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Legislation

Contents

[1] Text with EEA relevance

(Continued overleaf)

EN

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

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

Contents (continued)

EN

[1] Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1219/2003

of 8 July 2003

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 1947/2002 [2], and in particular Article 4(1) thereof,

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 9 July 2003.

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

Done at Brussels, 8 July 2003.

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

[1] OJ L 337, 24.12.1994, p. 66.
[2] OJ L 299, 1.11.2002, p. 17.

ANNEX

to the Commission Regulation of 8 July 2003 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	52,8
	068	49,8
	096	55,3
	999	52,6
0707 00 05	052	71,9
	999	71,9
0709 90 70	052	78,8
	999	78,8
0805 50 10	382	55,9
	388	53,4
	528	50,8
	999	53,4
0808 10 20, 0808 10 50, 0808 10 90	388	82,4
	400	110,7
	508	88,9
	512	70,4
	524	46,9
	528	66,0
	720	103,5
	804	105,3
	999	84,3
0808 20 50	388	103,9
	512	83,3
	528	77,5
	800	180,2
	804	195,3
	999	128,0
0809 10 00	052	203,9
	064	148,6
	094	146,2
	999	166,2
0809 20 95	052	273,2
	060	115,5
	061	210,0
	064	231,2
	068	86,8
	400	271,1
	616	181,2
	999	195,6
0809 40 05	052	113,6
	999	113,6

(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 1220/2003

of 7 July 2003

amending Regulation (EC) No 883/2001 laying down detailed rules for implementing Council Regulation (EC) No 1493/1999 as regards trade with third countries in products in the wine sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine [1], as last amended by Regulation (EC) No 806/2003 [2], and in particular Article 59(3) and Article 68(3) thereof,

Whereas:

(1) Article 2 of Commission Regulation (EC) No 883/2001 [3], as last amended by Regulation (EC) No 1175/2003 [4], stipulates that box 14 of import licence applications and import licences is to show the colour of the wine or must as 'white' or 'red/rosé'. It should be stipulated that box 14 is also to show the product name in line with the existing product definitions. Member States should also be able to stipulate that only one tariff code is to be entered on the licence application.

(2) Commission Regulation (EC) No 1291/2000 of 9 June 2000 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products [5], as last amended by Regulation (EC) No 325/2003 [6], specifies maximum quantities below which no import licence need be presented. For grape juice and grape must these quantities are expressed in kilograms. For these products it is preferable to give a choice of expressing security rates in euro either per 100 kilograms or euro per hectolitre.

(3) The import licence security required under Regulation (EC) No 1291/2001 is set at differing rates for certain products that have the same eight-digit Combined Nomenclature code. To avoid uncertainty over the rate applicable a single rate should be set for all wine types.

(4) Commission Regulation (EC) No 1832/2002 of 1 August 2002 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff [7] amends the nomenclature for grape juice, including grape must. The corresponding codes should therefore be adjusted.

(5) In the case of indirect imports with no processing, the V I 1 document is drawn up on the basis of a V I 1 or equivalent document made out by the competent authority of the country of origin. If the product does not correspond to the declaration by the exporting country, it is difficult to establish who is responsible on the basis of an administrative document that does not directly refer to an authentic declaration. It should therefore be stipulated that the accompanying document from the country of origin is to be attached to that from the exporting country.

(6) Point 13 of Annex I to Regulation (EC) No 1493/1999 sets a lower limit for the total acidity content of wine produced in the Community of 3,5 grams per litre but no upper limit. Regulation (EC) No 883/2001 should therefore be adjusted accordingly, in particular where the analytical derogations for certain wines imported from Switzerland are concerned.

(7) Some errors have crept into the text of the Regulation and should be removed.

(8) Regulation (EC) No 883/2001 should be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 883/2001 is hereby amended as follows:

1. Article 2(3) and (4) is replaced by:

'3. Box 14 of import licence applications and import licences shall show the name of the product in line with the definitions indicated in Article 34 of this Regulation and Annex I to Council Regulation (EC) No 1493/1999, and the colour of the wine or must as "white" or "red/rosé".

[1] OJ L 179, 14.7.1999, p. 1.
[2] OJ L 122, 16.5.2003, p. 1.
[3] OJ L 128, 10.5.2001, p. 1.
[4] OJ L 164, 2.7.2003, p. 8.
[5] OJ L 152, 24.6.2000, p. 1.
[6] OJ L 47, 21.2.2003, p. 21.
[7] OJ L 290, 28.10.2002, p. 1.

4. Applicants may include in a single import licence application products falling within more than one tariff code, by completing boxes 15 and 16 of the application as follows:

(a) box 15: description of the product as given in the Combined Nomenclature;

(b) box 16: CN codes.

The product description and CN codes entered on the application shall also be entered on the import licence.

Member States may decide that on each application box 16 may show only one tariff code.'

2. Article 4 is replaced by:

'*Article 4*

Securities

1. The security for import licences shall be:

(a) concentrated grape juice and must: EUR 2,5 per 100 kilograms or per hectolitre,

(b) other grape juice and must: EUR 1,25 per 100 kilograms or per hectolitre,

(c) all wines: EUR 1,25 per hectolitre.

2. The security for export licences shall be EUR 8 per hectolitre for products falling within CN codes 2009 69 11, 2009 69 19, 2009 69 51, 2009 69 71, 2204 30 92 and 2204 30 96 and EUR 2,5 per hectolitre for other products.'

3. In Article 12(3) point (a) is replaced by:

'(a) the quantity in hectolitres for each 12-digit product code of the agricultural product nomenclature for export refunds. In the case of licences issued for more than one 12-digit code in the same Annex II category the category number is to be given.'

4. Article 14(1) is replaced by:

'1. For products falling within CN codes 2009 69 and 2204 30 listed in Annex I, part Three, section I, Annex 2 to the Common Customs Tariff and subject to entry price arrangements, the actual import price shall be verified by checking every consignment.'

5. The following third and fourth paragraphs are added to Article 30:

'The original or a certified copy of the V I 1 document or equivalent of the country of origin shall be attached to the V I 1 document of the exporting country.

The only countries of origin for the purposes of this Article shall be those appearing on the list, published under Article 29(1), of agencies and laboratories that are appointed by third countries to complete the documents that must accompany each consignment of imported wine.'

6. Article 33(1)(b) is replaced by:

'(b) wines originating in Switzerland that are comparable to quality wines psr, have a total acidity expressed as tartaric acid of more than 3 grams per litre, are compulsorily designated by a geographical indication and are at least 85 % derived from grapes of one or more of the following vine varieties:

— Chasselas,

— Müller-Thurgau,

— Sylvaner,

— Pinot noir,

— Merlot;'.

7. Annex I is replaced by Annex I hereto.

8. Annex II is replaced by Annex II hereto.

9. Annex III is replaced by Annex III hereto.

Article 2

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

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

Done at Brussels, 7 July 2003.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

'ANNEX I

ISSUE OF IMPORT LICENCES

Notifications under Article 5

Period from ..... to .....

Quantity in hl

Code	Country of origin	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
036	Switzerland									
046	Malta									
etc.	Etc.									
	All third countries									

Product figures are shown by column as follows:
1: sparkling wines;
2: red and rosé wines;
3: white wines;
4: liqueur wines;
5: fortified wines;
6: grape juice and grape must;
7: concentrated grape juice and grape must;
8: sparkling wines;
9: other products, to be specified in a note.'

ANNEX II

'ANNEX II

PRODUCT CATEGORIES REFERRED TO IN ARTICLE 8(1)

Code	Category
2009 69 11 9100 2009 69 19 9100 2009 69 51 9100 2009 69 71 9100 2204 30 92 9100 2204 30 96 9100	1
2204 30 94 9100 2204 30 98 9100	2
2204 21 79 9910 2204 29 62 9910 2204 29 64 9910 2204 29 65 9910	3
2204 21 79 9100 2204 29 62 9100 2204 29 64 9100 2204 29 65 9100	4.1
2204 21 80 9100 2204 29 71 9100 2204 29 72 9100 2204 29 75 9100	4.2
2204 21 79 9200 2204 29 62 9200 2204 29 64 9200 2204 29 65 9200	5.1
2204 21 80 9200 2204 29 71 9200 2204 29 72 9200 2204 29 75 9200	5.2
2204 21 83 9100 2204 29 83 9100	6.1
2204 21 84 9100 2204 29 84 9100	6.2
2204 21 94 9910 2204 21 98 9910 2204 29 94 9910 2204 29 98 9910	7
2204 21 94 9100 2204 21 98 9100 2204 29 94 9100 2204 29 98 9100	8'

ANNEX III

'ANNEX III

PRODUCT GROUPS REFERRED TO IN ARTICLE 8(2)

Product code of the agricultural product nomenclature for export refunds	Group
2009 69 11 9100 2009 69 19 9100 2009 69 51 9100 2009 69 71 9100	A
2204 30 92 9100 2204 30 96 9100	B
2204 30 94 9100 2204 30 98 9100	C
2204 21 79 9100 2204 21 79 9200 2204 21 79 9910 2204 21 83 9100	D
2204 21 80 9100 2204 21 80 9200 2204 21 84 9100	E
2204 29 62 9100 2204 29 62 9200 2204 29 62 9910 2204 29 64 9100 2204 29 64 9200 2204 29 64 9910 2204 29 65 9100 2204 29 65 9200 2204 29 65 9910 2204 29 83 9100	F
2204 29 71 9100 2204 29 71 9200 2204 29 72 9100 2204 29 72 9200 2204 29 75 9100 2204 29 75 9200 2204 29 84 9100	G
2204 21 94 9910 2204 21 98 9910	H
2204 29 94 9910 2204 29 98 9910	I
2204 21 94 9100 2204 21 98 9100	J
2204 29 94 9100 2204 29 98 9100	K'

COMMISSION REGULATION (EC) No 1221/2003

of 8 July 2003

setting the actual production of olive oil and the unit amount of the production aid 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 No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats [1], as last amended by Regulation (EC) No 1513/2001 [2],

Having regard to Council Regulation (EEC) No 2261/84 of 17 July 1984 laying down general rules on the granting of aid for the production of olive oil and of aid to olive oil producer organisations [3], as last amended by Regulation (EC) No 1639/98 [4], and in particular Article 17a(2) thereof,

Whereas:

(1) Under Article 5 of Regulation No 136/66/EEC, the unit production aid must be adjusted in each Member State where actual production exceeds the guaranteed national quantity referred to in paragraph 3 of that Article. With a view to assessing the extent of the overrun in Spain, France, Greece, Italy and Portugal, account should be taken of the estimates for the production of table olives, expressed as olive-oil equivalent using the relevant coefficients referred to, in the case of Spain, in Commission Decision 2001/650/EC [5], as amended by Decision 2001/883/EC [6], in the case of Greece, in Commission Decision 2001/649/EC [7], as amended by Decision 2001/880/EC [8], in the case of Portugal, in Commission Decision 2001/670/EC [9], as amended by Decision 2001/878/EC [10], in the case of France, in Commission Decision 2001/648/EC [11], as amended by Decision 2001/879/EC [12] and, in the case of Italy, in Commission Decision 2001/658/EC [13], as amended by Decision 2001/884/EC [14].

(2) Article 17a(1) of Regulation (EEC) No 2261/84 provides that, in order to determine the unit amount of the production aid for olive oil that can be paid in advance, the estimated production for the marketing year concerned should be determined. That amount must be set at a level that rules out any risk of undue payment to olive growers. The amount also applies to table olives, expressed as olive-oil equivalent. For the 2001/02 marketing year, the estimated production and the unit amount of the production aid that can be paid in advance were laid down in Commission Regulation (EC) No 1793/2002 [15], as amended by Regulation (EC) No 15/2003 [16].

(3) In order to determine the actual production for which entitlement to aid is recognised, the individual Member States concerned must inform the Commission by no later than 15 May following each marketing year of the quantity on which the aid is payable in that Member State, in accordance with Article 14(4) of Commission Regulation (EC) No 2366/98 [17], as last amended by Regulation (EC) No 2383/2002 [18]. According to that information, the quantity on which the aid is payable for the 2001/02 marketing year is 1 562 531 tonnes for Spain, 2 591 tonnes for France, 404 619 tonnes for Greece, 711 076 tonnes for Italy and 33 613 tonnes for Portugal.

(4) Confirmation by the Member States that aid is payable on those quantities implies that the controls referred to in Regulations (EEC) No 2261/84 and (EC) No 2366/98 have been carried out. However, setting actual production on the basis of information from the Member States on the quantities on which aid is payable does not prejudge the conclusions that may be drawn from verification of the accuracy of that information under the accounts clearance procedure.

(5) Taking account of the actual production figures, the unit amount of the production aid provided for in Article 5(1) of Regulation No 136/66/EEC payable on the eligible quantities of actual production should also be set.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Oils and Fats,

[1] OJ 172, 30.9.1966, p. 3025/66.
[2] OJ L 201, 26.7.2001, p. 4.
[3] OJ L 208, 3.8.1984, p. 3.
[4] OJ L 210, 28.7.1998, p. 38.
[5] OJ L 229, 25.8.2001, p. 20.
[6] OJ L 327, 12.12.2001, p. 43.
[7] OJ L 229, 25.8.2001, p. 16.
[8] OJ L 326, 11.12.2001, p. 42.
[9] OJ L 235, 4.9.2001, p. 16.
[10] OJ L 326, 11.12.2001, p. 40.
[11] OJ L 229, 25.8.2001, p. 12.
[12] OJ L 326, 11.12.2001, p. 41.
[13] OJ L 231, 29.8.2001, p. 16.
[14] OJ L 327, 12.12.2001, p. 44.
[15] OJ L 272, 10.10.2002, p. 11.
[16] OJ L 2, 7.1.2003, p. 6.
[17] OJ L 293, 31.10.1998, p. 50.
[18] OJ L 358, 31.12.2002, p. 122.

HAS ADOPTED THIS REGULATION:

Article 1

1. For the 2001/02 marketing year, the actual production to be used to calculate the aid for olive oil as referred to in Article 5 of Regulation No 136/66/EEC shall be:

— 1 562 531 tonnes for Spain,

— 2 591 tonnes for France,

— 404 619 tonnes for Greece,

— 711 076 tonnes for Italy,

— 33 613 tonnes for Portugal.

2. For the 2001/02 marketing year, the unit amount of the production aid referred to in Article 5 of Regulation No 136/66/EEC payable on the eligible quantities of actual production shall be:

— EUR 63,75/100 kg for Spain,

— EUR 130,40/100 kg for France,

— EUR 130,40/100 kg for Greece,

— EUR 100,45/100 kg for Italy,

— EUR 130,40/100 kg for Portugal.

Article 2

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

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

Done at Brussels, 8 July 2003.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DIRECTIVE 2003/66/EC

of 3 July 2003

amending Directive 94/2/EC implementing Council Directive 92/75/EEC with regard to energy labelling of household electric refrigerators, freezers and their combinations

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 92/75/EEC of 22 September 1992 on the indication by labelling and standard product information of the consumption of energy and other resources of household appliances [1], and in particular Articles 9 and 12 thereof,

Whereas:

(1) Electricity use by refrigerators, freezers and their combinations accounts for a significant part of total Community household energy demand. The further scope for a reduction of energy use by these appliances is substantial.

(2) The success of the labelling scheme introduced by Commission Directive 94/2/EC [2], in conjunction with Directive 96/57/EC of the European Parliament and of the Council of 3 September 1996 on energy efficiency requirements for household electric refrigerators, freezers and combinations thereof [3] has led to a rise of the efficiency index of new refrigerators and freezers by over 30 % between 1996 and 2000.

(3) About 20 % of the cold appliances sold in 2000 were in the most efficient class A, and in some markets the proportion was more than 50 %. The market shares of A class appliances is rising rapidly. Consequently, there is a need to introduce two additional classes, to be designated as A+ and A++, as an interim arrangement until a comprehensive revision of the energy labelling classes takes place.

(4) The effect of labelling on energy efficiency will diminish, or disappear, unless further and more efficient classes are defined.

(5) Directive 94/2/EC should therefore be amended accordingly. By the same occasion, it will be possible to align that Directive on similar directives recently adopted, implementing Directive 92/75/EEC.

(6) The measures provided for in this Directive are in accordance with the opinion of the Committee set up under Article 10 of Directive 92/75/EEC,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 94/2/EC is amended as follows:

1. In Article 1, paragraphs 2, 3 and 4 are replaced by the following:

'2. The information required by this Directive shall be obtained by measurements made in accordance with harmonised standards adopted by the European Standardisation Bodies (CEN, CENELEC, ETSI) under mandate from the Commission in accordance with Directive 98/34/EC of the European Parliament and of the Council (*), the reference numbers of which have been published in the *Official Journal of the European Union* and for which Member States have published the reference numbers of the national standards transposing those harmonised standards.

3. The provisions in Annexes I, II and III requiring the giving of information relating to noise shall apply only where that information is required by Member States under Article 3 of Directive 86/594/EEC. This information shall be measured in accordance with that Directive.

4. In this Directive the definitions set out in Article 1(4) of Directive 92/75/EEC shall apply.

(*) OJ L 204, 21.7.1998, p. 37.'

2. Article 2 is amended as follows:

(a) In paragraph 1, the following subparagraph is added:

'Where the information relating to a particular model combination has been obtained by calculation on the basis of design, and/or extrapolation from other combinations, the documentation should include details of such calculations and/or extrapolations, and of tests undertaken to verify the accuracy of the calculations undertaken (details of mathematical model for calculating performance and of measurements taken to verify this model).'

[1] OJ L 297, 13.10.1992, p. 16.
[2] OJ L 45, 17.2.1994, p. 1.
[3] OJ L 236, 18.9.1996, p. 36.

(b) Paragraph 5 is replaced by the following:

'5. Where the appliances are offered for sale, hire or hire purchase by means of a printed or written communication, or by other means which imply that the potential customer cannot be expected to see the appliance displayed, such as a written offer, a mail order catalogue, advertisements on the Internet or on other electronic media, that communication shall include all the information specified in Annex III.'

3. Annexes I, II, III, and V are amended as shown in the Annex to this Directive.

4. Annex VI is deleted.

Article 2

Member States shall allow the circulation of labels, fiches and communications referred to in Article 2(5) of Directive 94/2/EC, containing the information as revised by this Directive, no later than 1 July 2004.

They shall ensure that all labels, fiches and communications referred to in Article 2(5) of Directive 94/2/EC comply with the revised models, no later than 31 December 2004.

Article 3

Member States shall adopt and publish the provisions to comply with this Directive no later than 30 June 2004. They shall immediately inform the Commission thereof.

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

Article 4

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

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 3 July 2003.

For the Commission

Loyola DE PALACIO

Vice-President

ANNEX

(1) Annex I is amended as follows:

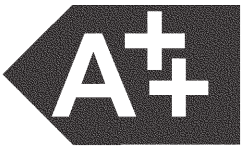
(a) under the heading 'Notes on label', the final sentence 'NB: the equivalent terms in other languages to those described above are given in Annex VI', is deleted;

(b) under the heading 'Printing':

(i) the following text is inserted after the illustration:

'The indicator letter for A+ and A++ appliances shall be in accordance with the following illustrations, and shall be placed in the same position as the A indicator for A class appliances

A+ A++



,

(ii) the final text, commencing with the words: 'Complete printing information is contained in a "refrigerator/freezer label design guide" …' is deleted.

(2) Annex II is amended as follows:

(a) point 4 is replaced by the following:

'4. The energy efficiency class of the model as defined in Annex V, expressed as "Energy efficiency class … on a scale of A++ (most efficient) to G (least efficient)". Where this information is provided in a table this may be expressed by other means provided it is clear that the scale is from A++ (most efficient) to G (least efficient).'

(b) point 8 is replaced by the following:

'8. Net storage volume of frozen food storage compartment, and of chill compartment when available, in accordance with standards referred to in Article 1(2) — omit for classes 1, 2 and 3. For class 3 appliances the net volume of the "ice box".'

(c) the following point 15 is added:

'15. If the model is produced in order to be built-in, this should be stated.'

(d) the final Note is deleted.

(3) Annex III is amended as follows:

The final Note is deleted.

(4) In Annex V the following text is inserted after the title 'ENERGY EFFICIENCY CLASS':

'PART 1: Definitions of Classes A+ and A++

An appliance shall be classified as A+ or A++, where the energy efficiency index alpha (I_α) is within the ranges specified in Table 1.

Table 1

Energy efficiency index α (I_α)	"Energy efficiency class"
$30 > I_\alpha$	A++
$42 > I_\alpha \geq 30$	A+
$I_\alpha \geq 42$	A to G (see below)

In Table 1

$$I_\alpha = \frac{AC}{SC_\alpha} \times 100$$

where:

AC = annual energy consumption of appliance (in accordance with Annex I, note V)

SC_α = standard annual energy consumption α of appliance

SC_α is calculated as

$$M_\alpha X \sum_{\text{Compartments}} \left(Vc \times \frac{(25 - Tc)}{20} \times FF \times CC \times BI \right) + N_\alpha + CH$$

where:

Vc is the net volume (in litres) of the compartment (in accordance with standards referred to in Article 1(2)).

Tc is the design temperature (in °C) of the compartment.

The values of M_α and N_α are given in Table 2 and the values of FF, CC, BI and CH are given in Table 3

Table 2

Type of appliance	Temperature of coldest compartment	M_α	N_α
1 Larder Fridge	> – 6 °C	0,233	245
2 Refrigerator/chiller	> – 6 °C	0,233	245
3 Refrigerator no star	> – 6 °C	0,233	245
4 Refrigerator *	≤ – 6 °C *	0,643	191
5 Refrigerator **	≤ – 12 °C **	0,450	245
6 Refrigerator ***/	≤ – 18 °C ***/*(***)	0,777	303
7 Fridge-freezer *(***)	≤ – 18 °C ***/*(***)	0,777	303
8 Upright freezer	≤ – 18 °C *(***)	0,539	315
9 Chest freezer	≤ – 18 °C *(***)	0,472	286
10 Multi-door or other appliance		([1])	([1])

([1]) For these appliances, the temperature and star rating of the compartment with the lowest temperature will determine the values of M and N. Appliances with – 18 °C *(***) compartments shall be considered as fridge-freezers *(***).

Table 3

Correction factor	Value	Condition
FF (frost-free)	1,2	For "frost-free" (ventilated) frozen food compartments
	1	Otherwise
CC (climate class)	1,2	For "tropical" appliances
	1,1	For "subtropical" appliances
	1	Otherwise
BI (built-in)	1,2	For built-in appliances ([1]) of under 58 cm in width.
	1	Otherwise
CH (chill compartment)	50 Kwh/y	For appliances with a chill compartment of at least 15 litres
	0	Otherwise

([1]) An appliance is "built-in" only if it is designed exclusively for installation within a kitchen cavity with a need of furniture finishing, and tested as such.

If an appliance is not A+ or A++, it shall be classified in accordance with Part 2.

PART 2: Definitions of Classes A to G

….'

II

(Acts whose publication is not obligatory)

COUNCIL

POLITICAL AND SECURITY COMMITTEE DECISION FYROM/2/2003

of 10 March 2003

on the acceptance of third States contributions to the European Union military operation in the Former Yugoslav Republic of Macedonia

(2003/497/CFSP)

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Treaty on European Union, and in particular Article 25, last paragraph, thereof,

Having regard to the Council Joint Action 2003/92/CFSP of 27 January 2003 on the European Union Military Operation in the Former Yugoslav Republic of Macedonia [1], and in particular Article 8(2) and (3), thereof on the participation of third States,

Whereas:

(1) Article 8(1) of the Joint Action provides that

— the non-EU European NATO members shall participate in the operation if they so wish,

— countries which have been invited by the Copenhagen European Council to become Member States are invited to participate in the operation, in accordance with the agreed modalities,

— potential partners may also be invited to participate in the operation.

(2) Under Article 8 of the Joint Action, the Council authorised the PSC to take, upon recommendation of the Operation Commander and the EU Military Committee, the relevant decisions on acceptance of the proposed contributions.

(3) Upon request of the PSC and the tasking by the EUMC, the EU Operation Commander and EU Force Commander have conducted the Force Generation and Manning Conferences.

(4) The EUMC agreed on 6 March 2003 to the recommendation of the Operation Commander on third States contributions and submitted to the PSC on 6 March its recommendation to accept these third States contributions,

HAS ADOPTED THIS DECISION:

Article 1

Third States contributions

Following Force Generation and Manning Conferences contributions from the following third States are accepted for the EU operation in FYROM:

Bulgaria

Canada

Czech Republic

Estonia

Iceland

Latvia

Lithuania

Norway

Poland

Romania

Slovakia

Slovenia

Turkey.

[1] OJ L 34, 11.2.2003, p. 26.

Article 2

Entry into force

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

Done at Brussels, 10 March 2003.

For the Political and Security Committee
The Chairperson
T. PARASKEVOPOULOS

POLITICAL AND SECURITY COMMITTEE DECISION FYROM/3/2003

of 11 March 2003

amending the Political and Security Committee Decision FYROM/2/2003 of 10 March 2003 on the acceptance of third States contributions to the European Union military operation in the Former Yugoslav Republic of Macedonia

(2003/498/CFSP)

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Political and Security Committee Decision FYROM/2/2003 of 10 March 2003 on the acceptance of third States' contributions to the EU military operation in the Former Yugoslav Republic of Macedonia,

Whereas:

(1) By letter of 11 March 2003 the Hungarian Military Representative to NATO Military Committee and WEU offered a contribution to the EU Military Operation in FYROM.

(2) On 11 March 2003, the Political and Security Committee, acting upon the recommendation of the EU Operation Commander and the EU Military Committee, decided to accept the contribution,

HAS ADOPTED THIS DECISION:

Article 1

Article 1 of the Political and Security Committee Decision FYROM/2/2003 shall be replaced by the following:

'*Article 1*

Third States' contributions

Following the Force Generation and Manning Conferences, contributions from the following third States are accepted for the EU operation in FYROM:

Bulgaria

Canada

Czech Republic

Estonia

Hungary

Iceland

Latvia

Lithuania

Norway

Poland

Romania

Slovakia

Slovenia

Turkey.'

Article 2

Entry into force

This Decision shall enter into force on the day of its signature.

Done at Brussels, 11 March 2003.

For the Political and Security Committee

The Chairperson

T. PARASKEVOPOULOS

POLITICAL AND SECURITY COMMITTEE DECISION FYROM/4/2003

of 17 June 2003

amending the Decision FYROM/2/2003 on the acceptance of third States contributions to the European Union military operation in the Former Yugoslav Republic of Macedonia

(2003/499/CFSP)

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Council Joint Action 2003/92/CFSP of 27 January on the European Union Military Operation in the Former Yugoslav Republic of Macedonia [1], in particular Article 8(2) thereof,

Having regard to the Political and Security Committee Decision FYROM/2/2003 of 10 March 2003 on the acceptance of third States' contributions to the EU military operation in the Former Yugoslav Republic of Macedonia,

Whereas by letter of 29 April 2003 the Canadian Representative to the EU has informed the EU that it is unable to participate in Operation Concordia on the current terms,

HAS ADOPTED THIS DECISION:

Article 1

Article 1 of Decision FYROM/2/2003 shall be replaced by the following:

'*Article 1*

Third States' contributions

Following the Force Generation and Manning Conferences, contributions from the following third States are accepted for the EU operation in FYROM:

Bulgaria

Czech Republic

Estonia

Hungary

Iceland

Latvia

Lithuania

Norway

Poland

Romania

Slovakia

Slovenia

Turkey.'

Article 2

Entry into force

This Decision shall enter into force on the day of its signature.

Done at Brussels, 17 June 2003.

For the Political and Security Committee

The Chairperson

T. PARASKEVOPOULOS

[1] OJ L 34, 11.2.2003, p. 26.

POLITICAL AND SECURITY COMMITTEE DECISION DRC/1/2003

of 1 July 2003

on the acceptance of third States' contributions to the European Union military operation in the Democratic Republic of Congo

(2003/500/CFSP)

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Treaty on European Union, and in particular Article 25, last paragraph, thereof,

Having regard to the Council Joint Action 2003/423/CFSP of 5 June 2003 on the European Union military operation in the Democratic Republic of Congo [1], and in particular Article 10(2) and (3) thereof on the participation of third States,

Whereas:

(1) Upon request of the Political and Security Committee and in accordance with the tasking by the European Union Military Committee (EUMC), the EU Operation Commander and EU Force Commander have conducted the Force Generation and Manning Conferences on 10 and 11 June 2003 respectively.

(2) On 25 June 2003, following the recommendation of the Operation Commander on third States' contributions, the EUMC agreed to recommend to the Political and Security Committee to accept these third States' contributions,

HAS ADOPTED THIS DECISION:

Article 1

Third States' contributions

Following Force Generation and Manning Conferences, contributions from the following third States are accepted for the EU military operation in the Democratic Republic of Congo:

Brazil

Canada

Hungary

South Africa.

Article 2

Entry into force

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

Done at Brussels, 1 July 2003.

For the Political and Security Committee

The Chairperson

M. MELANI

[1] OJ L 143, 11.6.2003, p. 50.

COMMISSION

COMMISSION DECISION

of 16 October 2002

on the State aid scheme C 49/2001 (ex NN 46/2000) — Coordination Centres — implemented by Luxembourg

(notified under document number C(2002) 3740)

(Only the French text is authentic)

(Text with EEA relevance)

(2003/501/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas:

I PROCEDURE

(1) In 1997 the Ecofin Council adopted a code of conduct on direct business taxation with a view to putting a stop to unfair practices in this area [2]. Further to the undertaking contained in the code, the Commission in 1998 published a notice on the application of the State aid rules to measures relating to direct business taxation [3] (hereinafter referred to as 'the notice'), in which it reaffirmed its determination to apply those rules rigorously and in accordance with the principle of equality of treatment. This procedure is covered by that notice.

(2) By letter of 12 February 1999 (D/50716), the Commission asked Luxembourg for information concerning the Luxembourg scheme for coordination centres. By letter of 26 March 1999 (A/32604), the Luxembourg authorities informed the Commission that the scheme had been withdrawn on 20 February 1996.

(3) By letter of 25 April 2000 (D/51738), the Commission asked for further information in view of the fact that, although it had been withdrawn, the scheme might have produced effects and/or still be producing effects. The information was supplied to the Commission by letter from the Luxembourg authorities dated 10 May 2000 (A/34012).

(4) By letter SG (2001) D/289761 of 11 July 2001, the Commission informed Luxembourg that it had decided to initiate the formal investigation procedure laid down in Article 88(2) of the EC Treaty in respect of the tax scheme for coordination centres. By letter of 14 September 2001 (A/37236), Luxembourg submitted its comments concerning the Commission's decision.

(5) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [4]. The Commission invited interested parties to submit their comments on the measure. It received no comments from interested parties.

(6) By letter of 25 March 2002 (D/51316), the Commission asked Luxembourg for further information, which was provided by letter of 17 April 2002 (A/32897).

[1] OJ C 304, 30.10.2001, p. 10.
[2] OJ C 2, 6.1.1998, p. 1.
[3] OJ C 384, 10.12.1998, p. 3.
[4] See footnote 1.

II DESCRIPTION OF THE MEASURE

(7) The status of coordination centres is governed by Circular LIR No 119 of 12 June 1989 (hereinafter referred to as 'Circular 119' or 'the Circular'). The Circular was repealed by Circular LIR No 1119 of 20 February 1996. A total of five companies were approved as coordination centres, of which four became operational.

(8) A coordination centre is a resident limited company which is multinational in nature and has as its sole purpose the provision of services exclusively to companies or enterprises in the same foreign international group. Within the meaning of the Circular, a foreign international group refers to companies that are financially linked and incorporated in at least two countries other than Luxembourg and whose parent company is not a resident taxpayer and is subject in another country to a tax corresponding to Luxembourg corporation tax (*impôt sur le revenu des collectivités*).

(9) Coordination-centre status was granted by prior administrative approval. Approval was, in principle, limited to four tax years.

(10) The administrative services provided by coordination centres to other companies within the group are as follows:

— organisational and secretariat services,

— advertising,

— marketing and market research,

— the supply, gathering and processing of technical or administrative information,

— relations with national or international authorities,

— centralisation of accounting, administrative/financial, IT and legal expertise services, and provision of assistance and services directly and indirectly relating to the activities in question.

(11) The Circular states that, for corporation tax purposes, the provision of intra-group services must generate an appropriate trading profit in line with the normal behaviour of a prudent manager in his relations with independent third parties. To that end, taxable profit is determined according to the cost-plus pricing method. This method involves applying a flat-rate mark-up to all deductible expenditure linked to the services provided to other companies within the group.

(12) However, if expenditure and charges to be taken into consideration do not exceed LUF 30 000 000 (approximately EUR 750 000), the trading profit is fixed at a flat rate of LUF 1 500 000 (approximately EUR 37 500).

(13) If the coordination centre pursues activities involving the payment of invoices in different currencies, the trading profit is not determined according to the cost-plus pricing method but on the basis of an appropriate consideration generally payable under conditions of full competition for the exchange risk borne by a third party. The consideration must be at least equal to 1 % of all invoices to be taken into account and must be in proportion to the exchange risk.

(14) Operations covered by the activities authorised by the Circular and carried out through the intermediary of a permanent establishment in Luxembourg of a foreign international group or by a resident company, other than a coordination centre, forming part of a foreign international group may also qualify for this method of calculating taxable profit.

III GROUNDS FOR INITIATING THE PROCEDURE

(15) In its evaluation of the information supplied by the Luxembourg authorities, the Commission examined whether the method of determining the mark-up rate, the exclusion of certain expenditure from the calculation of the tax base and the exercise of possible discretionary power by the administration might confer an advantage on coordination centres. It also took the view that such an advantage might have been granted from State resources, might affect competition and trade between Member States, and might be selective. Finally, it felt that none of the exceptions to the general principle that State aid is prohibited seemed to be applicable. These doubts led the Commission to initiate the formal investigation procedure in this case.

IV COMMENTS FROM LUXEMBOURG

(16) The comments submitted by the Luxembourg authorities may be summarised as follows.

(17) Since the scheme had been withdrawn, it was no longer producing any effects other than in respect of enterprises to which the provisions of Circular 119 applied up to the end of 2001. The Luxembourg authorities also pointed to the problems posed by transfer prices ([5]) and defended the solution adopted. Finally, they did not consider the measure as constituting aid within the meaning of Article 87 of the Treaty.

Transfer prices

(18) The links which exist between two enterprises within a particular group enable them (at least in theory) to determine conditions for supplying goods and services between them which differ from those which would have applied if the two parties had acted as independent enterprises operating on free markets. Enterprises may thus be tempted to allocate their profits within the group in such a way as to minimise the total tax burden on the group as a whole. In the case of multinational groups, allocating profits in this way often results in the tax base being increased in one country and reduced in another. This explains the concern of governments to ensure that transfer prices within a group are as close as possible to market prices.

([5]) Transfer prices are the prices at which a company invoices goods or services to associated companies.

(19) Within the OECD, to which the Member States belong, the principle of full competition was adopted to eliminate the impact of special conditions on the level of profits. This principle, set out in Article 9 of the OECD Model Tax Convention, serves a dual objective: to ensure that tax is correctly assigned to each country and, as far as possible, to avoid double taxation. It also enables multinational enterprises and independent enterprises to be treated as equally as possible. The methods used to determine transfer prices include the 'comparable prices on the free market' method and the cost-plus pricing method.

(20) Referring to the need to prevent tax avoidance and to the principle of full competition, the Luxembourg authorities point out that Article 164 of the Law of 4 December 1967 on income tax constitutes the legislative basis for transfer prices. It was in this context that Circular 119 was adopted to facilitate the taxation of certain types of activity. The Luxembourg administration normally tries to compare prices charged within the same group with prices charged for comparable transactions between independent enterprises. This is not always possible, however, because the relevant comparative data are not available.

(21) Consequently, the Luxembourg administration opted in this case for the cost-plus pricing method with a view to determining transfer prices for the intra-group services provided by coordination centres. On the basis of a uniform method such as that recommended by the OECD, the minimum threshold of 5 %, a rate comparable to that which can be obtained on the free market, was deemed reasonable for this type of services. Nevertheless, a higher rate could always be applied if the tax administration received information indicating that a higher profit margin had been achieved.

Circular 119 did not involve State aid within the meaning of Article 87 of the Treaty

The measure must give rise to an advantage

(22) The measure did not set out to lighten the tax burden normally borne by coordination centres but solely to determine as accurately as possible a market price for intra-group services by applying the cost-plus pricing method. Luxembourg points out that, in paragraph 13 of its notice, the Commission stressed that tax measures of a purely technical nature, such as provisions to prevent double taxation or tax avoidance, do not constitute State aid. Given that Circular 119 was a general measure designed to prevent tax avoidance and to produce an appropriate and fair trading profit for coordination centres, it did not constitute State aid.

(23) The requirement that coordination centres belong to a large international group and the imposition of a minimum profit of LUF 1 500 000 (approximately EUR 37 500) were such as to ensure a sufficient volume of activity in Luxembourg. Otherwise, profits would have been so insignificant from a tax point of view that the application of Circular 119 would not have been justified.

(24) Circular 119 required the parent company to be subject abroad to a tax corresponding to Luxembourg corporation tax. In this way, transferring excessive deductible tax to a foreign country seems to have been ruled out. If it considered the Luxembourg tax arrangements to be too favourable, the foreign country in which the parent company of the coordination centre originated could either refuse to apply the provisions of the 'parent company-subsidiary' Directive ([6]) in respect of distributions of dividends by the Luxembourg coordination centre or apply measures to prevent tax avoidance.

(25) Luxembourg notes that the Commission is merely questioning the way in which the principle of full competition is complied with, claiming that this objective is not being met under the scheme and asserting that, where the authorities have some margin of discretion, this is liable to favour certain enterprises or groups.

(26) The Luxembourg authorities consider that the Commission is criticising two aspects of the advantage enjoyed by coordination centres: on the one hand, the practical application of the cost-plus pricing method as compared with the use of the transfer prices actually paid and, on the other, the fact that non-deductible expenditure is not included in the tax base.

(27) As far as the first aspect is concerned, Luxembourg stresses that it was only where the transfer prices charged by the enterprise were higher than those resulting from the application of the cost-plus pricing method that the use of that method could have led to an advantage for the enterprise as a result of a smaller tax base being applied to it. The Luxembourg authorities admit that Circular 119 did not contain any explicit reference to the principle of linking the tax balance sheet to the commercial balance sheet and that they could not rule out the possibility that a taxpayer might have sought to take advantage of this loophole in order to overcharge in Luxembourg for services performed for other companies in the group. Nevertheless, Luxembourg considers that third countries had the means to check whether such overcharging was taking place. Should the Commission conclude that the application of Circular 119 in such cases constituted unlawful State aid and demand its recovery, the enterprises concerned would have to be identified and an individual calculation made for each enterprise on the basis of the real transfer prices.

([6]) Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ L 225, 20.8.1990, p. 6).

(28) Luxembourg would point out that the Commission accepts the use of methods such as the cost-plus pricing method and that there would not be any advantage if using such alternative methods resulted in taxation equal or at least comparable to that which could have been arrived at between two independent operators applying the traditional method whereby taxable profit is calculated on the basis of the difference between the enterprise's income and charges. According to Luxembourg, the Commission considers that an advantage should be deemed to exist where the result of applying the cost-plus pricing method is not sufficiently comparable to that which would have been obtained by means of the traditional method. However, the Commission is not concerned with the extent of any such advantage, and Luxembourg considers that the cost-plus pricing method does not in any case give rise to any advantage to the point where the taxable income would no longer be comparable to that which could have been obtained between two independent operators by means of the traditional method.

(29) As for the second aspect, Luxembourg considers that the Commission seems to be claiming that, by not including in the tax base expenditure which is not deductible pursuant to Article 168 of the Law on corporation tax, an advantage might be conferred on coordination centres. However, the Luxembourg authorities consider such exclusions to be justified. As regards the exemption of dividends from corporation tax and wealth tax, they note that dividends are allocations based on the trading result and are not genuine expenditure, and so the question of their deductibility does not arise. As for bonuses, attendance fees and donations to cultural, charitable or general-interest institutions, their exclusion from the basis for determining cost-plus prices can be explained by the need to avoid double taxation. Bonuses are an allocation from reserves formed on the basis of the net result.

(30) Luxembourg takes the view that all of these non-deductible expenses are already added to the coordination centre's tax result. In other words, they form in any case part of the tax base. If they had been included in the basis for determining cost-plus prices, they would have been taxed twice. Luxembourg also points out that Circular 119 is applied in its entirety and must therefore confer an advantage in its entirety without it being possible to single out any one of its aspects.

The advantage must be granted from State resources

(31) Luxembourg acknowledges that, if any advantage was conferred by Circular 119, it came from State resources.

The measure must be selective

(32) As for the alleged selectivity stemming from the application of a discretionary practice, the Luxembourg authorities confirm that the administration does not have any discretion to grant or refuse application of the scheme for coordination centres. On the contrary, although such selectivity results from a legislative or administrative exception to the tax provisions, they assert that the State aid rules have never been applied to a situation comparable to this case. The Commission has not cited any precedent.

(33) Luxembourg points out that, in point 20 of the notice, the Commission explains that some tax benefits are on occasion restricted to certain types of undertaking, to some of their functions or to the production of certain goods and may therefore constitute State aid. However, Luxembourg indicates that there is no example of a decision or judgment of the Court of Justice of the European Communities in which a measure has been deemed to be selective because it applied only to some types of undertaking or to some of their functions.

(34) According to Luxembourg, the specificity criterion is not met because Circular 119 stems from the normal application of the Luxembourg tax rules. The Circular applies to all international groups of a sufficient size and forms part of efforts to combat abnormally low transfer prices. The only conditions imposed relate to the size of the group and to its establishments in several countries. Such limitations are necessary in order to guarantee that serious operations are managed from Luxembourg in a volume which is sufficient to give rise to difficulties in determining the transfer prices of the enterprises concerned. The principles to be applied in determining the taxable result of a coordination centre, as proposed in the Circular, are based on the rules for transfer prices set out by the OECD, which are general in scope and applicable to all taxpayers encountering intra-group invoicing. The Circular does not involve the application of a lower tax rate to coordination centres but, at most, lays down how the tax base is to be calculated, taking account of the specific characteristics of multinational companies. It is therefore a tax measure of a purely technical nature, which, according to the Commission, does not constitute State aid.

(35) If, because of a loophole in the wording, the Circular had been used to obtain lower taxation, it would be an abusive extension of the concept of State aid to consider the exploitation of a loophole by a taxpayer as aid.

(36) As an ancillary argument, Luxembourg takes the view that, even if the arrangements for coordination centres were considered by the Commission to be a derogation from the normal arrangements, they are justified by the nature and general scheme of the system. The Luxembourg authorities wanted to reconcile the principle of legal certainty with that of full competition. For the reasons outlined above, they chose the cost-plus pricing method in order to give the taxpayers concerned a point of reference by laying down a minimum threshold for declaring profits earned on internal operations.

The measure distorts competition and affects trade between Member States

(37) Since the rules on transfer prices are designed to prevent disguised transfers of profits abroad by means of inappropriate invoicing methods, Circular 119 was addressed to international groups. The aim was not to permit an overall reduction of taxable profits within international groups but to prevent tax avoidance. Therefore, according to Luxembourg, the Circular cannot be considered to confer an advantage which improves the competitive position of the enterprises making up such groups within the common market.

The principle of legitimate expectations

(38) In Luxembourg's view, the taxpayers to which Circular 119 was applicable had legitimate expectations which militate against the repayment of any State aid resulting from application of the Circular. There is no precedent for applying the State aid rules to the choice of methods for calculating the tax base. Applying them in this way would involve a radical and unforeseeable extension of the current scope of Article 88 of the Treaty.

(39) Moreover, the Commission considered at the time that rules governing the taxation of European headquarters of multinational groups did not fall within the scope of the Treaty's provisions on State aid ([7]). Likewise, the Commission had not raised any objection concerning the taxation of coordination centres in Belgium. Consequently, Luxembourg had legitimate grounds for believing that the Circular was legal.

(40) Moreover, until publication of the notice in 1998, Community policy on State aid was unclear. Recovery could at most extend to the advantages obtained after the date on which the notice was published.

The principle of non-retroactivity of tax laws

(41) Luxembourg takes the view that a request for recovery of the alleged aid would be tantamount to a retroactive amendment of the ordinary tax rules that would run counter to the basic constitutional principle of non-retroactivity of tax laws. The Commission cannot reasonably impose recovery where aid results from a general tax scheme contested after the event by the Commission.

Impossibility of recovering the alleged aid

(42) Luxembourg considers that there is consistent case law to the effect that, where it is in fact impossible to recover illegal aid, a Member State may not be required to recover it. This is the situation in which Luxembourg finds itself in this case. A figure cannot be put on the amount of the aid because it would not be possible to establish the real transfer prices which should have been charged by coordination centres or to envisage using any other of the methods described by the OECD.

V ASSESSMENT OF THE MEASURE

(43) After considering the comments submitted by the Luxembourg authorities, the Commission would confirm its initial position as set out in its letter to Luxembourg of 11 July 2001 ([8]) initiating the formal investigation procedure laid down in Article 88(2) of the Treaty. It takes the view that the comments submitted by Luxembourg have not enabled the doubts it expressed in that letter to be dispelled and, consequently, that the tax scheme under review constitutes State aid within the meaning of Article 87(1) of the Treaty. Moreover, it deems the aid in question to be illegal and to constitute operating aid which cannot be declared compatible with the common market. Nevertheless, it considers that, in this case, Luxembourg and the recipient enterprises were justified in having legitimate expectations and that the aid need not therefore be recovered.

(44) To begin with, the Commission is able to accept Luxembourg's comments concerning the problems posed by transfer prices in an international context. There is nothing to prevent tax administrations from using a cost-plus pricing method to determine the tax base for intra-group services provided by coordination centres. This system can be likened to a tax measure of a technical nature, as referred to in the second indent of paragraph 13 of the notice. Nevertheless, some of the rules for applying the method in this case suggest that the possible granting of aid cannot be ruled out.

(45) In order to be regarded as aid within the meaning of Article 87(1) of the Treaty, a measure must meet all of the four criteria set out below.

Advantage

(46) Firstly, the measure must confer on recipients an advantage which relieves them of charges that are normally borne from their budgets. The objective of using alternative methods of determining taxable income in order to prevent certain transactions from hiding undue advantages or donations with the sole purpose of avoiding taxation must normally be to achieve taxation comparable to that which could have been arrived at between independent operators on the basis of the traditional method, whereby the taxable profit is calculated on the basis of the difference between the enterprise's income and charges. This complies with the principle of full competition. In the area of transfer prices, this international principle is set out in Article 9 of the OECD Model Tax Convention (and, in more detail, in the 1995 OECD Transfer Pricing Guidelines). Since an analysis requires individual facts and circumstances to be taken into account, the OECD Guidelines do not recommend the use of 'safe harbours' (such as fixed margins).

([7]) Written question No 1735/90 (OJ C 63, 11.3.1991, p. 37).

([8]) See footnote 1.

(47) The Luxembourg authorities have not provided any information on how the mark-ups used to establish the tax base for coordination centres under the cost-plus pricing method are determined in practice. While the Commission can accept the argument that the administration did not have any discretionary power to grant or refuse the application of the scheme for coordination centres, it is clear from the answers given by Luxembourg that the administration did have such power when it came to determining the mark-ups to be applied. Circular 119 fixed a minimum mark-up of 5 %. Nevertheless, it did not lay down any rules or guidelines on how to determine mark-ups in practice. Indeed, the Luxembourg authorities expressly indicated that only the 5 % mark-up recommended in the Circular was applied. The Commission thus concludes that coordination centres and the groups to which they belong were able to derive an advantage by dint of the fact that, in practice, Luxembourg systematically granted the minimum rate of 5 % without checking whether it corresponded to the economic reality of the underlying services. It transpires that the Luxembourg authorities failed, at least in some cases, to ensure that coordination centres were subject to taxation comparable to that which generally applied to enterprises liable for tax in Luxembourg.

(48) It is irrelevant that Circular 119 required the parent company to be subject abroad to a tax corresponding to Luxembourg corporation tax or that the foreign country in which the parent company originated could apply measures to prevent tax avoidance because these aspects do not demonstrate that the Luxembourg scheme for coordination centres did not confer any advantage or that any advantage which might have been conferred would have been justified. The conduct of other Member States, and in particular the possibility that they might take account of the advantage conferred by a Member States in an attempt to reduce or cancel its effects, does not in any way detract from the reality of that advantage. In any case, the method applied by Luxembourg in taxing cross-border intra-group services, which is based on cost-plus pricing, might not tally with the method used in other Member States whereby the taxable profit is calculated on the basis of the difference between the enterprise's income and charges. If this is the case, there is a risk that overcharging might give rise to a reduction in the tax burden in another Member State which would not be offset by an increase in the tax burden in Luxembourg. In this case, the advantage obtained in Luxembourg would come on top of the advantage obtained in another Member State and would not be in any way offset.

(49) As for Luxembourg's claim that Circular 119 did not contain any explicit reference to the principle of linking the tax balance sheet to the commercial balance sheet, the Commission has no criticism to make. It should be noted that, in the case of cross-border intra-group services, it is not necessary to compare the cost-plus pricing system with real transfer prices but to ensure that the system results in taxation which is comparable to what would have been obtained by means of the traditional method. The extent of the advantage derived from the system need not be determined at this stage of the analysis but only for the purposes of recovering the aid, if this proves necessary: the Commission notes that the 5 % minimum mark-up was systematically applied in this case. Luxembourg has not provided any indication of the existence of checks to ensure that the application of the minimum rate tallied with the level of taxation which would have resulted from the application of the traditional method. Consequently, the Commission takes the view that the conduct of the tax administration had the effect of conferring an advantage.

(50) With regard to the claim that non-deductible expenditure is not included in the base to which the mark-up rate is applied under the cost-plus pricing method, the Commission is able to accept some of the arguments put forward by Luxembourg. The logic behind this clearly stems from a comparison with the traditional method of taxation. Tax does not form part of genuine business expenditure but is a payment based on its trading result. The exclusion of donations seems to follow the same logic in that they do not represent genuine business costs. In other words, such non-deductible expenditure is not likely to contribute to the realisation of a taxable result. Since the existence of an advantage has been established as a result of the systematic application of a 5 % rate, it is not necessary to determine whether the same considerations apply to bonuses and attendance fees since they represent distributions of net profits.

Competition and trade between Member States are affected

(51) This criterion is met in that coordination centres were supposed to provide services predominantly to companies situated outside Luxembourg. Moreover, in accordance with the case law of the Court of Justice ([9]) and as stressed in paragraph 11 of the notice, the mere fact that a measure strengthens a firm's position compared with other firms competing in intra-Community trade is enough for it to be concluded that trade has been affected. In this particular case, coordination centres or enterprises in the groups to which they belong might have found their position to have been strengthened as a result of the reduced tax burden of their centre in Luxembourg. Assuming this to be the case, and taking account of the possibility that the groups in question are active in sectors characterised by the existence of trade between Member States, the Commission takes the view that the measure is liable to affect such trade.

(52) Even if, as the Luxembourg authorities claim, the main objective of Circular 119 was not to allow an overall reduction in taxable profit but rather to prevent disguised transfers, a measure must be assessed according to its effects and not according to its objectives. As consistently confirmed by case law ([10]), the objective pursued by the scheme in question cannot prevent it from being classified as State aid within the meaning of Article 87(1) of the Treaty.

([9]) Case 730/79 *Philip Morris* v *Commission* [1980] ECR 2671.
([10]) Case C-75/97 *Belgium* v *Commission* [1999] ECR I-3671, paragraph 25.

Selectivity

(53) Given that the tax provisions in question concerned only coordination centres belonging to multinational groups present in at least two countries other than Luxembourg and having their headquarters outside Luxembourg, only some enterprises had access to the advantages described above. Moreover, as stated in point 20 of the notice, some tax advantages are on occasion restricted to certain functions, such as intra-group services. This also holds for the Luxembourg scheme for coordination centres. The criterion of selectivity is thus met.

(54) Another aspect of selectivity stems from the fact that, if the coordination centre's total expenditure does not exceed LUF 30 000 000 (approximately EUR 750 000), the trading profit is fixed at a flat rate of LUF 1 500 000 (approximately EUR 37 500). This implies selectivity in favour of large groups in so far as groups which had been unable to achieve the minimum expenditure threshold would have been excluded from equal treatment under the cost-plus pricing method. The Luxembourg authorities themselves admit that the requirement that coordination centres belong to a large international group and the imposition of a minimum profit were such as to ensure a sufficient volume of activity in Luxembourg.

(55) The Commission considers these aspects of selectivity to be unjustified by the nature or general scheme of the Luxembourg tax system. In particular, it does not consider such limitations to be necessary to ensure that serious operations are managed from Luxembourg in a volume sufficient to give rise to difficulties in determining the transfer prices of the enterprises concerned ([11]). The difficulties linked to the determination of transfer prices apply in principle to all services or goods supplied between associated companies. While the international nature of such supplies is likely to increase those difficulties, they are faced not only by companies belonging to a large-scale multinational group with its headquarters outside Luxembourg. In any case, the difficulties in question are not relevant since the Luxembourg authorities systematically applied a 5 % rate to calculate cost-plus prices.

(56) As regards Luxembourg's comment to the effect that there is no precedent in the form of a Court decision or judgment, the Commission would merely point out that such precedents are not necessary. Classification of the scheme for coordination centres as State aid stems directly from Article 87(1) of the Treaty. However, it should be noted that, according to recent case-law, tax measures are selective and constitute State aid where they apply solely to undertakings which carry out investments exceeding a certain amount or create a certain number of jobs ([12]). The Commission takes the view that the same reasoning must be applied in this case.

(57) When it comes to reconciling the principle of legal certainty with that of full competition and providing taxpayers with a point of reference, there is nothing to prevent tax administrations from opting for the cost-plus pricing formula. The Commission is not criticising the use of that system as a means of facilitating the determination of transfer prices for transactions between associated entities. Nevertheless, in the case at issue, the systematic application of the 5 % minimum rate must be regarded as a derogation from the correct use of the cost-plus pricing method which is liable to have conferred an advantage on some enterprises without being justified by the nature or general scheme of the system.

State resources

(58) In this case, the reduction in the amount of tax resulting from the application of Circular 119 involves a reduction in tax revenues, which constitute State resources.

Compatibility

(59) The Luxembourg authorities have not challenged the preliminary assessment of the compatibility of the scheme for coordination centres, which is set out in the decision to initiate the formal investigation procedure ([13]) and which the Commission hereby confirms. That assessment may be summarised as follows:

(60) The derogations provided for in Article 87(2) of the Treaty regarding aid having a social character granted to individual consumers, aid to make good the damage caused by natural disasters or exceptional occurrences, and aid granted to certain regions of the Federal Republic of Germany are not applicable in this case.

(61) The derogation provided for in Article 87(3)(a) regarding aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment is also not applicable.

(62) Likewise, the scheme for coordination centres does not fall within the category of important projects of common European interest eligible for the derogation provided for in Article 87(3)(b) and, given that it is not designed to promote culture and heritage conservation, cannot qualify for the derogation provided for in Article 87(3)(d).

([11]) See paragraph (32): argument put forward by Luxembourg.

([12]) Joined Cases T-127/99, T-129/99 and T-148/99 *Territorio Histórico de Álava - Diputación Foral de Álava and others* v *Commission*, paragraph 157, and Joined Cases T-92/00 and T-103/00, paragraphs 39 and 40 and 49 and 50, not yet published.

([13]) See footnote 1.

(63) It should also be examined whether the scheme is eligible for the derogation provided for in Article 87(3)(c), which authorises aid to facilitate the development of certain economic activities or of certain economic areas in cases where such aid does not adversely affect trading conditions to an extent contrary to the common interest. The tax advantages granted under the scheme are not linked to investment, job creation or specific projects. They merely constitute ongoing tax relief and must consequently be classified as operating aid. The Commission thus takes the view that the aid in question is liable to adversely affect trading conditions to an extent contrary to the common interest.

Recovery

(64) The measures in question may not be regarded as existing aid within the meaning of Article 88(1) of the Treaty and Article 1(b) of Council Regulation (EC) No 659/99 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([14]) (now Article 88 of the EC Treaty). This is because they were implemented after the entry into force of the Treaty, have never been notified to the Commission as required by Article 88(3) of the Treaty, are not covered by a limitation period and constituted aid from the moment they were put into effect. They therefore constitute new aid. Where State aid granted illegally is found to be incompatible with the common market, the natural consequence is that the aid must be recovered from the recipients in accordance with Article 14 of Regulation (EC) No 659/99. The purpose of recovery is to restore as far as possible the competitive situation which existed before the aid was granted. Neither the absence of precedent for applying the State aid rules to choices concerning methods of calculating the tax base nor the alleged lack of clarity of Community State aid policy would justify an exemption from this basic principle.

(65) As for the claim that it would be impossible to recover the aid and the principle of the non-retroactivity of tax laws, the relevant case law indicates that, even if recovery of a tax credit presents difficulties from an administrative point of view, that fact is not such as to enable recovery to be deemed to be technically impossible ([15]). Moreover, as consistently confirmed by case law, a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with its obligations under Community law. In particular, a provision laying down a time limit for the revocation of an administrative act must, like all the relevant provisions of national law, be applied in such a way that the recovery required by Community law is not rendered practically impossible and the interests of the Community are taken fully into consideration ([16]). If this were not the case, Member States could escape effective monitoring of State aid by not complying with their obligation under Article 88(3) of the Treaty to notify in advance plans to grant aid.

Legitimate expectations

(66) Nevertheless, Article 14(1) of Regulation (EC) No 659/1999 lays down that 'the Commission shall not require recovery of the aid if this would be contrary to a general principle of Community law'. The case-law of the Court of Justice and the Commission's own practice in previous decisions have established that recovery would be contrary to a general principle of Community law if, following the Commission's action, the recipient had legitimate expectations that the aid was granted in accordance with Community law.

(67) In *Van den Bergh and Jurgens* ([17]), the Court stated that:

> 'The Court has consistently held that any trader in regard to whom an institution has given rise to justified hopes may rely on the principle of the protection of legitimate expectation. On the other hand, if a prudent and discriminating trader could have foreseen the adoption of a Community measure likely to affect his interests, he cannot plead that principle if the measure is adopted.'

(68) In Commission Decision 2001/168/ECSC of 31 October 2000 on Spain's corporation tax laws ([18]), the Commission noted the similarities between the Spanish system and a French system it had approved on the basis that it did not constitute aid within the meaning of Article 92(1) of the EEC Treaty (now Article 87(1) of the EC Treaty). In the present case, it notes that the Luxembourg scheme for coordination centres closely resembles the scheme introduced in Belgium by Royal Decree No 187 of 30 December 1982 on the taxation of coordination centres. Both schemes relate to intra-group activities and use the cost-plus pricing method to determine the tax base. In its decision of 2 May 1984, the Commission took the view that the scheme did not involve State aid within the meaning of Article 92(1) of the EEC Treaty. Even though that decision was not published, the fact that the Commission did not raise any objection to the Belgian scheme was made public at the time in the XIVth Report on Competition Policy and in an answer to a Parliamentary question ([19]).

([14]) OJ L 83, 27.3.1999, p. 1.
([15]) Case C-280/95 *Commission* v *Italy* [1998] ECR I-259, paragraph 23, and Case 378/98 *Commission* v *Belgium* [2001] ECR I-5107, paragraph 42.
([16]) Case C-5/89 *Commission* v *Germany* [1990] ECR I-3437, paragraphs 18 and 19.
([17]) Case C-265/85 *Van de Bergh and Jurgens and others* v *Commission* [1987] ECR 1155, paragraph 44.
([18]) OJ L 60, 1.3.2001, p. 57.
([19]) See footnote 7.

(69) In this connection, the Commission notes that its decision on the Belgian scheme was adopted before the entry into force of the Luxembourg scheme. It also notes that all the beneficiaries of the scheme were approved as coordination centres before the Commission's decision of 11 July 2001 to initiate the formal investigation procedure. It would further point out that Circular 119 was repealed on 20 February 1996 and that it has not applied to the beneficiaries since 31 December 2001. Consequently, the Commission accepts the arguments put forward by Luxembourg concerning the beneficiaries' legitimate expectations and waives recovery of the aid granted.

VI **CONCLUSION**

The Community finds that the Luxembourg scheme for coordination centres constitutes State aid within the meaning of Article 87(1) of the Treaty and that none of the derogations provided for in Article 87(2) or (3) are applicable. It also finds that Luxembourg unlawfully implemented the system in question in breach of Article 88(3) of the Treaty. Nevertheless, it notes that the system was withdrawn on 20 February 1996 and that the tax advantages granted to beneficiaries ceased on 31 December 2001. Lastly, it acknowledges that the beneficiaries had legitimate expectations such as to rule out recovery of the State aid found to be incompatible with the common market. Consequently, it is not requiring that the aid be recovered,

HAS ADOPTED THIS DECISION:

Article 1

The tax scheme for coordination centres implemented by the Grand Duchy of Luxembourg by means of Circular LIR No 119 of 12 June 1989 constitutes State aid which is incompatible with the common market.

Article 2

This Decision is addressed to the Grand Duchy of Luxembourg.

Done at Brussels, 16 October 2002.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION

of 23 June 2003

suspending the examination procedure concerning an obstacle to trade consisting of trade practices maintained by Canada in relation to certain geographical indications for wines

(2003/502/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organisation [1], as amended by Regulation (EC) No 356/95 [2], and in particular Articles 11 and 14 thereof,

Whereas:

(1) On 6 December 2001 CIVB (Conseil Interprofessionel du Vin de Bordeaux) lodged a complaint pursuant to Article 4 of Council Regulation (EC) No 3286/94 (hereinafter the Regulation).

(2) CIVB claimed that Community sales of Bordeaux and Médoc in Canada are hindered by a number of obstacles to trade within the meaning of Article 2(1) of the Regulation, i.e. 'a practice adopted or maintained by a third country and in respect of which international trade rules establish a right of action'.

(3) The alleged obstacle results from the C-57 Amendment to the Canadian Trademarks act, which deprives the geographical indications Bordeaux and Médoc of a standard protection in compliance with the protection requirements laid down by the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) for geographical indications for wines.

(4) The Commission decided that the complaint contained sufficient evidence to justify the initiation of an examination procedure. A corresponding notice was published in the *Official Journal of the European Communities* [3].

(5) The investigation confirmed the complainant's legal claim that the C-57 Amendment to the Canadian Trade-Marks Act violates Articles 23.1 and 2 as well as Article 24.3 (the so-called standstill clause) of TRIPS and that such infringements cannot be justified on the basis of the exception under Article 24.6 of TRIPS.

(6) The examination procedure also confirmed that Bordeaux wines have a considerable market share in Canada, which is strictly connected with the Bordeaux/Médoc product's name. If such an asset is not duly protected, holders of the 'Bordeaux' and 'Médoc' geographical indications could see their market position in Canada seriously curtailed. This prejudice could eventually result in adverse trade effects for the producers of 'Bordeaux' and 'Médoc' wine. It can therefore be concluded that the C-57 Amendment threatens to cause adverse trade effects to the complainant, within the meaning of Article 2(4) and 10(4) of the Regulation.

(7) On 12 February 2003, the Advisory Committee established by the Regulation considered the final report on the examination procedure.

(8) On 24 April 2003, the Commission initialled a bilateral agreement with Canada on trade in wine and spirits, which once it has entered into force, would contribute to the protection of Community interests in this field. In particular, this agreement would provide for the definitive elimination of the names listed as 'generic' in Canada, including 'Bordeaux', 'Médoc' and 'Medoc' by the entry into force of the agreement.

(9) However, the procedure cannot be terminated until the denominations 'Bordeaux', 'Médoc' and 'Medoc' are effectively eliminated from the list of generics of the C-57 Amendment.

(10) The Commission considers therefore that it is appropriate to suspend the procedure.

(11) The measures provided for in this decision are in accordance with the opinion of the Advisory Committee,

HAS DECIDED AS FOLLOWS:

Sole Article

The examination procedure concerning obstacles to trade, consisting of trade practices maintained by Canada in relation to certain geographical indications for wines, is hereby suspended.

Done at Brussels, 23 June 2003.

For the Commission

Pascal LAMY

Member of the Commission

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[1] OJ L 349, 31.12.1994, p. 71.
[2] OJ L 41, 23.2.1995, p. 3.
[3] OJ C 124, 25.5.2002, p. 6.

COMMISSION DECISION
of 7 July 2003
amending Decision 2003/42/EC as regards its date of application

(Text with EEA relevance)

(2003/503/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 92/118/EEC of 17 December 1992 laying down animal health and public health requirements governing trade in and imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A(I) to Directive 89/662/EEC and, as regards pathogens, to Directive 90/425/EEC [1], as last amended by Commission Decision 2003/42/EC [2], and in particular the second paragraph of Article 15 thereof,

Whereas:

(1) Decision 2003/42/EC amends Directive 92/118/EEC as regards the specific health conditions for collagen intended for human consumption and certification requirements for collagen and raw material for collagen production, intended for dispatch to the European Community for human consumption.

(2) The Community imports from third countries raw material and collagen, including collagen meeting certain technical requirements which is not available in the Community.

(3) The United Kingdom has requested a postponement of the application of the new specific health conditions to enable account to be taken of its producers who are dependent on imports from third countries.

(4) Negotiations are ongoing to find a resolution to problems in relation to imports of collagen aimed at allowing such imports to continue in full compliance with the new specific health conditions.

(5) It is appropriate to allow time for the conclusion of those negotiations but that period should be as short as possible.

(6) Decision 2003/42/EC should therefore be amended accordingly.

(7) 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 Article 2 of Decision 2003/42/EC, '30 June 2003' is replaced by '30 September 2003'.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 7 July 2003.

For the Commission
David BYRNE
Member of the Commission

[1] OJ L 62, 15.3.1993, p. 49.
[2] OJ L 13, 18.1.2003, p. 24.

CORRIGENDA

Corrigendum to Directive 2003/11/EC of the European Parliament and of the Council of 6 February 2003 amending for the 24th time Council Directive 76/769/EEC relating to restrictions on the marketing and use of certain dangerous substances and preparations (pentabromodiphenyl ether, octabromodiphenyl ether)

(Official Journal of the European Union L 42 of 15 February 2003)

On page 46, the Annex

for: *'ANNEX*

The following point [XX] shall be added to Annex I of Directive 76/769/EEC:

"[XX] diphenylether, pentabromo derivative $C_{12}H_5Br_5O$	1. May not be placed (…). 2. Articles may not be placed (…)."

The following point [XXa] shall be added to Annex I of Directive 76/769/EEC:

"[XXa] diphenylether, octabromo derivative $C_{12}H_2Br_8O$	1. May not be placed (…). 2. Articles may not be placed (…)."'

read: *'ANNEX*

The following point 44 shall be added to Annex I of Directive 76/769/EEC:

"44. diphenylether, pentabromo derivative $C_{12}H_5Br_5O$	1. May not be placed (…). 2. Articles may not be placed (…)."

The following point 45 shall be added to Annex I of Directive 76/769/EEC:

"45. diphenylether, octabromo derivative $C_{12}H_2Br_8O$	1. May not be placed (…). 2. Articles may not be placed (…)."'