001/783/EC as regards the protection and surveillance zones in relation to bluetongue in Italy

(notified under document number C(2002) 2494)

(Text with EEA relevance)

(2002/543/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2000/75/EC of 20 November 2000 laying down specific provisions for the control and eradication of bluetongue [1], and in particular Article 8(3) thereof,

Whereas:

(1) Following the evolution of the bluetongue situation in four Member States in 2001, Commission Decision 2001/783/EC of 9 November 2001 on protection and surveillance zones in relation to bluetongue and on rules applicable to movements of animals in and from those zones [2], as last amended by Decision 2002/189/EC [3], was adopted.

(2) Italy has requested in conformity with Article 8(3) of Directive 2000/75/EC the deletion of Napoli province from those protection and surveillance zones.

(3) It is clear from the results of the epidemiological survey carried out by the Italian authorities that no circulation of bluetongue virus has taken place in Napoli province for more than 100 days and as a consequence this province may be considered as free of the disease.

(4) Napoli province should therefore be deleted from the list of administrative units included in the protection and surveillance zones established by Decision 2001/783/EC.

(5) Decision 2001/783/EC should therefore be amended accordingly.

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

HAS ADOPTED THIS DECISION:

Article 1

In Annex I A to Decision 2001/783/EC the word 'Napoli' is deleted.

Article 2

The Member States shall amend the measures they apply to trade so as to bring them into compliance with this Decision and they shall give immediate appropriate publicity to the measures adopted. They shall immediately inform the Commission thereof.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 4 July 2002.

For the Commission

David BYRNE

Member of the Commission

[1] OJ L 327, 22.12.2000, p. 74.
[2] OJ L 293, 10.11.2001, p. 42.
[3] OJ L 63, 6.3.2002, p. 26.

COMMISSION DECISION

of 4 July 2002

recognising the system of surveillance networks for bovine holdings implemented in Belgium in accordance with Council Directive 64/432/EEC

(notified under document number C(2002) 2495)

(Text with EEA relevance)

(2002/544/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 64/432/EEC [1] of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine, as last amended by Commission Regulation (EC) No 535/2002 [2], and in particular Article 14(5) thereof,

Whereas:

(1) The competent authorities of Belgium submitted a request on 18 October 2000, accompanied by appropriate documentation, which was further updated, for the recognition of the system of surveillance networks for bovine holdings implemented in that Member State.

(2) Following a Commission veterinary inspection mission in Belgium and in the light of the situation concerning animal health in this country, the system of surveillance networks for bovine holdings implemented in Belgium has been audited by Commission experts as fully operational, and it is proposed that it should therefore be formally approved.

(3) In order to allow Member States to adapt the rules they apply with regard to trade in bovine animals it appears appropriate to specify the date as of which the recognition shall take effect.

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

HAS ADOPTED THIS DECISION:

Article 1

The system of surveillance networks for bovine holdings provided for under Article 14 of Directive 64/432/EEC implemented by Belgium is hereby recognised as fully operational as of 1 July 2002.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 4 July 2002.

For the Commission

David BYRNE

Member of the Commission

[1] OJ 121, 29.7.1964, p. 1977.
[2] OJ L 80, 23.3.2002, p. 22.

CORRIGENDA

Corrigendum to Council Regulation (EC) No 92/2002 of 17 January 2002 imposing definitive anti-dumping duty and collecting definitively the provisional anti-dumping duty imposed on imports of urea originating in Belarus, Bulgaria, Croatia, Estonia, Libya, Lithuania, Romania and the Ukraine

(Official Journal of the European Communities L 17 of 19 January 2002)

On page 16, second subparagraph of Article 3:

for: 'The amounts secured in excess of the definitive rate of anti-dumping duties shall be released.',

read: 'The amounts secured in excess of the definitive rate of anti-dumping duties shall be released. In cases where the rate of definitive duty imposed is higher than the rate of the provisional duty, only amounts secured at the level of the provisional duty shall be definitively collected.'

Corrigendum to Recommendation 2002/413/EC of the European Parliament and of the Council of 30 May 2002 concerning the implementation of Integrated Coastal Zone Management in Europe

(Official Journal of the European Communities L 148 of 6 June 2002)

On page 27, Council signatory formula:

for: *'For the Council*
The President
J. PIQUÉ I CAMPS',

read: *'For the Council*
The President
M. A. CORTÉS MARTÍN'.