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Contents

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(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

(Continued on inside back cover)

Contents (continued)

[1] Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 352/2004

of 27 February 2004

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], 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 28 February 2004.

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

Done at Brussels, 27 February 2004.

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

[1] OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 1947/2002 (OJ L 299, 1.11.2002, p. 17).

ANNEX

to the Commission Regulation of 27 February 2004 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	95,6
	204	44,4
	212	108,5
	999	82,8
0707 00 05	052	158,2
	068	87,4
	204	46,1
	999	97,2
0709 10 00	220	68,9
	999	68,9
0709 90 70	052	99,1
	204	55,7
	999	77,4
0805 10 10, 0805 10 30, 0805 10 50	052	69,6
	204	47,8
	212	52,3
	220	49,1
	600	41,8
	624	61,8
	999	53,7
0805 20 10	204	93,7
	999	93,7
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	84,1
	204	103,4
	220	88,5
	400	55,6
	464	76,4
	528	107,6
	600	80,7
	624	77,6
	999	84,2
0805 50 10	052	72,0
	400	36,4
	999	54,2
0808 10 20, 0808 10 50, 0808 10 90	060	35,9
	388	133,3
	400	109,9
	404	96,5
	508	95,0
	512	122,0
	524	79,2
	528	93,0
	720	79,4
	999	93,8
0808 20 50	060	65,7
	388	79,8
	508	69,3
	512	81,9
	528	85,6
	720	42,5
	999	70,8

(1) Country nomenclature as fixed by Commission Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 353/2004

of 27 February 2004

fixing the minimum selling prices for butter for the 136th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products [1], and in particular Article 10 thereof,

Whereas:

(1) The intervention agencies are, pursuant to Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs [2], to sell by invitation to tender certain quantities of butter from intervention stocks that they hold and to grant aid for cream, butter and concentrated butter. Article 18 of that Regulation stipulates that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter. It is further stipulated that the price or aid may vary according to the intended use of the butter, its fat content and the incorporation procedure, and that a decision may also be taken to make no award in response to the tenders submitted. The amount(s) of the processing securities must be fixed accordingly.

(2) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

The minimum selling prices of butter from intervention stocks and processing securities applying for the 136th individual invitation to tender, under the standing invitation to tender provided for in Regulation (EC) No 2571/97, shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 28 February 2004.

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

Done at Brussels, 27 February 2004.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).

[2] OJ L 350, 20.12.1997, p. 3. Regulation as last amended by Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).

ANNEX

to the Commission Regulation of 27 February 2004 fixing the minimum selling prices for butter for the 136th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

(EUR/100 kg)

Formula			A		B	
Incorporation procedure			With tracers	Without tracers	With tracers	Without tracers
Minimum selling price	Butter ≥ 82 %	Unaltered	—	215	—	—
		Concentrated	—	—	—	—
Processing security		Unaltered	—	129	—	—
		Concentrated	—	—	—	—

COMMISSION REGULATION (EC) No 354/2004

of 27 February 2004

fixing the maximum aid for cream, butter and concentrated butter for the 136th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products [1], and in particular Article 10 thereof,

Whereas:

(1) The intervention agencies are, pursuant to Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs [2], to sell by invitation to tender certain quantities of butter of intervention stocks that they hold and to grant aid for cream, butter and concentrated butter. Article 18 of that Regulation stipulates that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter. It is further stipulated that the price or aid may vary according to the intended use of the butter, its fat content and the incorporation procedure, and that a decision may also be taken to make no award in response to the tenders submitted. The amount(s) of the processing securities must be fixed accordingly.

(2) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

The maximum aid and processing securities applying for the 136th individual invitation to tender, under the standing invitation to tender provided for in Regulation (EC) No 2571/97, shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 28 February 2004.

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

Done at Brussels, 27 February 2004.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).

[2] OJ L 350, 20.12.1997, p. 3. Regulation as last amended by Regulation (EC) No 186/2004.

ANNEX

to the Commission Regulation of 27 February 2004 fixing the maximum aid for cream, butter and concentrated butter for the 136th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

(EUR/100 kg)

Formula		A		B	
Incorporation procedure		With tracers	Without tracers	With tracers	Without tracers
Maximum aid	Butter ≥ 82 %	79	75	79	71
	Butter < 82 %	77	72	—	—
	Concentrated butter	98	91	97	89
	Cream	—	—	34	31
Processing security	Butter	87	—	87	—
	Concentrated butter	108	—	107	—
	Cream	—	—	37	—

COMMISSION REGULATION (EC) No 355/2004

of 27 February 2004

fixing the maximum purchasing price for butter for the 89th invitation to tender carried out under the standing invitation to tender governed by Regulation (EC) No 2771/1999

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products [1], and in particular Article 10 thereof,

Whereas:

(1) Article 13 of Commission Regulation (EC) No 2771/1999 of 16 December 1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream [2], provides that, in the light of the tenders received for each invitation to tender, a maximum buying-in price is to be fixed in relation to the intervention price applicable and that it may also be decided not to proceed with the invitation to tender.

(2) As a result of the tenders received, the maximum buying-in price should be fixed as set out below.

(3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 89th invitation to tender issued under Regulation (EC) No 2771/1999, for which tenders had to be submitted not later than 24 February 2004, the maximum buying-in price is fixed at 295,38 EUR/100 kg.

Article 2

This Regulation shall enter into force on 28 February 2004.

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

Done at Brussels, 27 February 2004.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).
[2] OJ L 333, 24.12.1999, p. 11. Regulation as last amended by Regulation (EC) No 359/2003 (OJ L 53, 28.2.2003, p. 17).

COMMISSION REGULATION (EC) No 356/2004

of 27 February 2004

fixing the maximum aid for concentrated butter for the 308th special invitation to tender opened under the standing invitation to tender provided for in Regulation (EEC) No 429/90

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products [1], and in particular Article 10 thereof,

Whereas:

(1) In accordance with Commission Regulation (EEC) No 429/90 of 20 February 1990 on the granting by invitation to tender of an aid for concentrated butter intended for direct consumption in the Community [2], the intervention agencies are opening a standing invitation to tender for the granting of aid for concentrated butter; Article 6 of that Regulation provides that in the light of the tenders received in response to each special invitation to tender, a maximum amount of aid is to be fixed for concentrated butter with a minimum fat content of 96 % or a decision is to be taken to make no award; the end-use security must be fixed accordingly.

(2) In the light of the tenders received, the maximum aid should be fixed at the level specified below and the end-use security determined accordingly.

(3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 308th special invitation to tender under the standing invitation to tender opened by Regulation (EEC) No 429/90, the maximum aid and the amount of the end-use security shall be as follows:

— maximum aid: EUR 97/100 kg,

— end-use security: EUR 107/100 kg.

Article 2

This Regulation shall enter into force on 28 February 2004.

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

Done at Brussels, 27 February 2004.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).

[2] OJ L 45, 21.2.1990, p. 8. Regulation as last amended by Regulation (EC) No 124/1999 (OJ L 16, 21.1.1999, p. 19).

COMMISSION REGULATION (EC) No 357/2004
of 27 February 2004
suspending the buying-in of butter in certain Member States

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products [1],

Having regard to Commission Regulation (EC) No 2771/1999 of 16 December 1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream [2], and in particular Article 2 thereof,

Whereas:

(1) Article 2 of Regulation (EC) No 2771/1999 lays down that buying-in by invitation to tender is to be opened or suspended by the Commission in a Member State, as appropriate, once it is observed that, for two weeks in succession, the market price in that Member State is below or equal to or above 92 % of the intervention price.

(2) Commission Regulation (EC) No 212/2004 suspending the buying-in of butter in certain Member States [3] establishes the most recent list of Member States in which intervention is suspended. This list must be adjusted as a result of the market prices communicated by Belgium and Luxembourg pursuant to Article 8 of Regulation (EC) No 2771/1999. In the interests of clarity, the list in question should be replaced and Regulation (EC) No 212/2004 should be repealed,

HAS ADOPTED THIS REGULATION:

Article 1

Buying-in of butter by invitation to tender as provided for in Article 6(1) of Regulation (EC) No 1255/1999 is hereby suspended in Denmark, Greece, the Netherlands, Austria, Finland and the United Kingdom.

Article 2

Regulation (EC) No 212/2004 is hereby repealed.

Article 3

This Regulation shall enter into force on 28 February 2004.

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

Done at Brussels, 27 February 2004.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).
[2] OJ L 333, 24.12.1999, p. 11. Regulation as last amended by Regulation (EC) No 359/2003 (OJ L 53, 28.2.2003, p. 17).
[3] OJ L 36, 7.2.2004, p. 3.

COMMISSION REGULATION (EC) No 358/2004
of 27 February 2004
fixing the production refund on white sugar used in the chemical industry

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector [1], and in particular Article 7(5) thereof,

Whereas:

(1) Pursuant to Article 7(3) of Regulation (EC) No 1260/2001, production refunds may be granted on the products listed in Article 1(1)(a) and (f) of that Regulation, on syrups listed in Article 1(1)(d) thereof and on chemically pure fructose covered by CN code 1702 50 00 as an intermediate product, that are in one of the situations referred to in Article 23(2) of the Treaty and are used in the manufacture of certain products of the chemical industry.

(2) Commission Regulation (EC) No 1265/2001 of 27 June 2001 laying down detailed rules for the application of Council Regulation (EC) No 1260/2001 as regards granting the production refund on certain sugar products used in the chemical industry [2] lays down the rules for determining the production refunds and specifies the chemical products the basic products used in the manufacture of which attract a production refund. Articles 5, 6 and 7 of Regulation (EC) No 1265/2001 provide that the production refund applying to raw sugar, sucrose syrups and unprocessed isoglucose is to be derived from the refund fixed for white sugar in accordance with a method of calculation specific to each basic product.

(3) Article 9 of Regulation (EC) No 1265/2001 provides that the production refund on white sugar is to be fixed at monthly intervals commencing on the first day of each month. It may be adjusted in the intervening period where there is a significant change in the prices for sugar on the Community and/or world markets. The application of those provisions results in the production refund fixed in Article 1 of this Regulation for the period shown.

(4) As a result of the amendment to the definition of white sugar and raw sugar in Article 1(2)(a) and (b) of Regulation (EC) No 1260/2001, flavoured or coloured sugars or sugars containing any other added substances are no longer deemed to meet those definitions and should thus be regarded as 'other sugar'. However, in accordance with Article 1 of Regulation (EC) No 1265/2001, they attract the production refund as basic products. A method should accordingly be laid down for calculating the production refund on these products by reference to their sucrose content.

(5) 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 production refund on white sugar referred to in Article 4 of Regulation (EC) No 1265/2001 shall be equal to 46,511 EUR/100 kg net.

Article 2

This Regulation shall enter into force on 1 March 2004.

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

Done at Brussels, 27 February 2004.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 178, 30.6.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 39/2004 (OJ L 6, 10.1.2004, p. 16).
[2] OJ L 178, 30.6.2001, p. 63.

COMMISSION REGULATION (EC) No 359/2004

of 27 February 2004

laying down transitional measures applicable to Regulation (EC) No 2125/95 by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, and in particular Article 2(3) thereof,

Having regard to the Act of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, and in particular the first subparagraph of Article 41 thereof,

Whereas:

(1) Transitional measures should be laid down in order to allow importers from the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (hereinafter referred to as 'the new Member States') to benefit from the provisions contained in Commission Regulation (EC) No 2125/95 of 6 September 1995 opening and providing for the administration of tariff quotas for preserved mushrooms [1].

(2) Arrangements should be laid down for the year 2004 to ensure that, as from the date of accession, a distinction between traditional importers and new importers within the meaning of Article 4(1) of Regulation (EC) No 2125/95 and traditional importers and new importers from new Member States is made.

(3) To ensure the correct use of quotas and allow traditional importers from the new Member States to be in a position to apply for sufficient quantities during the year 2004, provisions should be made for the year 2004 to adjust the quantity to which licence applications presented by traditional importers from the new Member States may relate.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Products Processed from Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation:

1. 'current Member States' shall mean the Member States of the Community as constituted on 30 April 2004;

2. 'new Member States' shall mean the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.

Article 2

By way of derogation from Article 4(1)(a) of Regulation (EC) No 2125/95, for the year 2004 and only in the new Member States, 'traditional importers' shall mean importers who can prove that:

(a) they have imported, from origins other than the new Member States or the current Member States, the products referred to in Article 1(1) of Regulation (EC) No 2125/95 in at least two of the three calendar years preceding 2004;

(b) they have also imported and/or exported during the year 2003 at least 100 tonnes of processed fruit and vegetable products, as referred to in Article 1(2) of Council Regulation (EC) No 2201/96 [2].

Imports shall have taken place in the new Member State where the importer concerned is established or has its head office, and exports shall have been sent to destinations other than the new Member States or the current Member States.

Article 3

By way of derogation from Article 4(1)(b) of Regulation (EC) No 2125/95, for the year 2004, and only in the new Member States, 'new importers' shall mean importers other than traditional importers within the meaning of Article 2 of this Regulation who are traders, natural or legal persons, individuals or groups, which can prove that they have imported, from origins other than the new Member States or the current Member States, and/or exported at least 50 tonnes of processed fruit and vegetable products, as referred to in Article 1(2) of Regulation (EC) No 2201/96, in each of the two calendar years preceding 2004.

[1] OJ L 212, 7.9.1995, p. 16. Regulation as last amended by Regulation (EC) No 1142/2003 (OJ L 160, 28.6.2003, p. 39).

[2] OJ L 297, 21.11.1996, p. 29. Regulation as last amended by Regulation (EC) No 1239/2001 (OJ L 171, 26.6.2001, p. 1).

Imports shall have taken place in the new Member State where the importer concerned is established or has its head office, and exports shall have been sent to destinations other than the new Member States or the current Member States.

Article 4

1. By way of derogation from Article 5(1) of Regulation (EC) No 2125/95, licence applications presented in May 2004 by the traditional importers of the new Member States shall not relate to a quantity exceeding 65 % of the average annual quantity of imports in the Member State concerned originating in countries other than the current Member States, Poland, Bulgaria and Romania in the three previous calendar years.

2. By way of derogation from Article 5(2) of Regulation (EC) No 2125/95, licence applications presented in May 2004 by the new importers of the new Member States shall not relate to a quantity exceeding 8 % of the quantity allocated pursuant to Article 3 of this Regulation.

Article 5

This Regulation shall enter into force on 1 May 2004 subject to the entry into force of the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.

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

Done at Brussels, 27 February 2004.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION REGULATION (EC) No 360/2004

of 27 February 2004

amending Regulation (EC) No 1445/95 on rules of application for import and export licences in the beef and veal sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal [1], and in particular Article 33(12) thereof,

Whereas:

(1) The economic conditions on the beef and veal export markets vary widely and the bilateral agreements regularly concluded widen disparities in the conditions in which export refunds are granted for products in this sector. In order to attain more effectively the objectives of adjustment of the method for the allocation of the quantities which may be exported with a refund and efficient use of the resources available, as referred to in Article 33(2) of Regulation (EC) No 1254/1999, it would be advisable to extend the circumstances, provided for in Article 10(2) of Commission Regulation (EC) No 1445/95 [2], in which the Commission may take steps to restrict the issue of export licences or the lodging of applications for such licences during the reflection period for which provision is made following the lodging of applications. It would also be advisable to provide for these measures to be taken by destination or group of destinations.

(2) In view of the use made of the special scheme for exports to the United States, as provided in Commission Regulation (EEC) No 2973/79 of 21 December 1979 laying down detailed rules for the application of granting of assistance for the export of beef and veal products which may benefit from a special import treatment in a third country [3], and in order to avoid needless administrative work, the quarterly carryover of quantities not used under this scheme, as provided for in Article 12(8) of Regulation (EC) No 1445/95, should be abolished.

(3) Regulation (EC) No 1445/95 should be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1445/95 is hereby amended as follows:

1. Article 10 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. Where the issue of export licences would or might result in the available budgetary amounts being exceeded or in the maximum quantities which may be exported with a refund being exhausted during the period concerned, in view of the limits referred to in Article 33(11) of Regulation (EC) 1254/1999, or would not allow exports to continue during the remainder of the period, the Commission may:

(a) set an acceptance percentage for the quantities applied for,

(b) reject applications for which licences have not yet been granted,

(c) suspend lodging of licence applications for a maximum period of five working days, extendable by the procedure specified in Article 43 of Regulation (EC) No 1254/1999.

In the circumstances referred to in point (c) of the first subparagraph, licence applications made during the suspension period shall be invalid.

The measures provided for in the first subparagraph may be implemented or modulated by category of product and by destination or group of destinations.';

(b) the following paragraph 2a is inserted:

'2a. The measures provided for in paragraph 2 may also be adopted where export licence applications relate to quantities which exceed or might exceed the normal disposable quantities for one destination or group of destinations and issuing the licences requested would entail a risk of speculation, distortion of competition between operators, or disturbance of the trade concerned or the Community market.';

2. In Article 12, paragraph 8 is replaced by the following:

'8. If the quantities in respect of which licences have been applied for exceed those available, the Commission shall set a single acceptance percentage for the quantities requested.'

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[1] OJ L 160, 26.6.1999, p. 21, Regulation as last amended by Regulation (EC) No 1782/2003 (OJ L 270, 21.10.2003, p. 1).
[2] OJ L 143, 27.6.1995, p. 35, Regulation as last amended by Regulation (EC) No 852/2003 (OJ L 123, 17.5.2003, p. 9).
[3] OJ L 336, 29.12.1979, p. 44, Regulation as last amended by Regulation (EEC) No 3434/87 (OJ L 327, 18.11.1987, p. 7).

Article 2

This Regulation shall enter into force on the third day following that of 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, 27 February 2004.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION REGULATION (EC) No 361/2004

of 27 February 2004

amending Regulation (EC) No 2497/96 laying down procedures for applying in the poultrymeat sector the arrangements provided for in the Association Agreement and the Interim Agreement between the European Community and the State of Israel

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 2003/917/EC of 22 December 2003 on the conclusion of an Agreement in the form of an Exchange of Letters between the European Community and the State of Israel concerning reciprocal liberalisation measures and the replacement of Protocols 1 and 2 to the EC-Israel Association Agreement [1], and in particular Article 2 thereof,

Whereas:

(1) Decision 2003/917/EC provides for a greater liberalisation of trade in agricultural products within the Association Agreement between the EC and Israel, replaces Protocols 1 and 2 to the Association Agreement, and in particular extends concessions for trade in poultrymeat.

(2) Commission Regulation (EC) No 2497/96 [2] should be adapted to take account of extended concessions for trade in poultrymeat within the EC-Israel Association Agreement approved by Decision 2003/917/EC.

(3) Decision 2003/917/EC was published only on the last day of December 2003 which did not allow operators to apply for new import concessions applicable from 1 January 2004 in the normal application period laid down in the Regulation (EC) No 2497/96, and the licence application period under the new import concessions should be set for March 2004.

(4) Accession to the European Union, on 1 May 2004, of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia should allow those countries to benefit from the tariff quotas in the sector of the poultrymeat referred to in Regulation (EC) No 2497/96, under equal conditions with those applicable to the current Member States. The possibility should therefore be given to the operators in those States to fully take benefit of these quotas after their accession.

(5) In order not to create a market distortion before and after 1 May 2004, the trade periods have to be modified, for year 2004, without however modifying the total quantities provided for by Decision 2003/917/EC. It is also appropriate to adapt the implementing measures with regard to the applications lodging date.

(6) As licence application periods under the new import concessions for periods 1 January to 31 March 2004 and 1 April to 30 April 2004 coincide for reasons of simplicity, the quantities relevant for each period should be merged.

(7) Regulation (EC) No 2497/96 should therefore be amended accordingly.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Poultrymeat and Eggs,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2497/96 is amended as follows:

1. in Article 1, the first paragraph is replaced by the following:

   'All imports into the Community under the arrangements provided for in Protocol 1 to the Association Agreement between the Community and Israel of products in groups IL1 and IL2 referred to in Annex I to this Regulation shall be subject to the presentation of an import licence.';

2. in Article 2 the following paragraph is added:

   'However, in year 2004, the quotas referred to in Article 1 shall be staggered as follows:

   — 33 % in the period 1 January to 30 April,

   — 17 % in the period 1 May to 30 June,

   — 25 % in the period 1 July to 30 September,

   — 25 % in the period 1 October to 31 December.';

3. in Article 4(1) the following subparagraph is added:

   'However, for the period of 1 January to 30 April 2004 and 1 May to 30 June 2004 licence applications shall be lodged, respectively during the first seven days of March and May 2004.';

4. Annex I is replaced by the text set out in the Annex to this Regulation.

[1] OJ L 346, 31.12.2003, p. 65.
[2] OJ L 338, 28.12.1996, p. 48. Regulation as last amended by Regulation (EC) No 1043/2001 (OJ L 145, 31.5.2001, p. 24).

Article 2

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

It shall apply from 1 March 2004.

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

Done at Brussels, 27 February 2004.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

'ANNEX I

Group number	Order number	CN code	Description (1)	Reduction of the MFN customs duty (2) (%)	Tariff quotas (tonnes)				
					1.1.-31.12. 2004	1.1.-31.12. 2005	1.1.-31.12. 2006	1.1.-31.12. 2007	and following years
IL1	09.4092	0207 25	Turkeys, not cut in pieces, frozen	100	1 442,0	1 484,0	1 526,0	1 568,0	1 568,0
		0207 27 10	Boneless turkeys cuts, frozen						
		0207 27 30/40/ 50/60/70	Turkeys cuts with bone in, frozen						
IL2	09.4091	ex 0207 32	Meat of ducks and geese, not cut in pieces, fresh or chilled	100	515,0	530,0	545,0	560,0	560,0
		ex 0207 33	Meat of ducks and geese, not cut in pieces, frozen						
		ex 0207 35	Other meat and edible offal of ducks and geese, fresh or chilled						
		ex 0207 36	Other meat and edible offal of ducks and geese, frozen						

(1) Notwithstanding the rules for the interpretation of the combined nomenclature, the wording for the description of the products is to be considered as having no more than an indicative value, the preferential scheme being determined, within the context of this Annex, by the coverage of the Combined Nomenclature codes. Where "ex" Combined Nomenclature codes are indicated, the preferential scheme is to be determined by the application of the Combined Nomenclature codes and corresponding description taken together.

(2) Duty reduction applies to "ad valorem" customs duties and in the case of code 0207 also to specific customs duties.'

COMMISSION REGULATION (EC) No 362/2004

of 27 February 2004

opening a preferential tariff quota for imports of raw cane sugar originating in the ACP States for supply to refineries during the period 1 March to 30 June 2004

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector [1], and in particular Article 39(6) thereof,

Whereas:

(1) Article 39(1) of Regulation (EC) No 1260/2001 provides that, during the 2001/02 to 2005/06 marketing years and in order to ensure adequate supplies to Community refineries, a special reduced rate of duty is to be levied on imports of raw cane sugar originating in States with which the Community has concluded supply agreements on preferential terms. At present such agreements have been concluded by Council Decision 2001/870/EC [2] with the African, Caribbean and Pacific States (ACP States) referred to in Protocol 3 on ACP sugar in Annex V to the ACP-EC Partnership Agreement [3] and with the Republic of India.

(2) The agreements in the form of an exchange of letters concluded by Decision 2001/870/EC provide that the refiners in question are to pay a minimum purchase price equal to the guaranteed price for raw sugar, less the adjustment aid fixed for the marketing year in question. That minimum price should therefore be fixed in the light of the factors applicable in the 2003/04 marketing year.

(3) The quantities of special preferential sugar to be imported are calculated in accordance with Article 39 of Regulation (EC) No 1260/2001 on the basis of an annual Community forecast supply balance.

(4) The balance shows the need at this stage to import raw sugar and to open tariff quotas for the 2003/04 marketing year at the special reduced rate of duty provided for in the above agreements in order to meet the Community refineries' supply needs for part of that marketing year. Pursuant to Commission Regulation (EC) No 1115/2003 [4], quotas were opened for the period 1 July 2003 to 29 February 2004.

(5) Since the forecasts for raw cane sugar production are available for the 2003/04 marketing year, a quota should be opened for the second part of that marketing year.

(6) In view of the presumed maximum refining needs fixed for each Member State and the shortfall predicted in the forecast supply balance, provision should be made to authorise imports for each refining Member State for the period 1 March to 30 June 2004.

(7) The 2003 Act of Accession adds Slovenia to the list of countries for which maximum supply needs per marketing year are laid down in Article 39 of Regulation (EC) No 1260/2001. The needs of Slovenia for the two months (May and June 2004) falling under the 2003/04 marketing year after accession are set at 3 264 t in Article 3 of Commission Regulation (EC) No 60/2004 [5]. In view of the relatively small quantity involved and the fact that the period of application is relatively short, special provisions must be adopted as regards the issue and validity of import licences and the refining period.

(8) Commission Regulation (EC) No 1159/2003 of 30 June 2003 laying down detailed rules of application for the 2003/04, 2004/05 and 2005/06 marketing years for the import of cane sugar under certain tariff quotas and preferential agreements and amending Regulations (EC) No 1464/95 and (EC) No 779/96 [6] must apply to the new quota.

(9) In order to avoid any interruption in supplies, for quantities to be imported in accordance with Regulation (EC) No 1115/2003 and not covered by licence applications submitted by 1 March 2004, the Member States concerned should be authorised to issue the corresponding licences after that date in the course of the 2003/04 marketing year.

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

[1] OJ L 178, 30.6.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 39/2004 (OJ L 6, 10.1.2004, p. 16).
[2] OJ L 325, 8.12.2001, p. 21.
[3] OJ L 317, 15.12.2000, p. 3.
[4] OJ L 158, 27.6.2003, p. 30.
[5] OJ L 9, 15.1.2004, p. 8.
[6] OJ L 162, 1.7.2003, p. 25.

HAS ADOPTED THIS REGULATION:

Article 1

For the period 1 March to 30 June 2004, a tariff quota is hereby opened under Decision 2001/870/EC for imports of raw cane sugar for refining falling within CN code 1701 11 10, amounting to 30 459 tonnes expressed as white sugar originating in the ACP States signatory to the Agreement in the form of an Exchange of Letters approved by that Decision.

The tariff quota shall bear the serial number 09.4097.

Article 2

1. A special reduced duty of EUR 0 per 100 kg of standard-quality raw sugar shall apply to imports of the quantity referred to in Article 1.

2. The minimum purchase price to be paid by Community refiners for the period referred to in Article 1 shall be EUR 49,68 per 100 kg of standard-quality raw sugar.

Article 3

1. Import licences may be issued

(a) by the Member States listed in Article 39 of Regulation (EC) No 1260/2001, except Slovenia, under the quota fixed in Article 1 and on the terms laid down in Article 2 for a total quantity of 27 195 tonnes;

(b) by Slovenia for a quantity of 3 264 tonnes.

2. Notwithstanding the last sentence of Article 4(4) of Commission Regulation (EC) No 1159/2003, licences issued by Slovenia shall be valid to the end of the third month following the marketing year in question. Notwithstanding Article 18(1) of that Regulation, the sugar must be refined by the end of the fourth month following the marketing year in question.

Article 4

Regulation (EC) No 1159/2003 shall apply to the tariff quota opened by this Regulation.

Article 5

The Member States referred to in Article 3 of Regulation (EC) No 1115/2003 are hereby authorised to issue licences for the import and refining by 30 June 2004 of the quantities listed in that Article and not covered by import licence applications submitted before 1 March 2004.

Article 6

This Regulation shall enter into force on 1 March 2004.

Article 3(1)(b) and (2) shall apply subject to and from the date of entry into force of the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.

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

Done at Brussels, 27 February 2004.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 363/2004

of 25 February 2004

amending Regulation (EC) No 68/2001 on the application of Articles 87 and 88 of the EC Treaty to training aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid [1] and in particular point (a)(iv) of Article 1(1) thereof,

Having published a draft of this Regulation [2],

Having consulted the Advisory Committee on State Aid,

Whereas:

(1) Commission Regulation (EC) No 68/2001 [3] provides for special conditions in respect of aid to be granted for small and medium-sized enterprises. The definition of small and medium-sized enterprises in Regulation (EC) No 68/2001 is that used in Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises [4]. That Recommendation has been replaced by Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises [5] with effect from 1 January 2005. In the interests of legal certainty, the definition used in Regulation (EC) No 68/2001 should be the same as that used in Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises [6].

(2) Experience has shown that it is desirable to have a unified and simplified reporting system of annual reports adopted pursuant to Article 27 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [7]. The specific reporting provisions laid down in Annex III to Regulation (EC) No 68/2001 should therefore only apply until such time as a general reporting system has been adopted.

(3) It is necessary to lay down provisions for the assessment of the compatibility with the common market of any training aid granted without prior authorisation of the Commission before the entry into force of Regulation (EC) No 68/2001.

(4) Regulation (EC) No 68/2001 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 68/2001 is amended as follows:

1. Article 1 is replaced by the following:

'*Article 1*

Scope

This Regulation applies to training aid in all sectors, including the activities relating to the production, processing and marketing of products listed in Annex I of the Treaty, with the exception of aid falling within the scope of Council Regulation (EC) No 1407/2002 (*).

(*) OJ L 205, 2.8.2002, p. 1.';

2. In Article 2 points, (b) and (c) are replaced by the following:

'(b) "small and medium-sized enterprises" shall mean enterprises as defined in Annex I to Commission Regulation (EC) No 70/2001 (*);

(c) "large enterprises" shall mean enterprises not coming under the definition of small and medium-sized enterprises;

(*) OJ L 10, 13.1.2002, p. 33.';

3. In Article 7, paragraph 3 is replaced by the following:

'3. Member States shall compile an annual report on the application of this Regulation in accordance with the implementing provisions concerning the form and content of annual reports which are laid down pursuant to Article 27 of Council Regulation (EC) No 659/1999 (*).

Until such provisions enter into force, Member States shall compile an annual report on the application of this Regulation in respect of the whole or part of each calendar year during which this Regulation applies, in the form laid down in Annex III, also in computerised form. Member States shall provide the Commission with such report no later than three months after the expiry of the period to which the report relates.

(*) OJ L 83, 27.3.1999, p. 1.'

[1] OJ L 142, 14.5.1998, p. 1.
[2] OJ C 190, 12.8.2003, p. 2.
[3] OJ L 10, 13.1.2001, p. 20.
[4] OJ L 107, 30.4.1996, p. 4.
[5] OJ L 124, 20.5.2003, p. 36.
[6] OJ L 10, 13.1.2001, p. 33.
[7] OJ L 83, 27.3.1999, p. 1, Regulation as amended by the 2003 Act of Accession.

4. The following Article 7a is inserted:

'*Article 7a*

Transitional provisions

Aid schemes implemented before the date of entry into force of this Regulation, and aid granted under such schemes, in the absence of a Commission authorisation and in breach of the notification requirement of Article 88(3) of the Treaty, shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt if they fulfil the conditions laid down in Article 3(2)(a) and Article 3(3) of this Regulation.

Individual aid outside any scheme granted before the date of entry into force of this Regulation, in the absence of a Commission authorisation and in breach of the notification requirement of Article 88(3) of the Treaty, shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt if it fulfils all the conditions of this Regulation, except the requirement in Article 3(1) that express reference be made to this Regulation.

Any aid which does not fulfil these conditions shall be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.'

5. Annex I is deleted.

Article 2

This Regulation shall enter into force on the twentieth day following that of 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, 25 February 2004.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION REGULATION (EC) No 364/2004

of 25 February 2004

amending Regulation (EC) No 70/2001 as regards the extension of its scope to include aid for research and development

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid [1] and in particular points (a)(i) and (b) of Article 1(1) thereof,

Having published a draft of this Regulation [2],

Having consulted the Advisory Committee on State Aid,

Whereas:

(1) The definition of small and medium-sized enterprises (SMEs) used in Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises [3] is that used in Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises [4]. That Recommendation has been replaced by Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises [5] with effect from 1 January 2005.

(2) The rules should be clarified in cases where an investment takes place in an area eligible for regional aid, but in a sector where regional aid is forbidden. The regional aid ceilings should only apply if both the region where the investment is carried out and the sector to which the beneficiary belongs are eligible for regional aid. The rules requiring notification of large individual grants beyond certain thresholds should be clarified accordingly.

(3) Experience has shown that it is desirable to have a unified and simplified reporting system of annual reports adopted pursuant to Article 27 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [6]. The specific reporting provisions laid down in Annex III to Regulation (EC) No 70/2001 should therefore only apply until such time as a general reporting system has been adopted.

(4) It is necessary to lay down provisions for the assessment of the compatibility with the common market of any aid to small and medium-sized enterprises granted without prior authorisation of the Commission before the entry into force of Regulation (EC) No 70/2001.

(5) Aid for research and development can contribute to economic growth, strengthening competitiveness and boosting employment. Aid for research and development for SMEs is of utmost importance, because one of the structural disadvantages of SMEs lies in the difficulty they may experience in gaining access to new technological developments and to technology transfer. At the same time, the Commission has taken the view in the Community framework for State aid for research and development [7] that it may be assumed that State aid for research and development will represent an incentive for SMEs to engage in more research and development since SMEs in general only spend a low percentage of their turnover on research and development activities. On the basis of its experience with the application of the Community framework for State aid for research and development to SMEs, the Commission has therefore decided that it is justified to exempt such aid from prior notification, taking also into account that such aid only has very limited potential to have a negative effect on competition. This also applies to aid for feasibility studies and aid to cover patenting costs as well as to individual aid which does not exceed certain ceilings.

(6) The scope of Regulation (EC) No 70/2001 should therefore be extended to cover aid for research and development granted to SMEs in the widest possible range of sectors.

(7) Certain definitions in Regulation (EC) No 70/2001 should be amended, in order to take account of the particularities of State aid for research and development, and others should be added. In particular, the definitions of the stages of research and development contained in Annex I to the Community framework for State aid for Research and Development should be inserted. The list of eligible costs should correspond to the list in Annex II to the framework, with certain clarifications necessary in order to reflect the fact that a Regulation is directly applicable in the Member States. Beneficiaries should not be able to benefit from double subsidisation of identical research results.

[1] OJ L 142, 14.5.1998, p. 1.
[2] OJ C 190, 12.8.2003, p. 3.
[3] OJ L 10, 13.1.2001, p. 33.
[4] OJ L 107, 30.4.1996, p. 4.
[5] OJ L 124, 20.5.2003, p. 36.
[6] OJ L 83, 27.3.1999, p. 1. Regulation as amended by the 2003 Act of Accession.
[7] OJ C 45, 17.2.1996, p. 5.

(8) The guidance in the Community framework for State aid for research and development as to whether certain measures constitute State aid within the meaning of Article 87(1) of the Treaty remains relevant for the purposes of this Regulation.

(9) With a view to encouraging the dissemination of research results, SMEs may receive aid for the costs of obtaining and validating patents and other industrial property rights resulting from research and development activities. It should not be a precondition for exempting such aid that the activity which led to the right in question also received aid. It is sufficient that the activity would have qualified for research and development aid.

(10) Not all research and development aid for SMEs can be exempted under Regulation (EC) No 70/2001. The ceiling in the Community framework for State aid for Research and Development which applies to individual notifications should also apply in respect of individual aid which may be exempted under that Regulation. Special rules should also continue to apply for Eureka projects falling within the scope of the Declaration of the Ministerial Conference in Hanover on 6 November 1985 which are considered to be of common European interest.

(11) Regulation (EC) No 70/2001 should not exempt aid granted in the form of an advance that, expressed as a percentage of eligible costs, exceeds the aid intensity set in that Regulation and is repayable only in the event of a successful outcome of the research activities as provided for in the Framework for State aid for Research and Development, since the Commission assesses reimbursable aid on a case by case basis, taking into account the proposed conditions of reimbursement.

(12) Regulation (EC) No 70/2001, as amended by this regulation, applies only to State aid for Research and Development granted to small and medium-sized enterprises. The Community framework for State aid for research and development will continue to be used for the assessment of all aid for research and development which is notified to the Commission.

(13) Regulation (EC) No 70/2001 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 70/2001 is amended as follows:

1. Article 1(2) is amended as follows:

   (a) point (a) is replaced by the following:

   '(a) with regard to Articles 4 and 5, to activities linked to the production, processing or marketing of products listed in Annex I to the Treaty;'

   (b) the following point (d) is added:

   '(d) to aid falling within the scope of Council Regulation (EC) No 1407/2002 (*).

   (*) OJ L 205, 2.8.2002, p. 1.';

2. Article 2 is amended as follows:

   (a) in point (e) the following subparagraph is added:

   'For aid for research and development (R&D), the gross aid intensity for an R&D project being carried out in collaboration between public research establishments and enterprises shall be calculated on the basis of the combined aid deriving from direct government support for a specific research project and, where they constitute aid, contributions from public non-profit-making higher education or research establishments to the project.';

   (b) the following points (h), (i) and (j) are added:

   '(h) "fundamental research" shall mean an activity designed to broaden scientific and technical knowledge not linked to industrial or commercial objectives;

   (i) "industrial research" shall mean planned research or critical investigation aimed at the acquisition of new knowledge, the objective being that such knowledge may be useful in developing new products, processes or services or in bringing about a significant improvement in existing products, processes or services;

   (j) "pre-competitive development" shall mean the shaping of the results of industrial research into a plan, arrangement or design for new, altered or improved products, processes or services, whether they are intended to be sold or used, including the creation of an initial prototype which could not be used commercially. This may also include the conceptual formulation and design of other products, processes or services and initial demonstration projects or pilot projects, provided that such projects cannot be converted or used for industrial applications or commercial exploitation. It does not include the routine or periodic changes made to products, production lines, manufacturing processes, existing services and other operations in progress, even if such changes may represent improvements.';

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

   '2. Where the investment takes place in areas or in sectors which do not qualify for regional aid pursuant to Article 87(3)(a) and (c) of the Treaty at the moment the aid is granted, the gross aid intensity shall not exceed:

   (a) 15 % in the case of small enterprises;

   (b) 7,5 % in the case of medium-sized enterprises.

3. Where the investment takes place in areas and in sectors which qualify for regional aid at the moment the aid is granted, the aid intensity shall not exceed the ceiling of regional investment aid determined in the map approved by the Commission for each Member State by more than:

(a) 10 percentage points gross in areas covered by Article 87(3)(c), provided that the total net aid intensity does not exceed 30 %; or

(b) 15 percentage points gross in areas covered by Article 87(3)(a), provided that the total net aid intensity does not exceed 75 %.

The higher regional aid ceilings shall only apply if the aid is granted under the condition that the investment is maintained in the recipient region for at least five years and the beneficiary's contribution to its financing is at least 25 %.';

4. the following Articles 5a, 5b and 5c are inserted:

'Article 5a

Aid for research and development

1. Aid for research and development shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty if it fulfils the conditions set out in paragraphs 2 to 5.

2. The aided project must completely fall within the stages of research and development defined in Article 2(h), (i) and (j).

3. The gross aid intensity, as calculated on the basis of the eligible costs of the project, shall not exceed:

(a) 100 % for fundamental research;

(b) 60 % for industrial research;

(c) 35 % for pre-competitive development.

If a project includes different stages of research and development, the permissible aid intensity shall be established on the basis of the weighted average of the respective permissible aid intensities, calculated on the basis of the eligible costs involved.

In the case of collaborative projects, the maximum amount of aid for each beneficiary shall not exceed the permitted aid intensity calculated by reference to the eligible costs incurred by the beneficiary concerned.

4. The ceilings in paragraph 3 may be increased as follows up to a maximum gross aid intensity of 75 % for industrial research and 50 % for pre-competitive development:

(a) where the project takes place in an area which, at the time when the aid is granted, qualifies for regional aid, the maximum aid intensity may be increased by 10 percentage points gross in areas covered by Article 87(3)(a) of the Treaty and by five percentage points gross in areas covered by Article 87(3)(c) of the Treaty;

(b) where the project aims at carrying out research with potential multi-sectoral application and focuses on a multidisciplinary approach in accordance with the objective, tasks and technical targets of a specific project or programme undertaken under the Sixth Framework Programme for research and development, established by Decision No 1513/2002/EC of the European Parliament and of the Council (*) or any subsequent Framework Programme for research and development or Eureka, the maximum aid intensity may be increased by 15 percentage points gross;

(c) the maximum aid intensity may be increased by 10 percentage points if one of the following conditions is satisfied:

(i) the project involves effective cross-border cooperation between at least two independent partners in two Member States, particularly in the context of coordinating national R&D policies; no single company in the Member State granting the aid may bear more than 70 % of the eligible costs; or

(ii) the project involves effective cooperation between a company and a public research body, particularly in the context of coordination of national R&D policies, where the public research body bears at least 10 % of the eligible project costs and has the right to publish the results insofar as they stem from research implemented by that body; or

(iii) the results of the project are widely disseminated through technical and scientific conferences or published in peer-reviewed scientific and technical journals.

For the purposes of points (i) and (ii) subcontracting is not considered to be effective cooperation.

5. Eligible costs for the purposes of this Article shall be the following:

(a) personnel costs (researchers, technicians and other supporting staff to the extent employed on the research project);

(b) costs of instruments and equipment to the extent and for the duration used for the research project. If such instruments and equipment are not used for their full life for the research project, only the depreciation costs corresponding to the life of the research project, as calculated on the basis of good accounting practice, are considered as eligible;

(c) costs for buildings and land, to the extent and for the duration used for the research project. With regard to buildings, only the depreciation costs corresponding to the life of the research project, as calculated on the basis of good accounting practice, are considered as eligible. For land, costs of commercial transfer or actually incurred capital costs are eligible;

(d) cost of consultancy and equivalent services used exclusively for the research activity, including research, technical knowledge and patents bought or licensed from outside sources at market prices, where the transaction has been carried out at arm's length and there is no element of collusion involved. These costs are only considered eligible up to 70 % of total eligible project costs;

(e) additional overheads incurred directly as a result of the research project;

(f) other operating expenses, including costs of materials, supplies and similar products incurred directly as a result of the research activity.

Article 5b

Aid for technical feasibility studies

Aid for technical feasibility studies preparatory to industrial research activities or pre-competitive development activities shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that the gross aid intensity, as calculated on the basis of study costs, does not exceed 75 %.

Article 5c

Aid for patenting costs

1. Aid for the costs associated with obtaining and validating patents and other industrial property rights shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty up to the same level of aid as would have qualified as R&D aid in respect of the research activities which first led to the industrial property rights concerned.

2. Eligible costs for the purposes of paragraph 1 shall be the following:

(a) all costs preceding the grant of the right in the first legal jurisdiction, including costs relating to the preparation, filing and prosecution of the application as well as costs incurred in renewing the application before the right has been granted;

(b) translation and other costs incurred in order to obtain the granting or validation of the right in other legal jurisdictions;

(c) costs incurred in defending the validity of the right during the official prosecution of the application and possible opposition proceedings, even if such costs occur after the right is granted.

(*) OJ L 232, 29.8.2002, p. 1.';

5. Article 6 is replaced by the following:

'*Article 6*

Large individual aid grants

1. In the case of aid covered by Articles 4 and 5, this Regulation shall not exempt an individual aid grant where one of the following thresholds is met:

(a) the total eligible costs of the whole project are at least EUR 25 000 000; and

(i) in areas or in sectors which do not qualify for regional aid, the gross aid intensity is at least 50 % of the ceilings laid down in Article 4(2);

(ii) in areas and in sectors which qualify for regional aid, the net aid intensity is at least 50 % of the net aid ceiling as determined in the regional aid map for the area concerned; or

(b) the total gross aid amount is at least EUR 15 000 000.

2. In the case of aid covered by Articles 5a, 5b and 5c, this Regulation shall not exempt an individual aid grant where the following thresholds are met:

(a) the total eligible costs of the whole project incurred by all companies participating in the project are at least EUR 25 000 000; and

(b) it is proposed to provide aid with a gross grant equivalent of at least EUR 5 000 000 to one or more of the individual companies.

In the case of aid granted to a Eureka project, the thresholds in the first subparagraph shall be replaced by the following:

(a) the total eligible costs of the Eureka project incurred by all companies participating in the project are at least EUR 40 000 000; and

(b) it is proposed to provide aid with a gross grant equivalent of at least EUR 10 000 000 to one or more of the individual companies.';

6. the following Article 6a is inserted:

'*Article 6a*

Aid remaining subject to prior notification to the Commission

1. This Regulation shall not exempt any aid, whether individual aid or aid granted under an aid scheme, in the form of one or more advances that are repayable only in the event of a successful outcome of research activities, where the total amount of the advances expressed as a percentage of the eligible costs exceeds the intensities provided for in Articles 5a, 5b or 5c or the limit fixed in Article 6(2).

2. This Regulation is without prejudice to any obligation on a Member State to notify individual grants of aid under other State aid instruments, and in particular the obligation to notify, or to inform the Commission of, aid to an enterprise receiving restructuring aid within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty (*) and the obligation to notify regional aid for large investment projects under the applicable multisectoral Framework.

(*) OJ C 288, 9.10.1999, p. 2.';

7. in Article 8, paragraph 1 is replaced by the following:

'1. The aid ceilings fixed in Articles 4 to 6 shall apply regardless of whether the support for the aided project is financed entirely from State resources or is partly financed by the Community.';

8. in Article 9, paragraph 3 is replaced by the following:

'3. Member States shall compile an annual report on the application of this Regulation in accordance with the implementing provisions concerning the form and content of annual reports provisions which are laid down pursuant to Article 27 of Council Regulation (EC) No 659/1999 (*).

Until such provisions enter into force, Member States shall compile an annual report on the application of this Regulation in respect of the whole or part of each calendar year during which this Regulation applies, in the form laid down in Annex III, also in computerised form. Member States shall provide the Commission with such report no later than three months after the expiry of the period to which the report relates.

(*) OJ L 83, 27.3.1999, p. 1.'

9. The following Article 9a is inserted:

'*Article 9a*

Transitional provisions

1. Notifications concerning aid for Research and Development pending on 19 March 2004 shall continue to be assessed under the Framework for State aid for Research and Development, while all other pending notifications shall be assessed in accordance with the provisions of this regulation.

2. Aid schemes implemented before the date of entry into force of this Regulation, and aid granted under such schemes in the absence of a Commission authorisation and in breach of the notification requirement of Article 88(3) of the Treaty, shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt if they fulfil the conditions laid down in Article 3(2)(a) and Article 3(3) of this Regulation.

Individual aid outside any scheme granted before the date of entry into force of this Regulation in the absence of a Commission authorisation and in breach of the notification requirement of Article 88(3) of the Treaty, shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt if it fulfils all the conditions of this Regulation, except the requirement in Article 3(1) that express reference be made to this Regulation.

Any aid which does not fulfil these conditions shall be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.';

10. Annex I is replaced by the text in the Annex to this Regulation.

Article 2

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

Point 10 of Article 1 shall apply from 1 January 2005.

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

Done at Brussels, 25 February 2004.

For the Commission

Mario MONTI

Member of the Commission

ANNEX

'ANNEX I

Definition of small and medium-sized enterprises

(Extract from Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of small and medium sized enterprises, OJ L 124, 20.5.2003, p. 36)

DEFINITION OF MICRO, SMALL AND MEDIUM-SIZED ENTERPRISES ADOPTED BY THE COMMISSION

Article 1

Enterprise

An enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity.

Article 2

Staff headcount and financial ceilings determining enterprise categories

1. The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding 50 million euro, and/or an annual balance sheet total not exceeding EUR 43 million.

2. Within the SME category, a small enterprise is defined as an enterprise which employ fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.

3. Within the SME category, a micro-enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

Article 3

Types of enterprise taken into consideration in calculating staff numbers and financial amounts

1. An "autonomous enterprise" is any enterprise which is not classified as a partner enterprise within the meaning of paragraph 2 or as a linked enterprise within the meaning of paragraph 3.

2. "Partner enterprises" are all enterprises which are not classified as linked enterprises within the meaning of paragraph 3 and between which there is the following relationship: an enterprise (upstream enterprise) holds, either solely or jointly with one or more linked enterprises within the meaning of paragraph 3, 25 % or more of the capital or voting rights of another enterprise (downstream enterprise).

However, an enterprise may be ranked as autonomous, and thus as not having any partner enterprises, even if this 25 % threshold is reached or exceeded by the following investors, provided that those investors are not linked, within the meaning of paragraph 3, either individually or jointly to the enterprise in question:

(a) public investment corporations, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses (business angels), provided the total investment of those business angels in the same enterprise is less than EUR 1 250 000;

(b) universities or non-profit research centres;

(c) institutional investors, including regional development funds;

(d) autonomous local authorities with an annual budget of less than EUR 10 million and less than 5 000 inhabitants.

3. "Linked enterprises" are enterprises which have any of the following relationships with each other:

(a) an enterprise has a majority of the shareholders' or members' voting rights in another enterprise;

(b) an enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;

(c) an enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;

(d) an enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise.

There is a presumption that no dominant influence exists if the investors listed in the second subparagraph of paragraph 2 are not involving themselves directly or indirectly in the management of the enterprise in question, without prejudice to their rights as stakeholders.

Enterprises having any of the relationships described in the first subparagraph through one or more other enterprises, or any one of the investors mentioned in paragraph 2, are also considered to be linked.

Enterprises which have one or other of such relationships through a natural person or group of natural persons acting jointly are also considered linked enterprises if they engage in their activity or in part of their activity in the same relevant market or in adjacent markets.

An "adjacent market" is considered to be the market for a product or service situated directly upstream or downstream of the relevant market.

4. Except in the cases set out in paragraph 2, second subparagraph an enterprise cannot be considered an SME if 25 % or more of the capital or voting rights are directly or indirectly controlled, jointly or individually, by one or more public bodies.

5. Enterprises may make a declaration of status as an autonomous enterprise, partner enterprise or linked enterprise, including the data regarding the ceilings set out in Article 2. The declaration may be made even if the capital is spread in such a way that it is not possible to determine exactly by whom it is held, in which case the enterprise may declare in good faith that it can legitimately presume that it is not owned as to 25 % or more by one enterprise or jointly by enterprises linked to one another. Such declarations are made without prejudice to the checks and investigations provided for by national or Community rules.

Article 4

Data used for the staff headcount and the financial amounts and reference period

1. The data to apply to the headcount of staff and the financial amounts are those relating to the latest approved accounting period and calculated on an annual basis. They are taken into account from the date of closure of the accounts. The amount selected for the turnover is calculated excluding value added tax (VAT) and other indirect taxes.

2. Where, at the date of closure of the accounts, an enterprise finds that, on an annual basis, it has exceeded or fallen below the headcount or financial ceilings stated in Article 2, this will not result in the loss or acquisition of the status of medium-sized, small or micro-enterprise unless those ceilings are exceeded over two consecutive accounting periods.

3. In the case of newly-established enterprises whose accounts have not yet been approved, the data to apply is to be derived from a *bona fide* estimate made in the course of the financial year.

Article 5

Staff headcount

The headcount corresponds to the number of annual work units (AWU), i.e. the number of persons who worked full-time within the enterprise in question or on its behalf during the entire reference year under consideration. The work of persons who have not worked the full year, the work of those who have worked part-time, regardless of duration, and the work of seasonal workers are counted as fractions of AWU. The staff consists of:

(a) employees;

(b) persons working for the enterprise being subordinated to it and deemed to be employees under national law;

(c) owner-managers;

(d) partners engaging in a regular activity in the enterprise and benefiting from financial advantages from the enterprise.

Apprentices or students engaged in vocational training with an apprenticeship or vocational training contract are not included as staff. The duration of maternity or parental leaves is not counted.

Article 6

Establishing the data of an enterprise

1. In the case of an autonomous enterprise, the data, including the number of staff, are determined exclusively on the basis of the accounts of that enterprise.

2. The data, including the headcount, of an enterprise having partner enterprises or linked enterprises are determined on the basis of the accounts and other data of the enterprise or, where they exist, the consolidated accounts of the enterprise, or the consolidated accounts in which the enterprise is included through consolidation.

To the data referred to in the first subparagraph are added the data of any partner enterprise of the enterprise in question situated immediately upstream or downstream from it. Aggregation is proportional to the percentage interest in the capital or voting rights (whichever is greater). In the case of cross-holdings, the greater percentage applies.

To the data referred to in the first and second subparagraph are added 100 % of the data of any enterprise, which is linked directly or indirectly to the enterprise in question, where the data were not already included through consolidation in the accounts.

3. For the application of paragraph 2, the data of the partner enterprises of the enterprise in question are derived from their accounts and their other data, consolidated if they exist. To these are added 100 % of the data of enterprises which are linked to these partner enterprises, unless their accounts data are already included through consolidation.

For the application of the same paragraph 2, the data of the enterprises which are linked to the enterprise in question are to be derived from their accounts and their other data, consolidated if they exist. To these are added, pro rata, the data of any possible partner enterprise of that linked enterprise, situated immediately upstream or downstream from it, unless it has already been included in the consolidated accounts with a percentage at least proportional to the percentage identified under the second subparagraph of paragraph 2.

4. Where in the consolidated accounts no staff data appear for a given enterprise, staff figures are calculated by aggregating proportionally the data from its partner enterprises and by adding the data from the enterprises to which the enterprise in question is linked.'

COMMISSION REGULATION (EC) No 365/2004

of 27 February 2004

amending Regulation (EC) No 2233/2003 opening Community tariff quotas for 2004 for sheep, goats, sheepmeat and goatmeat

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2529/2001 of 19 December 2001 on the common organisation of the market in sheepmeat and goatmeat [1], and in particular Article 16(1) thereof,

Whereas:

(1) Article 11(1) of Commission Regulation (EC) No 1439/1995 of 26 June 1995 laying down detailed rules for the application of Council Regulation (EEC) No 3013/89 as regards the import and export of products in the sheepmeat and goatmeat sector [2] indicates the validity period for documents of origin issued by third country authorities in view of imports into the Community of sheep, goats, sheepmeat and goatmeat under tariff quotas.

(2) Commission Regulation (EC) No 2233/2003 [3] introduced the management of those quotas under the first-come, first-served system as of 1 January 2004. However, with regard to certain third countries, that Regulation provides for the continuation of the licence-system until 30 April 2004. In those cases, provisions should be made to allow a smooth transition from the import licence system to the first-come, first-served system.

(3) To that end, a higher degree of flexibility as concerns the period of validity of the document of origin as stipulated in Article 11(1) of Regulation (EC) No 1439/95 should be allowed to the extent that the authorities of the third country concerned may issue such documents with a period of validity of less than three months from the date of issue.

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

HAS ADOPTED THIS REGULATION:

Article 1

In Article 5(1) of Regulation (EC) No 2233/2003, the following subparagraph is added:

'By way of derogation from Article 11(1) of Regulation (EC) No 1439/95, the issuing authorities of Australia and New Zealand may, until 30 April 2004, issue documents of origin with a validity period of less than three months from their actual date of issue.'

Article 2

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

It shall apply from 1 January 2004.

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

Done at Brussels, 27 February 2004.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 341, 22.12.2001, p. 3.
[2] OJ L 143, 27.6.1995, p. 7, Regulation as last amended by Regulation (EC) No 272/2001 (OJ L 41, 10.2.2001, p. 3).
[3] OJ L 339, 24.12.2003, p. 22.

COMMISSION REGULATION (EC) No 366/2004

of 27 February 2004

amending Regulation (EC) No 2259/2003 as regards the available quantity for which import licence applications for certain pigmeat products may be lodged for the period 1 to 30 April 2004

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EEC) No 2759/75 of the Council of 29 October 1975 on the common organisation of the market in pigmeat ([1]),

Having regard to Council Decision 2003/18/EC of 19 December 2002 on the conclusion of a Protocol adjusting the trade aspects of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Romania, of the other part, to take account of the outcome of negotiations between the Parties on new mutual agricultural concessions ([2]),

Having regard to Council Decision 2003/286/EC of 8 April 2003 on the conclusion of a Protocol adjusting the trade aspects of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part, to take account of the outcome of negotiations between the Parties on new mutual agricultural concessions ([3]),

Having regard to Commission Regulation (EC) No 1898/97 of 29 September 1997 laying down rules of application in the pigmeat sector for the arrangements under the Europe Agreements with Bulgaria, the Czech Republic, Slovakia, Romania, Poland and Hungary ([4]), and in particular Article 4(4) thereof,

Whereas:

(1) The accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union on 1 May 2004 should enable those countries to qualify for the tariff quotas for pigmeat provided for under the arrangements established by Decisions 2003/18/EC and 2003/286/EC under fair conditions compared with those applicable to the existing Member States. Economic operators in those countries must be given the possibility therefore of participating fully in those quotas upon accession.

(2) In order not to create disturbance on the market before and after 1 May 2004, the timetable for the tranches provided for products originating in Bulgaria and Romania in 2004 has been altered and the allocation of quantities adjusted by Commission Regulation (EC) No 333/2004 of 26 February 2004 ([5]). It is therefore necessary to amend Commission Regulation (EC) No 2259/2003 of 22 December 2003 determining the extent to which applications lodged in December 2003 for import licences for certain pigmeat products under the regime provided for by the Agreements concluded by the Community with the Republic of Poland, the Republic of Hungary, the Czech Republic, Slovakia, Bulgaria and Romania can be accepted ([6]),

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2259/2003 is hereby amended as follows:

(a) Article 1(2) is replaced by the following:

'2. For the period 1 to 30 April 2004, applications for import licences for products originating in Bulgaria and Romania may be lodged pursuant to Regulation (EC) No 1898/97 for the total quantity referred to in Annex II.'

(b) Annex II is replaced by the text contained in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 March 2004.

([1]) OJ L 282, 1.11.1975, p. 1, regulation as last amended by Regulation (EC) No 1365/2000 (OJ L 156, 29.6.2000, p. 5).
([2]) OJ L 8, 14.1.2003, p. 18.
([3]) OJ L 102, 24.4.2003, p. 60.
([4]) OJ L 267, 30.9.1997, p. 58, regulation as last amended by Regulation (EC) No 1467/2003 (OJ L 210, 20.8.2003, p. 11).
([5]) OJ L 60, 27.2.2004, p. 12.
([6]) OJ L 336, 21.12.2003, p. 10.

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

Done at Brussels, 27 February 2004.

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

ANNEX

'ANNEX II

Group	Total quantity of products originating in Bulgaria and Romania available for the period 1 to 30 April 2004 (tonnes)
B1	2 490
15	918,8
16	1 763,8
17	12 968,8'

COMMISSION REGULATION (EC) No 367/2004

of 27 February 2004

amending Regulation (EC) No 2261/2003 as regards the available quantity for which import licence applications for certain pigmeat products may be lodged for the period 1 to 30 April 2004

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EEC) No 2759/75 of the Council of 29 October 1975 on the common organisation of the market in pigmeat [1],

Having regard to Council Regulation (EC) No 774/94 of 29 March 1994 opening and providing for the administration of certain Community tariff quotas for high-quality beef, and for pigmeat, poultrymeat, wheat and meslin, and brans, sharps and other residues [2],

Having regard to Commission Regulation (EC) No 1432/94 of 22 June 1994 laying down detailed rules for the application in the pigmeat sector of the import arrangements provided for in Council Regulation (EC) No 774/94 opening and providing for the administration of certain Community tariff quotas for pigmeat and certain other agricultural products [3], and in particular Article 4(4) thereof,

Whereas:

(1) The accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union on 1 May 2004 should enable those countries to qualify for the tariff quotas for pigmeat provided for by Regulation (EC) No 774/94 under fair conditions compared with those applicable to the existing Member States. Economic operators in those countries must be given the possibility therefore of participating fully in those quotas upon accession.

(2) In order not to create disturbance on the market before and after 1 May 2004, the timetable for the tranches provided for by Regulation (EC) No 1432/94 has been altered and the allocation of quantities adjusted for 2004 by Commission Regulation (EC) No 232/2004 of 26 February 2004 [4]. It is therefore necessary to amend Commission Regulation (EC) No 2261/2003 of 22 December 2003 determining the extent to which applications lodged in December 2003 for import licences for certain pigmeat sector products under the regime provided for by Council Regulation (EC) No 774/94 opening and providing for the administration of certain Community tariff quotas for pigmeat and certain other agricultural products can be accepted [5],

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2261/2003 is hereby amended as follows:

(a) Article 1(2) is replaced by the following:

'2. Applications for import licences for the period 1 to 30 April 2004 may be lodged pursuant to Regulation (EC) No 1432/94 for the total quantity referred to in Annex II.';

(b) Annex II is replaced by the text contained in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 March 2004.

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

Done at Brussels, 27 February 2004.

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

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[1] OJ L 282, 1.11.1975, p. 1, Regulation as last amended by Regulation (EC) No 1365/2000 (OJ L 156, 29.6.2000, p. 5).
[2] OJ L 91, 8.4.1994, p. 1, Regulation as amended by Regulation (EC) No 2198/95 (OJ L 221, 19.9.1995, p. 3).
[3] OJ L 156, 23.6.1994, p. 14, Regulation as last amended by Regulation (EC) No 1006/2001 (OJ L 140, 24.5.2001, p. 13).
[4] OJ L 60, 27.2.2004, p. 10.
[5] OJ L 336, 21.12.2003, p. 14.

ANNEX

'ANNEX II

Group	Total quantity available for the period 1 to 30 April 2004 (tonnes)
1	2 286'

COMMISSION REGULATION (EC) No 368/2004

of 27 February 2004

amending Regulation (EC) No 2262/2003 as regards the available quantity for which import licence applications for certain pigmeat products may be lodged for the period 1 to 30 April 2004

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EEC) No 2759/75 of the Council of 29 October 1975 on the common organisation of the market in pigmeat [1],

Having regard to Council Regulation (EC) No 1095/96 of 18 June 1996 on the implementation of the concessions set out in Schedule CXL drawn up in the wake of the conclusion of the GATT XXIV.6 negotiations [2],

Having regard to Commission Regulation (EC) No 1458/2003 of 18 August 2003 opening and providing for the administration of a tariff quota in the pigmeat sector [3], and in particular Article 5(6) thereof,

Whereas:

(1) The accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union on 1 May 2004 should enable those countries to qualify for the tariff quotas for pigmeat provided for by Regulation (EC) No 1458/2003 under fair conditions compared with those applicable to the existing Member States. Economic operators in those countries must be given the possibility therefore of participating fully in those quotas upon accession.

(2) In order not to create disturbance on the market before and after 1 May 2004, the timetable for the tranches provided for in 2004 has been altered and the allocation of quantities adjusted by Commission Regulation (EC) No 334/2004 of 26 February 2004 [4]. It is therefore necessary to amend Commission Regulation (EC) No 2262/2003 of 22 December 2003 determining the extent to which applications lodged in December 2003 for import licences under the regime provided for by tariff quotas for certain products in the pigmeat sector for the period 1 January to 31 March 2004 can be accepted [5],

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2262/2003 is hereby amended as follows:

(a) Article 1(2) is replaced by the following:

'2. Applications for import licences for the period 1 to 30 April 2004 may be lodged pursuant to Regulation (EC) No 1458/2003 for the total quantity referred to in Annex II.'

(b) Annex II is replaced by the text contained in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 March 2004.

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

Done at Brussels, 27 February 2004.

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

[1] OJ L 282, 1.11.1975, p. 1. Regulation last amended by Regulation (EC) No 1365/2000 (OJ L 156, 29.6.2000, p. 5).
[2] OJ L 146, 20.6.1996, p. 1.
[3] OJ L 208, 19.8.2003, p. 3.
[4] OJ L 60, 27.2.2004, p. 14.
[5] OJ L 336, 21.12.2003, p. 16.

ANNEX

'ANNEX II

Group	Total quantity available for the period 1 to 30 April 2004 (tonnes)
G2	24 751,7
G3	2 728
G4	2 347
G5	5 063
G6	12 450
G7	4 564'

COMMISSION REGULATION (EC) No 369/2004

of 27 February 2004

fixing the refunds applicable to cereal and rice sector products supplied as Community and national food aid

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]), and in particular the third subparagraph of Article 13(2) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ([2]), and in particular Article 13(3) thereof,

Whereas:

(1) Article 2 of Council Regulation (EEC) No 2681/74 of 21 October 1974 on Community financing of expenditure incurred in respect of the supply of agricultural products as food aid ([3]) lays down that the portion of the expenditure corresponding to the export refunds on the products in question fixed under Community rules is to be charged to the European Agricultural Guidance and Guarantee Fund, Guarantee Section.

(2) In order to make it easier to draw up and manage the budget for Community food aid actions and to enable the Member States to know the extent of Community participation in the financing of national food aid actions, the level of the refunds granted for these actions should be determined.

(3) The general and implementing rules provided for in Article 13 of Regulation (EEC) No 1766/92 and in Article 13 of Regulation (EC) No 3072/95 on export refunds are applicable *mutatis mutandis* to the abovementioned operations.

(4) The specific criteria to be used for calculating the export refund on rice are set out in Article 13 of Regulation (EC) No 3072/95.

(5) 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 Community and national food aid operations under international agreements or other supplementary programmes, and other Community free supply measures, the refunds applicable to cereals and rice sector products shall be as set out in the Annex.

Article 2

This Regulation shall enter into force on 1 March 2004.

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

Done at Brussels, 27 February 2004.

For the Commission

Franz FISCHLER

Member of the Commission

([1]) OJ L 181, 1.7.1992, p. 21. Regulation as last amended by Commission Regulation (EC) No 1104/2003 (OJ L 158, 27.6.2003, p. 1).
([2]) OJ L 329, 30.12.1995, p. 18. Regulation as last amended by Commission Regulation (EC) No 411/2002 (OJ L 62, 5.3.2002, p. 27).
([3]) OJ L 288, 25.10.1974, p. 1.

ANNEX

to the Commission Regulation of 27 February 2004 fixing the refunds applicable to cereal and rice sector products supplied as Comunity and national food aid

(EUR/t)

Product code	Refund
1001 10 00 9400	0,00
1001 90 99 9000	0,00
1002 00 00 9000	0,00
1003 00 90 9000	0,00
1005 90 00 9000	0,00
1006 30 92 9100	111,00
1006 30 92 9900	111,00
1006 30 94 9100	111,00
1006 30 94 9900	111,00
1006 30 96 9100	111,00
1006 30 96 9900	111,00
1006 30 98 9100	111,00
1006 30 98 9900	111,00
1006 30 65 9900	111,00
1007 00 90 9000	0,00
1101 00 15 9100	0,00
1101 00 15 9130	0,00
1102 10 00 9500	0,00
1102 20 10 9200	35,70
1102 20 10 9400	30,60
1103 11 10 9200	0,00
1103 13 10 9100	45,90
1104 12 90 9100	0,00

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

COMMISSION REGULATION (EC) No 370/2004

of 27 February 2004

fixing the maximum export refund on wholly milled and parboiled long grain B rice to certain third countries in connection with the invitation to tender issued in Regulation (EC) No 1877/2003

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [1], and in particular Article 13(3) thereof,

Whereas:

(1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 1877/2003 [2].

(2) Article 5 of Commission Regulation (EEC) No 584/75 [3] allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) The application of the abovementioned criteria to the current market situation for the rice 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

The maximum export refund on wholly milled and parboiled long grain B rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 1877/2003 is hereby fixed on the basis of the tenders submitted from 23 to 26 February 2004 at 252,00 EUR/t.

Article 2

This Regulation shall enter into force on 28 February 2004.

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

Done at Brussels, 27 February 2004.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 329, 30.12.1995, p. 18. Regulation as last amended by Commission Regulation (EC) No 411/2002 (OJ L 62, 5.3.2002, p. 27).

[2] OJ L 275, 25.10.2003, p. 20.

[3] OJ L 61, 7.3.1975, p. 25. Regulation as last amended by Regulation (EC) No 1948/2002 (OJ L 299, 1.11.2002, p. 18).

COMMISSION REGULATION (EC) No 371/2004

of 27 February 2004

fixing the maximum subsidy on exports of husked long grain rice B to Réunion pursuant to the invitation to tender referred to in Regulation (EC) No 1878/2003

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [1], and in particular Article 10(1) thereof,

Having regard to Commission Regulation (EEC) No 2692/89 of 6 September 1989 laying down detailed rules for exports of rice to Réunion [2], and in particular Article 9(1) thereof,

Whereas:

(1) Commission Regulation (EC) No 1878/2003 [3] opens an invitation to tender for the subsidy on rice exported to Réunion.

(2) Article 9 of Regulation (EEC) No 2692/89 allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum subsidy.

(3) The criteria laid down in Articles 2 and 3 of Regulation (EEC) No 2692/89 should be taken into account when fixing this maximum subsidy. Successful tenderers shall be those whose bids are at or below the level of the maximum subsidy.

(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

A maximum subsidy on exports to Réunion of husked long grain rice B falling within CN code 1006 20 98 is hereby set on the basis of the tenders lodged from 23 to 26 February 2004 at 285,00 EUR/t pursuant to the invitation to tender referred to in Regulation (EC) No 1878/2003.

Article 2

This Regulation shall enter into force on 28 February 2004.

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

Done at Brussels, 27 February 2004.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 329, 30.12.1995, p. 18. Regulation as last amended by Commission Regulation (EC) No 411/2002 (OJ L 62, 5.3.2002, p. 27).

[2] OJ L 261, 7.9.1989, p. 8. Regulation as last amended by Commission Regulation (EC) No 1453/1999 (OJ L 167, 2.9.1999, p. 19).

[3] OJ L 275, 25.10.2003, p. 23.

COMMISSION REGULATION (EC) No 372/2004

of 27 February 2004

fixing the maximum export refund on wholly milled round grain rice to certain third countries in connection with the invitation to tender issued in Regulation (EC) No 1875/2003

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [1], and in particular Article 13(3) thereof,

Whereas:

(1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 1875/2003 [2].

(2) Article 5 of Commission Regulation (EEC) No 584/75 [3] allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) The application of the abovementioned criteria to the current market situation for the rice 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

The maximum export refund on wholly milled round grain rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 1875/2003 is hereby fixed on the basis of the tenders submitted from 23 to 26 February 2004 at 111,00 EUR/t.

Article 2

This Regulation shall enter into force on 28 February 2004.

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

Done at Brussels, 27 February 2004.

For the Commission

Franz FISCHLER

Member of the Commission

---

[1] OJ L 329, 30.12.1995, p. 18. Regulation as last amended by Commission Regulation (EC) No 411/2002 (OJ L 62, 5.3.2002, p. 27).

[2] OJ L 275, 25.10.2003, p. 14.

[3] OJ L 61, 7.3.1975, p. 25. Regulation as last amended by Regulation (EC) No 1948/2002 (OJ L 299, 1.11.2002, p. 27).

COMMISSION REGULATION (EC) No 373/2004

of 27 February 2004

fixing the maximum export refund on wholly milled round grain, medium grain and long grain A rice to be exported to certain third countries in connection with the invitation to tender issued in Regulation (EC) No 1876/2003

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [1], and in particular Article 13(3) thereof,

Whereas:

(1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 1876/2003 [2].

(2) Article 5 of Commission Regulation (EEC) No 584/75 [3] allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) The application of the abovementioned criteria to the current market situation for the rice 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

The maximum export refund on wholly milled grain, medium grain and long grain A rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 1876/2003 is hereby fixed on the basis of the tenders submitted from 23 to 26 February 2004 at 111,00 EUR/t.

Article 2

This Regulation shall enter into force on 28 February 2004.

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

Done at Brussels, 27 February 2004.

For the Commission

Franz FISCHLER

Member of the Commission

---

[1] OJ L 329, 30.12.1995, p. 18. Regulation as last amended by Commission Regulation (EC) No 411/2002 (OJ L 62, 5.3.2002, p. 27).

[2] OJ L 275, 25.10.2003, p. 17.

[3] OJ L 61, 7.3.1975, p. 25. Regulation as last amended by Regulation (EC) No 1948/2002 (OJ L 299, 1.11.2002, p. 18).

COMMISSION REGULATION (EC) No 374/2004
of 27 February 2004
determining the world market price for unginned cotton

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Protocol 4 on cotton, annexed to the Act of Accession of Greece, as last amended by Council Regulation (EC) No 1050/2001 [1],

Having regard to Council Regulation (EC) No 1051/2001 of 22 May 2001 on production aid for cotton [2], and in particular Article 4 thereof,

Whereas:

(1) In accordance with Article 4 of Regulation (EC) No 1051/2001, a world market price for unginned cotton is to be determined periodically from the price for ginned cotton recorded on the world market and by reference to the historical relationship between the price recorded for ginned cotton and that calculated for unginned cotton. That historical relationship has been established in Article 2(2) of Commission Regulation (EC) No 1591/2001 of 2 August 2001 laying down detailed rules for applying the cotton aid scheme [3]. Where the world market price cannot be determined in this way, it is to be based on the most recent price determined.

(2) In accordance with Article 5 of Regulation (EC) No 1051/2001, the world market price for unginned cotton is to be determined in respect of a product of specific characteristics and by reference to the most favourable offers and quotations on the world market among those considered representative of the real market trend. To that end, an average is to be calculated of offers and quotations recorded on one or more European exchanges for a product delivered cif to a port in the Community and coming from the various supplier countries considered the most representative in terms of international trade. However, there is provision for adjusting the criteria for determining the world market price for ginned cotton to reflect differences justified by the quality of the product delivered and the offers and quotations concerned. Those adjustments are specified in Article 3(2) of Regulation (EC) No 1591/2001.

(3) The application of the above criteria gives the world market price for unginned cotton determined hereinafter,

HAS ADOPTED THIS REGULATION:

Article 1

The world price for unginned cotton as referred to in Article 4 of Regulation (EC) No 1051/2001 is hereby determined as equalling EUR 32,378/100 kg.

Article 2

This Regulation shall enter into force on 28 February 2004.

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

Done at Brussels, 27 February 2004.

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

[1] OJ L 148, 1.6.2001, p. 1.
[2] OJ L 148, 1.6.2001, p. 3.
[3] OJ L 210, 3.8.2001, p. 10. Regulation as amended by Regulation (EC) No 1486/2002 (OJ L 223, 20.8.2002, p. 3).

COMMISSION REGULATION (EC) No 375/2004
of 27 February 2004
fixing the import duties in the cereals sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals [1],

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

Whereas:

(1) Article 10 of Regulation (EEC) No 1766/92 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation. However, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by 55 %, minus the cif import price applicable to the consignment in question. However, that duty may not exceed the rate of duty in the Common Customs Tariff.

(2) Pursuant to Article 10(3) of Regulation (EEC) No 1766/92, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market.

(3) Regulation (EC) No 1249/96 lays down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector.

(4) The import duties are applicable until new duties are fixed and enter into force.

(5) In order to allow the import duty system to function normally, the representative market rates recorded during a reference period should be used for calculating the duties.

(6) Application of Regulation (EC) No 1249/96 results in import duties being fixed as set out in Annex I to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the cereals sector referred to in Article 10(2) of Regulation (EEC) No 1766/92 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 1 March 2004.

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

Done at Brussels, 27 February 2004.

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

[1] OJ L 181, 1.7.1992, p. 21. Regulation as last amended by Regulation (EC) No 1104/2003 (OJ L 158, 27.6.2003, p. 1).
[2] OJ L 161, 29.6.1996, p. 125. Regulation as last amended by Regulation (EC) No 1110/2003 (OJ L 158, 27.6.2003, p. 12).

ANNEX I

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

CN code	Description	Import duty [1] (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00
	medium quality	0,00
	low quality	0,00
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	Common high quality wheat other than for sowing	0,00
1002 00 00	Rye	29,65
1005 10 90	Maize seed other than hybrid	32,69
1005 90 00	Maize other than seed [2]	32,69
1007 00 90	Grain sorghum other than hybrids for sowing	29,65

[1] For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2(4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:
— EUR 3 per tonne, where the port of unloading is on the Mediterranean Sea, or
— EUR 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic coasts of the Iberian peninsula.

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

ANNEX II

Factors for calculating duties

(period from 13 February 2004 to 26 February 2004)

1. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

Exchange quotations	Minneapolis	Chicago	Minneapolis	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2 (14 %)	YC3	HAD2	Medium quality (*)	Low quality (**)	US barley 2
Quotation (EUR/t)	137,48 (***)	88,90	167,04	157,04	137,04	102,40
Gulf premium (EUR/t)	28,12	10,46	—	—	—	—
Great Lakes premium (EUR/t)	—	—	—	—	—	—

(*) A discount of 10 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).
(**) A discount of 30 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).
(***) Premium of 14 EUR/t incorporated (Article 4(3) of Regulation (EC) No 1249/96).

2. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

   Freight/cost: Gulf of Mexico–Rotterdam: 32,19 EUR/t; Great Lakes–Rotterdam: 0,00 EUR/t.

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

COMMISSION REGULATION (EC) No 376/2004

of 27 February 2004

fixing the production refund for olive oil used in the manufacture of certain preserved foods

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], and in particular Article 20a thereof,

Whereas:

(1) Article 20a of Regulation No 136/66/EEC provides for the granting of a production refund for olive oil used in the preserving industry. Pursuant to paragraph 6 of that Article, and without prejudice to paragraph 3 thereof, the Commission shall fix this refund every two months.

(2) By virtue of Article 20a(2) of the abovementioned Regulation, the production refund must be fixed on the basis of the gap between prices on the world market and on the Community market, taking account of the import charge applicable to olive oil falling within CN subheading 1509 90 00 and the factors used for fixing the export refunds for those olive oils during the reference period. It is appropriate to take as a reference period the two-month period preceding the beginning of the term of validity of the production refund.

(3) The application of the above criteria results in the refund being fixed as shown below,

HAS ADOPTED THIS REGULATION:

Article 1

For the months of March and April 2004, the amount of the production refund referred to in Article 20a(2) of Regulation No 136/66/EEC shall be EUR 44,00/100 kg.

Article 2

This Regulation shall enter into force on 1 March 2004.

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

Done at Brussels, 27 February 2004.

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

[1] OJ 172, 30.9.1966, p. 3025/66. Regulation as last amended by Regulation (EC) No 1513/2001 (OJ L 201, 26.7.2001, p. 4).

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION
of 10 February 2004
amending Decision 2001/264/EC adopting the Council's security regulations

(2004/194/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 207(3) thereof,

Having regard to Council Decision 2002/682/EC, Euratom of 22 July 2002 adopting the Council's Rules of Procedure [1], and in particular Article 24 thereof,

Whereas:

(1) Appendices 1 and 2 to the Security Regulations of the Council of the European Union annexed to Decision 2001/264/EC [2] contain a list of national security authorities (NSAs) and a table of comparison including national security classifications, respectively.

(2) On 16 April 2003, the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic signed the Treaty concerning their accession to the European Union [3].

(3) According to Article 2(2) of Decision 2001/264/EC, those States have to take appropriate measures to ensure that, when EU classified information is handled, the Council's security regulations are respected.

(4) In order to take into account those States in the abovementioned Appendices, it is therefore necessary, from a technical point of view, to amend Decision 2001/264/EC.

(5) Appendix 2 to Decision 2001/264/EC indicates that correspondence with NATO classification levels will be established when the Security Agreement between the European Union and NATO is negotiated.

(6) An Agreement [4] on the security of information was signed between the European Union and NATO on 14 March 2003.

(7) It is therefore also necessary to introduce correspondence with NATO classification levels in Appendix 2 to the abovementioned Decision,

HAS DECIDED AS FOLLOWS:

Article 1

Decision 2001/264/EC is hereby amended as follows:

(a) Appendix 1 is replaced by the document in Annex I to this Decision;

(b) Appendix 2 is replaced by the document in Annex II to this Decision.

Article 2

1. This Decision shall take effect on the day of its publication.

2. It shall apply only subject to and on the date of the entry into force of the 2003 Treaty of Accession, signed in Athens on 16 April 2003.

Done at Brussels, 10 February 2004.

For the Council
The President
C. McCREEVY

[1] OJ L 230, 28.8.2002, p. 7.
[2] OJ L 101, 11.4.2001, p. 1.
[3] OJ L 236, 23.9.2003, p. 17.
[4] OJ L 80, 27.3.2003, p. 36.

ANNEX I

BELGIUM

Service public fédéral des affaires étrangères, du commerce extérieur et de la coopération au développement
Autorité nationale de sécurité (ANS)
Direction du protocole et de la sécurité
Service de la sécurité P & S 6
Rue des Petits Carmes 15
B-1000 Bruxelles

Federale Overheidsdienst Buitenlandse Zaken, Buitenlandse Handel en Ontwikkelingssamenwerking
Nationale Veiligheidsoverheid (NVO)
Directie Protocol en Veiligheid P&S 6
Karmelietenstraat 15
B-1000 Brussel
Téléphone du secrétariat: (32-2) 519 05 74
Téléphone de la présidence: (32-2) 501 82 20; (32-2) 501 87 10
Télécopieur: (32-2) 519 05 96

CZECH REPUBLIC

National Security Authority
Na Popelce 2/16
CZ-150 06 Praha 56
Telefon: (420) 257 28 33 35
Fax: (420) 257 28 31 10

DENMARK

Politiets Efterretningstjeneste
Klausdalsbrovej 1
DK-2860 Søborg
Telefon (45) 33 14 88 88
Fax (45) 33 43 01 90

GERMANY

Bundesministerium des Innern
Referat IS 2
Alt-Moabit 101 D
D-11014 Berlin
Telefon: 49-18 88–681-15 26
Fax: 49-18 88-681-558 06

ESTONIA

Ministry of Defence, Republic of Estonia, Department of Security
Sakala 1
EE-15094 Tallinn
Telefon: (372) 717 00 30
Fax: (372) 717 00 01

GREECE

Γενικό Επιτελείο Εθνικής Άμυνας (ΓΕΕΘΑ)
Υπηρεσία Στρατιωτικών Πληροφοριών (ΥΣΠ — Β Κλάδος)
Τμήμα Ασφαλείας και Αντιπληροφοριών
ΣΤΓ 1020-Χολαργός (Αθήνα)
Ελλάδα
Τηλέφωνα: (30) 210 657 20 09 (ώρες γραφείου), (30) 210 657 20 10 (ώρες γραφείου)
Φαξ: (30) 210 642 64 32, (30) 210 657 21 81

Hellenic National Defence General Staff (HNDGS)
Military Intelligence Service (MIS-Bi Branch)
Security Counterintelligence Section
GR-STG 1020 Holargos — Athens
Telephone: (30) 210 657 20 09, (30) 210 657 20 10
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SPAIN

Autoridad Nacional de Seguridad
Oficina Nacional de Seguridad
Avenida Padre Huidobro s/n
Carretera Nacional Radial VI, km 8,5
E-28023 Madrid
Teléfono: (34-91) 372 57 07, (34-91) 372 50 27
Fax: (34-91) 372 58 08

FRANCE

Secrétariat général de la défense nationale
Service de sécurité et de défense (SGDN/SSD)
51 boulevard de la Tour-Maubourg
F-75700 Paris 07 SP
Téléphone: (33-1) 71 75 81 77
Télécopieur: (33-1) 71 75 82 00

IRELAND

National Security Authority
Department of Foreign Affairs
80 St. Stephens Green
Dublin 2
Ireland
Telephone: (353-1) 478 08 22
Fax: (353-1) 478 14 84

ITALY

Presidenza del Consiglio dei Ministri
Autorità Nazionale per la Sicurezza
Ufficio Centrale per la Sicurezza
Via della Pineta Sacchetti, 216
I-00168 Roma
Tel.: (39) 066 27 47 75
Fax: (39) 066 14 33 97

CYPRUS

Υπουργείο Άμυνας
Στρατιωτικό επιτελείο του υπουργού
Εθνική Αρχή Ασφάλειας (ΕΑΑ)
Υπουργείο Άμυνας
Λεωφόρος Εμμανουήλ Ροΐδη 4
1432 Λευκωσία, Κύπρος
Τηλέφωνα: (357) 22 80 75 69, (357) 22 80 75 19, (357) 22 80 77 64
Φαξ: (357) 22 30 23 51

Ministry of Defence
Minister's Military Staff
National Security Authority (NSA)
4 Emanuel Roidi street
CY-1432 Nicosia
Telephone: (357) 22 80 75 69; (357) 22 80 75 19; (357) 22 80 77 64
Fax: (357) 22 30 23 51

LATVIA

Constitution Protection Bureau of the Republic of Latvia
Miera Iela 85/A
LV-1001 Riga
Telefon: (371) 702 54 18
Fax: (371) 702 54 06

LITHUANIA

National Security Authority of the Republic of Lithuania
Gedimino 40/2
LT-2600 Vilnius
Telefon: (370-5) 266 32 05
Fax: (370-5) 266 32 00

LUXEMBOURG

Autorité nationale de sécurité
Ministère d'État
Boîte Postale 23 79
L-1023 Luxembourg
Téléphone: (352) 478 22 10 (central), (352) 478 22 35 (ligne directe)
Télécopieur: (352) 478 22 43; (352) 478 22 71

HUNGARY

National Security Authority Republic of Hungary
Pf. 2
HU-1352 Budapest
Telefon: (361) 346 96 52
Fax: (361) 346 96 58

MALTA

Ministry of Justice and Home Affairs
P.O. Box 146
MT-Valletta
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Fax: (356) 21 23 53 00

NETHERLANDS

Ministerie van Binnenlandse Zaken
Postbus 20010
2500 EA Den Haag
Nederland
Tel.: (31-70) 320 44 00
Fax: (31-70) 320 07 33

Ministerie van Defensie
Militaire Inlichtingendienst (MID)
Postbus 20701
2500 ES Den Haag
Nederland
Tel.: (31-70) 318 70 60
Fax: (31-70) 318 79 51

AUSTRIA

Informationssicherheitskommission
Bundeskanzleramt
Ballhausplatz 2
A-1014 Wien
Telefon: 431-531 15 23 96
Fax: 431-531 15 25 08

POLAND

Military Information Services
National Security Authority — Military Sphere
PL-00-909 Warszawa 60
Telefon: (48-22) 684 61 19
Fax: (48-22) 684 61 72

Internal Security Agency
Department for the Protection of Classified Information
2A Rakowiecka St.
PL-00-993 Warszawa
Telefon: (48-22) 585 73 60
Fax: (48-22) 585 85 09

PORTUGAL

Presidência do Conselho de Ministros
Autoridade Nacional de Segurança
Avenida Ilha da Madeira
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SLOVENIA

Office of the Government of the Republic of Slovenia
For the Protection of Classified Information — NSA
Slovenska cesta 5
SVN-1000 Ljubljana
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SLOVAKIA

National Security Authority
Budatínska 30
SK-851 05 Bratislava
Telefon: (421-2) 68 69 95 09
Fax: (421-2) 63 82 40 05

FINLAND

Ulkoasiainministeriö/Utrikesministeriet
Alivaltiosihteeri (Hallinto)/Understatssekreteraren (Administration)
Laivastokatu/Maringatan 22
PL/PB 176
FI-00161 Helsinki/Helsingfors
P. (358-9) 16 05 53 38
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SWEDEN

Utrikesdepartementet
SSSB
S-103 39 Stockholm
Telefon (46-8) 405 54 44
Fax (46-8) 723 11 76

UNITED KINGDOM

National Security Authority
The Secretary for T3P/1
PO Box 56 56
London EC1A 1AH
United Kingdom
Telephone: (44) 20 72 70 87 51
Fax: (44) 20 76 30 14 28

ANNEX II

Comparison of security classifications

EU classification	Très Secret UE/EU Top Secret	Secret UE	Confidentiel UE	Restreint UE
Belgium	Très Secret Zeer Geheim	Secret Geheim	Confidentiel Vertrouwelijk	Diffusion restreinte Beperkte verspreiding
Czech Republic	Přísně tajné	Tajné	Důvěrné	Vyhrazené
Denmark	Yderst hemmeligt	Hemmeligt	Fortroligt	Til tjenestebrug
Germany	Streng geheim	Geheim	VS (2) — Vertraulich	VS — Nur für den Dienstgebrauch
Estonia	Täiesti salajane	Salajane	Konfidentsiaalne	Piiratud
Greece	Άκρως απόρρητο Abk: ΑΑΠ	Απόρρητο Abk: (ΑΠ)	Εμπιστευτικό ΕΕ Abk: (ΕΜ)	Περιορισμένης χρήσης Abk: (ΠΧ)
Spain	Secreto	Reservado	Confidencial	Difusión limitada
France	Très Secret Défense (1)	Secret Défense	Confidentiel Défense	Diffusion restreinte
Ireland	Top Secret	Secret	Confidential	Restricted
Italy	Segretissimo	Segreto	Riservatissimo	Riservato
Cyprus	Άκρως απόρρητο	Απόρρητο	Εμπιστευτικό ΕΕ	Περιορισμένης χρήσης
Latvia	Sevišķi slepeni	Slepeni	Konfidenciāli	Dienesta vajadzībām
Lithuania	Visiškai slaptai	Slaptai	Konfidencialiai	Riboto naudojimo
Luxembourg	Très Secret	Secret	Confidentiel	Diffusion restreinte
Hungary	Szigorúan titkos!	Titkos!	Bizalmas!	Korlátozott terjesztésű!
Malta	L-Għola Segretezza	Sigriet	Kunfidenzjali	Ristrett
Netherlands	STG Zeer Geheim	STG Geheim	STG Confidentieel	—
Austria	Streng geheim	Geheim	Vertraulich	Eingeschränkt
Poland	Ściśle tajne	Tajne	Poufne	Zastrzeżone

EU classification	Très Secret UE/EU Top Secret	Secret UE	Confidentiel UE	Restreint UE
Portugal	Muito Secreto	Secreto	Confidencial	Reservado
Slovenia	Strogo tajno	Tajno	Zaupno	SVN Interno
Slovakia	Prísne tajné	Tajné	Dôverné	Vyhradené
Finland	Erittäin salainen	Erittäin salainen	Salainen	Luottamuksellinen
Sweden	Kvalificerat hemlig	Hemlig	Hemlig	Hemlig
United Kingdom	Top Secret	Secret	Confidential	Restricted
NATO Classification	Cosmic Top Secret	NATO Secret	NATO Confidential	NATO Restricted
WEU Classification	Focal Top Secret	WEU Secret	WEU Confidential	WEU Restricted

(1) France: the classification 'Très Secret Défense', which covers governmental priority issues, may be changed only with the Prime Minister's authorisation.
(2) Germany: VS = Verschlusssache.

COMMISSION

COMMISSION DECISION

of 29 September 2000

declaring a concentration to be compatible with the common market and the functioning of the EEA Agreement

(Case COMP/M.1879 — Boeing/Hughes)

(notified under document number C(2000) 2740)

(Only the English text is authentic)

(Text with EEA relevance)

(2004/195/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57(2)(a) thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings [1], as last amended by Regulation (EC) No 1310/97 [2], and in particular Article 8(2) thereof,

Having regard to the Commission's decision of 26 May 2000 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations [3],

Whereas:

(1) On 18 April 2000, the Commission received a notification pursuant to Article 4 of the Regulation (EEC) No 4064/89 (the Merger Regulation) by which the Boeing Company ('Boeing' or 'the notifying party') acquires control within the meaning of Article 3(1)(b) of the Merger Regulation the satellite prime contracting and equipment business of Hughes Electronics Corporation (Hughes).

(2) By decision dated 26 May 2000, the Commission found that the notified operation raised serious doubts as to its compatibility with the common market and initiated proceedings pursuant to Article 6(1)(c) of the Merger Regulation and Article 57(2)(a) of the EEA Agreement.

I. THE PARTIES

(3) Boeing is a Delaware corporation operating in the field of commercial aircraft, defence and space industries, including the production and launch of satellites. Boeing's satellite business involves primarily the manufacture of global positioning systems (GPS) navigation satellites for the United States Department of Defence. Boeing provides satellite launch services for commercial customers worldwide as well as for the United States Government through its wholly-owned Delta programme. Boeing is also a minority shareholder through a 40 % interest in another launch service provider named Sea Launch. The Sea Launch joint venture started operations in 1999.

(4) Hughes is a US-based subsidiary of General Motors, active in satellite-based services (including communications services and pay-TV), and satellite manufacturing. Hughes' satellite prime contracting and equipment business consists of Hughes Space and Communications Company (HSC), Spectrolab Inc. (Spectrolab) and Hughes Electron Dynamics (HED): HSC designs and manufactures communication satellites for commercial customers worldwide as well as for the US Department of Defence and NASA, while Spectrolab and HED produce components primarily for use in satellites (such as solar cells, solar panels, travelling wave tubes and batteries).

[1] OJ L 395, 30.12.1989, p. 1 (corrected version in OJ L 257, 21.9.1990, p. 13).
[2] OJ L 180, 9.7.1997, p. 1.
[3] OJ C 53, 28.2.2004.

II. THE OPERATION

(5) On 13 January 2000, Boeing, Hughes and HSC entered into a Stock Purchase Agreement, according to which Boeing will acquire: (a) all outstanding shares of HSC; (b) all outstanding shares of Spectrolab; (c) the assets of HED; (d) 2,69 % of the issued and outstanding shares of common stock of ICO Global Communications (Holdings) Ltd, currently held by Hughes; and (e) 2 % of the issued and outstanding shares of common stock of Thuraya Satellite Telecommunications Private Joint Stock Co. currently held by Hughes.

(6) In addition, the shares of the Hughes group in a research joint venture with Raytheon (HRL) will be transferred to Boeing, if the consent of Raytheon is obtained. If not, Hughes and Boeing intend to form a joint venture to enable Boeing to benefit from the research and development activities of HRL.

(7) The Hughes Group will retain its ownership in all its other businesses, in particular, Hughes Network Systems, PanAmSat and DirecTV.

(8) In the light of the foregoing, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

(9) The notifying party considers that the present transaction does not have a Community dimension and therefore falls outside the jurisdiction of the Commission because HSC does not meet the EEA turnover thresholds laid down in the Merger Regulation. According to the notifying party, HSC's Community-wide turnover amounted to EUR […] (*) million in 1999 and EUR […]* million in 1998.

(10) However, HSC had significant turnover (approximately EUR […]* million in 1999) with ICO Global Communications (Holdings) Ltd (ICO). ICO was established to provide global mobile personal communication services by satellite. The ICO company filed for Chapter 11 protection (US procedure for companies facing bankruptcy) in August 1999 and has recently been reorganised. Boeing submits that the only way that HSC might be considered to exceed the EEA turnover threshold would be if its sales to ICO were to be included in its EEA turnover.

(11) Given that ICO is registered in the Cayman Islands but is actually managed in London, whether ICO should be seen as a Community company is decisive in determining whether or not the proposed transaction has a Community dimension. If HSC's turnover with ICO is allocated to the EEA, then the transaction falls under the Merger Regulation. The notifying party however maintains that HSC's turnover with ICO should be allocated to the Cayman Islands.

(12) On that basis, the Commission requested further information from ICO, which replied on 29 February 2000. It appears that ICO was formed as a result of a project established by Inmarsat (an international organisation based in London, which has now become a UK-listed company) to offer worldwide data and voice communication services through the use of a satellite-based telecommunication network. For that purpose, ICO was incorporated in 1994 in England and Wales. This company was subsequently liquidated and the assets were transferred to a Cayman Island company, which itself was changed into a Bermuda company. However, these changes, which seem to have primarily been made for tax purposes, have not altered the management structure of the company. As ICO has formally stated, its principal place of business is in London, where all ICO's day-to-day management is carried out and where 73 % of ICO's personnel is located, the remainder being spread in several locations around the world. In the light of the foregoing, it appears that, formally speaking, the parties are correct in claiming that ICO is a Cayman Islands (or more precisely a Bermuda Islands) registered company but that, economically speaking, ICO is still clearly a United Kingdom based company.

(13) In the calculation of turnover for the purposes of the Merger Regulation, it is the economic reality of a situation that should be taken into account. Indeed, paragraph 7 of the Commission Notice on calculation of turnover [1] states that 'the set of rules [concerning the calculation of turnover] are designed to ensure that the resulting figures are a true representation of economic reality'. In this case, therefore, HSC's turnover with ICO should be allocated to the United Kingdom.

(14) Furthermore, it appears that, although the satellite contract between HSC and ICO is formally placed with the Cayman Islands company, it was finally negotiated by ICO's London staff, and that any important modifications to this contract would be negotiated in London. If account is also taken of the place where the transaction was in reality carried out, and therefore where competition between HSC and other satellite prime contractors took place, it clearly points to the United Kingdom.

(*) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

[1] OJ C 66, 2.3.1998, p. 25.

(15) Following the guidelines in paragraph 7 of the Notice on the calculation of turnover, HSC's turnover with ICO should therefore be allocated to the United Kingdom and included in its EEA turnover.

(16) Boeing and HSC have a combined aggregate worldwide turnover of more than EUR 5 000 million [1] (EUR 53 403 million for Boeing in 1999 and EUR 2 136 million for Hughes in 1999). They each have an aggregate Community-wide turnover in excess of EUR 250 million (EUR […]* million for Boeing in 1999 and EUR […]* million for Hughes in 1999) and neither of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension within the meaning of Article 1(2) of the Merger Regulation.

IV. **COMPATIBILITY WITH THE COMMON MARKET**

(17) The merged entity will be active in the manufacture of satellites and equipment, and the provision of satellite launch services. In its decision of 26 May 2000, the Commission identified serious doubts that the operation would create or strengthen a dominant position by HSC on the market for commercial GEO communication satellites, and could create a dominant position on a market for commercial satellite launches.

(18) However, the results of the detailed investigation carried out by the Commission demonstrate that, for the reasons indicated in sections A and B below, there are no competition concerns about these markets.

A. **Satellites**

Relevant product markets

(19) Satellites are complex spacecraft orbiting or revolving around a celestial body. Satellites may be used for various applications (communications, navigation, observation and scientific purposes), for civilian as well as military customers.

(20) The notifying party submits that satellite product markets are distinguishable on the basis of two characteristics: (i) the type of customer, and (ii) the satellite orbit.

(21) Boeing considers that civil satellites sold to commercial customers, civil satellites sold to government, and military satellites, constitute each a distinct product market. First, government satellites belong to a different product market than commercial satellites since they are typically specialised products, in contrast to commercial satellites which are often derivatives of previous satellites. These differences create different conditions of competition between commercial satellites and government satellites: competition in the commercial arena is focussed on 'mass production techniques', while competition in government markets is based on a higher degree of specialisation and customer involvement. Secondly, military satellites form a specific product market because they have uniquely rigorous equipment requirements, resulting in tighter product specifications, tougher test programmes and specialised components not used in other satellites.

(22) Boeing also submits that geosynchronous orbit (GEO) satellites and non- geosynchronous orbit (NGSO, i.e. low earth orbit (LEO) and medium earth orbit (MEO)) satellites belong to different product markets, because, from a demand side perspective, each type of orbit has distinct advantages and disadvantages making each type inherently better suited for different use (for example, being closer to the earth makes a LEO satellite more appropriate for high resolution sensing uses). Also, on the supply side, the time necessary to prove the technical capability to build a satellite with a different orbit may be three to five years. In particular, GEO satellites are much more expensive (USD 100 million for GEO satellites, as compared to USD 10 million for LEO satellites), complex, heavy and long-lasting than NGSO satellites.

(23) In previous decisions [2], the Commission primarily segmented the satellite sector by application, establishing a distinction between communication (and possibly navigation) satellites on the one hand, and observation and scientific satellites on the other hand, because of differences in the technological skills and know-how required for these various applications. The Commission also suggested that there could be distinct product markets for military satellites and civil satellites (essentially because the conditions of competition are different between military and civil applications), and that a further segmentation by orbit type could be taken into account. A further distinction by customer type (commercial operator or government) was also taken into account, albeit for the purposes of the geographic market definitions.

[1] Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C 66, 2.3.1998, p. 25). To the extent that figures include turnover for the period before 1 January 1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

[2] See, for example, Case COMP/M.1636-MMS/DASA/Astrium, Commission Decision of 21 March 2000 — not yet published.

(24) The results of the Commission enquiry generally confirm (a) that satellites used for communications, navigation, and observation and scientific purposes belong to distinct product markets; (b) that the conditions of competition for commercial satellites, civil government satellites and military satellites are different; and (c) that a distinction should be made between GEO and NGSO satellites, although this segmentation may be more relevant in the case of communication satellites than in observation or scientific satellites (because most observation and scientific satellites are NGSO, and also probably because, in view of the specificity of each observation and scientific satellite, having existing designs or past experience within a given orbit type may be less important than in 'mass produced' communication products).

(25) However, it appears from the parties' estimates that all commercial GEO satellites are communication satellites, and that nearly all commercial NGSO satellites also are communication satellites. Accordingly, whether commercial satellites are further segmented by application (for example, communication, navigation, observation and scientific satellites) does not affect the competitive assessment of the proposed concentration.

(26) Furthermore, for the purposes of this case, it is not necessary to further delineate the relevant product markets for satellites because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Relevant geographic markets

(27) The notifying party submits that the markets for commercial satellites are worldwide. This is in line with previous Commission decisions [1] [for example], and has been broadly confirmed by the results of the Commission enquiry.

(28) Boeing also submits that the geographic markets for government (civil and military) satellites are national or at most regional. In the Astrium decision [2], the Commission concluded that there is a western European [3] market for satellites procured by space agencies, because, in that area, institutional satellites are primarily purchased by the Europan Space Agency (ESA), whose procurement is subject to a geographic 'juste retour' principle. Furthermore, the Commission indicated that there might also be national markets for institutional satellites in those Member States where national space agencies apply similar procurement procedures. Finally, the Commission suggested that there could be a worldwide market for military satellites procured through competitive processes involving prime contractors in the Community and the United States, but that there appeared to remain national markets in those Member States where satellites are procured from domestic prime contractors only. However, for the purposes of this case, it is not necessary to further delineate the geographic markets for government (civil and military) satellites because, in all geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Competitive assessment

(29) HSC and Boeing both operate as satellite prime contractors. However, the operation will not lead to direct overlaps between the parties, since only HSC is active in the commercial area, and neither HSC nor Boeing has supplied government GEO or NGSO satellites to European customers. In addition, it should be noted that the satellites of Boeing and HSC are used for different applications (respectively communication for HSC, and navigation for Boeing) and have different sizes and orbits (respectively GEO and MEO satellites for HSC, and LEO satellites for Boeing).

(30) In that context, the notifying party maintains that there are no horizontally affected markets. However, given HSC's market share in commercial communication satellites, it is necessary to examine whether the addition of Boeing's satellite business will strengthen HSC's present strong position, in particular on the market for commercial GEO satellites.

Market characteristics

(31) Commercial GEO communication satellites are large satellites (over half GEO payloads exceed 9 000 lbs.) placed in geosynchronous orbit, where they support various services such as telephony, data transmission, broadcast and cable television, and direct broadcast services.

(32) Demand is generated by commercial satellite operators, which may be large international institutions such as Intelsat or Inmarsat or private companies, and which either provide the end services themselves or lease satellite capacity to service operators such as television broadcasting corporations, telecommunication companies, etc.

[1] See Case IV/M.437-Matra Marconi Space/British Aerospace Systems, paragraph 22, Commission Decision of 22 August 1994 and Case COMP/M.1636-MMS/DASA/Astrium.
[2] See Case COMP/M.1636-MMS/DASA/Astrium.
[3] For the purpose of this case, western Europe means the EEA and Switzerland (and therefore includes all the Member States of the European Space Agency).

(33) It appears from the Commission investigation that satellites are almost always procured through international competitive bidding procedures involving several satellite prime contractors, such as HSC, Space Systems/Loral (SS/Loral), Lockheed Martin, Alcatel Space Industries (Alcatel) or Astrium. In view of the considerable losses of revenue (up to one million dollars per day) caused by a satellite failure, it also appears that the selection of the satellite prime contractor is primarily based on its proven reliability and price, with the satellite durability and the manufacturing lead times also playing an important role.

(34) In view of the advent of smaller, NGSO satellite constellations also offering communication services (such as mobile telephony, paging, data transmission and remote messaging), and of the filling-up of spots and orbital slots used by GEO satellites, the GEO satellite market is expected to evolve in the following three directions: (i) levelling, or even reduction in the number of satellites ordered; (ii) increase in satellite average mass and power; and (iii) focus on broadband services (not economically supported by smaller satellites).

Market players

(35) GEO communication satellites are primarily offered by five satellite prime contractors in the United States or in Europe, namely HSC, SS/Loral, Lockheed Martin, Alcatel and Astrium. All five producers appear to manufacture GEO as well as NGSO communication satellites, for use by both government and commercial customers.

(36) Based on the average commercial GEO communication satellite orders since 1997, HSC has a market share of [between 35 % and 45 %]* followed by Lockheed Martin [between 25 % and 35 %]*, Alcatel [between 10 % and 20 %]*, SS/Loral [between 10 % and 20 %]* and Astrium [between 0 % and 10 %]*.

Impact of the operation

(37) In its decision of 26 May 2000, the Commission found indications that HSC's market share could underestimate its actual position on the market. First, third parties had indicated that HSC benefited from a number of competitive advantages over other satellite prime contractors, primarily a reputation of excellence and reliability superior to that of its competitors, and lower costs due to higher sale volumes (both in the commercial and military sectors). Secondly, it appeared that HSC's success could be limited by the fact that, because it belongs to the Hughes group which is vertically integrated into the downstream sector of satellite operation (through PanAmSat, DirecTV and Hughes Network Systems), HSC could be viewed both as a major supplier and a major competitor of its customers. Internal documents from the parties suggested that this led a significant proportion of satellite operators not to purchase from HSC.

(38) Consequently, it was considered that HSC's competitive position was better indicated by its success rate when bidding for contracts, which is [between 40 % and 60 %]*. Third parties explicitly indicated that they viewed HSC as having a dominant position on the commercial GEO communication satellite market.

(39) Despite the absence of overlaps between Boeing and HSC in the satellite markets, the Commission also found indications that the operation could strengthen HSC's market position. First, it was concluded that the elimination of the link between HSC and the Hughes group would enable HSC to address the whole market, and so lead HSC to win market share (possibly up to its [between 40 % and 60 %]* success rate).

(40) Secondly, it was indicated that satellite prime contractors currently procured certain satellite equipment (namely solar cells, battery cells and travelling wave tube amplifiers) from Hughes (especially Spectrolab and HED). In that context, third parties expressed concerns that, after the proposed transaction, the equipment concerned could be procured by Boeing for its own satellites, which would reduce the capacity available to third parties to such an extent as to weaken them with regard to HSC.

(41) In the light of the above, the Commission therefore considered that the operation might further enlarge the gap between HSC and its competitors. In view of the apparent presence of economies of scale in satellite manufacturing (due to the fact that the amortisation of sunk costs accounts for a significant share of the satellite costs), it was feared that this could create or strengthen a dominant position by HSC in the GEO satellite market.

(42) However, the results of the Commission's detailed investigation indicate that the operation will not create or strengthen a dominant position. First, it should be noted that satellite markets are bidding markets, where the conditions of competition are determined by the presence of credible alternatives to HSC's products. In that context, and given the market positions of Lockheed Martin [between 20 % and 40 %]*, SS/Loral [between 10 % and 20 %]* and Alcatel [between 10 % and 20 %]*, it would appear that HSC remains subject to competition from other large and credible prime contractors.

(43) Secondly, it appears from the results of the Commission's investigation that HSC's alleged competitive advantages have probably been overestimated. For instance, most customers indicated that they did not view HSC satellites as being more reliable than those of other satellite prime contractors, and a number of third parties specified that, although HSC satellites historically enjoyed a superior reputation of excellence and reliability, they too have experienced a number of failures in recent years. Similarly, most customers indicated that they did not consider HSC to have any substantial cost advantage over its competitors. Finally, taking into account the main evaluation criteria used by customers, HSC seems not to be considered the best offer in a majority of cases. The presence of credible alternatives to HSC's satellites is further confirmed by the fact that HSC only won […]* of the 29 satellites ordered since the beginning of 2000. In the light of the foregoing, it can therefore be concluded that HSC does not have a dominant position in the commercial GEO satellite market.

(44) Furthermore, there is no indication that, after the proposed concentration, Boeing's purchases from Spectrolab and HED would reduce these suppliers' incentives to supply solar cells, battery cells and travelling wave tube amplifiers to other prime contractors. This is clear for travelling wave tube amplifiers, since Boeing does not purchase those products. This is also true for solar cells and battery cells, because HSC seems to have substantial overcapacity for most of the equipment concerned, which would not be filled even taking into account all of Boeing's potential demand, particularly as Boeing already purchases most of its solar cells from Spectrolab and does not buy travelling wave tube amplifiers. Secondly, solar cells and battery cells are essentially standardised products, which could competitively be procured from alternative sources of supply. Thirdly, most (including the largest) prime contractors currently do not purchase equipment from HSC, so that even a reduction of HSC's supplies to third parties would not create competition concerns.

(45) The Commission investigation also shows that, despite Hughes' ownership of satellite operators (namely PanAmSat, DirecTV and Hughes Network Systems), the fact that HSC could be viewed as both a competitor and a supplier of third party satellite operators did not lead most customers to refuse procuring satellites from HSC. It follows that the operation should not substantially bring new business to HSC satellites, and therefore should not substantially create new opportunities for HSC.

(46) Instead, it appears that, by severing the link between HSC and Hughes' satellite operating companies (PanAmSat, DirecTV and Hughes Network Systems), the transaction would probably make these satellite operators more open to other prime contractors. Given that the purchases of Hughes' satellite companies have represented approximately [35 % to 45 %]* of HSC's satellite orders between 1997 and 1999, the proposed operation could therefore substantially weaken HSC's competitive position rather than strengthen it.

(47) In the light of the foregoing, it is concluded that the operation will not create or strengthen a dominant position on the satellite markets as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

B. **Launch services**

Relevant product markets

(48) Launch vehicles are used to deliver satellites to space orbit. The services involved in launching satellites into orbit are referred to as satellite launch services. In general, two types of launchers can be distinguished: expendable launch vehicles which are consumed during the launch process, and partially or fully reusable launchers. However, in practice, launch services are conducted almost exclusively by expendable launch vehicles.

(49) Expendable launch vehicles may be categorised into various product groups, depending on the payload mass that the launcher is able to deliver in orbit. In particular, Boeing submits that LEO and MEO satellites can be and are launched on a wide range of launch vehicles (including larger and smaller launchers), but that intermediate/heavy GEO satellites (that is, those with a mass in excess of 4 000 pounds or approximately 1 800 kg) can only be launched by certain, larger launch vehicles (hereinafter referred to as heavy lift launchers). Accordingly, Boeing suggests that there are two product markets: an overall market for launch services comprising all satellite launches, and a 'nested' market for intermediate/heavy GEO satellite launch services (only performed by heavy lift launchers).

(50) The Commission enquiry broadly supports the view that heavy lift launchers are part of a specific product market, because only they are capable of launching larger satellites into GEO. This is in line with the conclusions of the Commission in previous decisions [1], where it was suggested that a segmentation of the launch service sector according to the size of the satellite launched or the capability of the launcher may be appropriate for the purposes of product market definition.

[1] See Case IV/M.1564 — Astrolink, Commission Decision of 25 June 1999 and Case COMP/M.1636-MMS/DASA/Astrium.

(51) However, first, there appears to be a contradiction in Boeing's proposed market definitions. If one accepts that intermediate/heavy GEO satellites can only be launched by heavy lift launchers, then the launch of these intermediate/heavy GEO satellites is not substitutable with any other launch service, and therefore cannot be included in a broader product market. In that context, there cannot be an overall product market comprising all satellite launches. A more consistent approach would consist in considering the following two product markets: a market for launch services of all satellites but intermediate/heavy GEO satellites, and a market for intermediate/heavy GEO satellite launch services.

(52) Furthermore, third parties have expressed criticisms over the notifying party's proposed product market definition for intermediate/heavy GEO satellite launch services. According to them, contrary to Boeing's proposal, the product market segmentation should not be based on the satellite size and orbit, but on the launch vehicle category. These third parties consider that the services offered by heavy lift launch vehicles are not substitutable with those offered by other launch vehicles, whatever the size and orbit of the satellite concerned. For instance, it would appear that certain NGSO satellites are capable of being launched by the larger launch vehicles only.

(53) In that case, the 'nested' product market should refer to the launch services offered by large/intermediate launch vehicles. This alternative market would comprise all satellite launches performed by heavy lift launchers, and would therefore be broader in scope than the large/intermediate GEO satellite launch services as proposed by Boeing (which does not include the NGSO satellite or smaller GEO satellite launches performed by heavy lift launchers). This alternative market definition would have the advantage of providing a more accurate picture of the competitive stance of the different launchers, because it would include all of the launches performed by these launchers. On the other hand, it would mean that the heavy lift launch vehicles are not in competition with smaller vehicles even for smaller satellite launches, which has not been demonstrated.

(54) Other third parties accepted Boeing's proposal for a specific product market for intermediate/heavy GEO satellite launch services, but criticised the dividing line for intermediate/heavy GEO satellites (4 000 lbs.). In particular, it was suggested that there is no strict limit between 'small' and 'large' satellites, and that the borderline could have been defined specifically for the purpose of excluding Boeing's Delta II launcher from the nested product market. However, it is doubtful whether the selection of another borderline would have much effect on the competition assessment, since it would appear that the average mass of GEO satellites is 6 000 lbs. (and rising), and that 75 % to 90 % of all GEO satellites fall within the intermediate/heavy category.

(55) However, for the purposes of this decision, it is not necessary to further delineate the relevant product markets for launch services, since, in none of the alternative market definitions considered, would effective competition be significantly impeded in the EEA or any substantial part of that area.

Relevant geographic markets

(56) Boeing submits that government and commercial launches belong to different geographic markets. The geographic markets for launch services are worldwide in the case of commercial applications, but are national or regional in the case of government (civil or military) launches. This difference is due to the fact that, as is the case with satellites, governments tend to give strong preference to national or at least regional launch service providers where applicable.

(57) This is in line with the Astrolink decision where the Commission concluded that commercial launches had to be distinguished from captive military or other governmental launches (which are ordinarily not available for open competition, even though the vehicles used are similar). These definitions have also been broadly confirmed by the results of the Commission investigation.

Competitive assessment

(58) Boeing is active in launch services, where it operates the Delta range of launchers (Delta II, Delta III and, as of 2001, Delta IV). The Delta II launcher has been reported to be the commercial launch vehicle with the longest heritage and the highest number of flights. It enjoys an excellent reputation of reliability, but is limited by its lift-off capacity (4 000 lbs.) which is insufficient for most commercial GEO satellite missions. The new Delta III and the future Delta IV will support much higher payload capacity, but Delta III is currently handicapped because it has only had one successful flight out of its three first launches, while Delta IV is still at development stage, and therefore has never flown to date.

(59) Boeing also has a 40 % stake in Sea Launch, a multinational partnership with the Russian company RSC-Energia (25 %), as well as with Norwegian-based Kvaerner Maritime (20 %) and the Ukrainian company Yuzhnoye/PO Yuzhmash (15 %). Sea Launch operates

the Ukrainian-built Zenit 2 vehicle (using the Block DM upper stage manufactured by Energia), which it launches from a marine platform that travels from California to equatorial waters. Sea Launch had its first launch in March 1999. Its reliability is also questioned by the failure of its third flight.

(60) Boeing submits that its 40 % interest in Sea Launch does not confer control over Sea Launch, on the grounds that there is no common marketing or management of the Delta and Sea Launch programmes. However, it appears that Boeing has veto rights over a number of strategic decisions by Sea Launch, including amendments to business plans (which require unanimity of the partners), the appointment of officers and contracts with third-party customers and major suppliers (which require a 67 % majority). In addition, Boeing has nominated three of the five Sea Launch officers (namely the President and General Manager, the Vice-President for Corporate Affairs and Secretary, and the Vice-President for the Launch Segment). Consequently, it is concluded that Boeing has joint control over Sea Launch.

(61) HSC is not active in launch services, but, as indicated in paragraph 36, it is the largest supplier of those commercial GEO satellites to be delivered into orbit by launch vehicles. It is therefore necessary to examine whether the combination of HSC' and Boeing's positions on these complementary markets could create or strengthen a dominant position in launch services.

(62) The investigation carried out by the Commission confirms that nearly all customers attach a great deal of importance to the selection of the launch vehicle that will eventually send their satellite into space. Reliability and proven performance are the most important criteria in the eyes of the customers when it comes to judging and rating potential launch service operators. According to the results of the customer survey, price is always taken into account by customers when making their final choice. However, customers also clearly indicate that securing their launch is paramount and, for that reason, they are ready to pay more in order to avoid any failure that would harm their company both financially and commercially. Eventually, the size of the launch service provider does not appear to be a critical factor based upon which the satellite customers will make their final decision.

Market characteristics

Procurement process

(63) Launch services are usually purchased separately from the satellite concerned. In that type of situation (known as Delivery on the Ground or 'DOG'), the satellite operator places two contracts: one contract (with the satellite prime contractor) for the supply of the satellite, and one contract (with the launch service operator) for the provision of the associated launch service.

(64) However, in recent years, satellite prime contractors have increasingly offered (and customers have increasingly accepted or requested) a new type of contract known as Delivery In Orbit (DIO). In that type of situation, the customer orders a complete package from the satellite manufacturer who, under the terms of a single contract, is required to supply both the satellite and the launch service. The DIO provider consequently bears responsibility for the arrangement of the satellite launch.

(65) The advantage of DIO procurement is that it simplifies the relationships with the prime contractor. Insofar as, in a DIO contract, the responsibility of the satellite delivery and launch is transferred to the satellite prime contractor, DIO procurement also avoids the customers having to deal with a number of risks such as delays, satellite/launcher interfaces or compatibility issues etc. linked to the interrelationships between the satellite and the launch service contracts. Conversely, DIO contracts appear to reduce the customer's visibility on the contract progress and on the choices performed by the satellite prime contractor (including those for the launch operations). Customers have indicated that DIO procurement may be more expensive than DOG. As a result, DIO seems to be primarily chosen by those smaller customers lacking the internal resources necessary for the management of the DOG process.

(66) In either procurement process, the selection of the launch service operator is carried out through an international competitive bidding procedure involving the main launch service operators worldwide. Insofar as any delay or failure would lead to considerable losses of revenues (up to one million dollars per day) for the satellite operator, and as no insurance seems to cover such risks, it appears from the Commission investigation that the selection of the launch vehicle is primarily based on reliability and price, with launch schedule flexibility also playing an important role.

Integration between the satellite and the launch vehicle

(67) In order to be successfully launched into space, the compatibility of a satellite with a chosen launch vehicle has to be ensured. This can be achieved on a case-by-case basis, but can also be secured either by the outcome of previous launches or by compatibility agreements.

(68) In the context of DOG procurement, customers generally send out requests for proposals to both satellite prime contractors and launch service operators. These requests may be in parallel or phased, depending upon the customer. At that stage, customers generally select the satellite manufacturer, and pre-select several possible launch vehicles. In general, the selection of the satellite is made 24 to 36 months before the launch date, and the satellite contract is signed before the final selection of the launch service supplier. In that context, and in order to keep their options open for the ultimate selection of the launch vehicle, customers usually require the satellite manufacturer to maintain compatibility with several launch vehicles (which may or may not be identified).

(69) After contract award, and although in principle it is the satellite that needs to be made compatible with the launcher and not the reverse, both the launcher and satellite manufacturers need to cooperate in order to have the satellite integrated to the selected launch vehicle. In that context, a broad variety of tests and analyses need to be carried out both by the satellite manufacturer and the launcher, so as to ensure, *inter alia*, the mechanical, thermal, electrical, radio frequency and electromagnetic compatibility between the satellite and the launcher environment.

(70) Those tasks are performed on a case-by-case basis, for each individual satellite. However, given that satellite manufacturers usually design their commercial communication satellite around a limited number of 'standard platforms', it is also possible to provide for the general compatibility of families of satellites. This is secured through broader 'compatibility agreements' between the satellite manufacturer and the launch service provider, covering a whole family of satellites. In practice, satellite manufacturers and launch service providers agree on a generic 'envelope' platform, the compatibility of which with the launch vehicle concerned is ensured. It is then considered that satellites falling within that platform will generally be compatible with the launch vehicle concerned. Compatibility agreements therefore reduce the risks, workload and time required for the integration of specific satellites belonging to a broader family with a given launch vehicle.

(71) The closer to the anticipated launch, the more expensive it may be to make the necessary technical changes to accommodate a different launch vehicle. Subject to contract arrangements between the parties, customers can be liable to pay termination fees in an increasing amount as the launch date draws closer. Although some of the customers who answered the Commission's investigation argue that they have complete freedom to change either element of the chosen combination, customers, in general, confirm that the earlier modifications are brought to the programme, the better it is for all parties involved.

Excess capacity

(72) It is generally considered that the commercial launch service industry is currently suffering from excess capacity. This situation appears to result from the over-investment into launch vehicle capacity which took place in the second half of the 1990s following optimistic anticipations of the launch market volume. In particular, it was generally expected that the development of NGSO satellite constellations would result in a soaring demand for launch services. For instance, in 1997, Boeing forecast that around […]* satellites would be launched in 2002. Given that such demand could hardly be met by the existing capacity, launch service operators actively invested into new facilities and often new launch vehicles. However, now that the first systems launched (such as Iridium or ICO) have met financial difficulties, the projects for satellite constellations have been substantially reduced or delayed, and launch forecasts have therefore become far more conservative. For instance, in the autumn of 1999, the revised predictions for launch services in 2002 were brought down to just […]* satellites.

(73) The considerable difference between the initial forecasts and the actual situation, combined with the important investments into new facilities and launch vehicles, has resulted in a situation of substantial excess capacity in the launch service industry. For instance, the combined capacity of the three main launch vehicles (Delta, Atlas and Ariane) is expected to exceed 50 units per year. That is to say potentially up to twice the current commercial market volume. Taking into account the presence of other launch vehicles (such as Proton, Sea Launch, Great Wall (China) and Starsem), and despite the presence of additional launches for government satellites, these figures suggest that capacity may be twice as high as total demand.

(74) The industry's excess capacity affects the cost structure of most launch service operators as their lower than expected actual sales volumes approach their operations' break-even points. The high level of fixed costs that characterises the industry requires a significant number of launches in order to be amortised. This makes launch providers very dependent on winning commercial launch contracts as each individual contract is of importance when it comes to price competitiveness. Losing two contracts can amount to a loss of 20 % to 25 % of the annual sales volume of some launch service providers and therefore seriously jeopardise their profitability.

Market players

(75) The market leaders in commercial launch services have traditionally been Arianespace and International Launch Services (ILS), which have respectively represented around [between 30 % and 50 %]* and [between 30 %

and 50 %]* of commercial intermediate/heavy GEO satellite launches over the last three years. Boeing's Delta III launches, the first two of which failed, Great Wall and Sea Launch account for the remaining few launches.

(76) ILS is a joint venture between Lockheed Martin and Krunichev, responsible for the marketing of the Atlas and the Proton ranges of launch vehicles to customers other than the US Government. The Atlas launchers are designed and built by Lockheed Martin. The Atlas range currently includes two families, the Atlas II launchers and the new Atlas III vehicle (which made its first commercial launch in May 2000). A newer launch vehicle (to be called Atlas V) is also currently being developed. The Proton vehicles are designed, developed and manufactured by the Russian firms Khrunichev and Energia.

(77) Arianespace was created in 1980 as the first commercial space transportation company. It is responsible for the production, marketing and launch of the Ariane launch vehicles, which are designed and developed through programmes under the auspices of the European Space Agency. Arianespace is held by 53 shareholders from 12 European countries. The current range of vehicles on offer includes the Ariane IV launcher and the recent Ariane V launcher, with newer, heavier versions of Ariane V currently being developed.

(78) Boeing and Sea Launch currently hold relatively limited positions on the satellite launch services market. This is due to a series of factors, but essentially stems from the fact that Boeing's main launcher, Delta II, is not capable of launching large satellites into space, and that the reliability of Boeing's and Sea Launch's new and larger launchers remains in doubt after recent failures. Customers confirm this situation in their responses to the investigation conducted by the Commission. Although Delta II is generally considered to be one of the most reliable launchers, proven reliability of the other Boeing launch vehicles are severely downrated by most of the customers. In 1999, Boeing and Sea Launch collectively accounted for 17 % of commercial launches, behind Lockheed Martin (25 %) and Arianespace (22 %). On the market for intermediate/heavy GEO satellite launch services, Boeing's position was lower, at 12 %, behind Arianespace (44 %) and Lockheed Martin (44 %).

(79) Despite the apparent drawbacks affecting Boeing's present market position, it seems quite clear that Boeing will become a major contender in launch services in the next few years. This is further indicated by the success of Delta III and Sea Launch's latest flights. Furthermore, Boeing's next launch vehicle, Delta IV, which is due to start operating in 2001, is expected to be the world's largest launcher, and will probably have the possibility to establish itself as a well-reputed and cost effective launcher through its existing contract of around 20 guaranteed launches with the United States Government. Boeing's capacity as a launch provider for commercial satellites is also reflected by the fact that Delta III and Sea Launch together already represent [between 25 % and 40 %]* of commercial launches ordered from heavy lift launchers since 1997, compared with [between 25 % and 40 %]* for Arianespace and [between 15 % and 25 %]* for ILS.

(80) Other launchers, such as Japan's H2 vehicle, or China's Long March programme, are also able to deliver large GEO satellites into orbit. However, these vehicles do not seem to constitute credible alternatives to the other market players: the H2 launcher is severely disadvantaged by its launch failures, while Long March suffers from both technological and export difficulties (it does not appear to be able to launch US-based satellites, because of the restrictions arising from the US satellite export regime). It therefore appears that the only main launchers capable of influencing the functioning of the market for the launch of commercial intermediate/heavy GEO satellites are Boeing, Sea Launch, ILS and Arianespace.

Impact of the operation

(81) Despite the absence of any overlap between Boeing and HSC in launch services, the Commission has identified, in its decision to initiate proceedings in this case, several potential adverse effects that could result from the proposed transaction. Given that satellite manufacturing and launch services are complementary goods, which are both necessary for the satellite operators to have satellites into orbit, and given HSC's strong position on the market for commercial GEO satellites, it was feared that the merged entity could induce satellite operators to obtain their launch services on Boeing's launchers, and consequently give Boeing a dominant position on the market for larger satellite launches.

(82) In particular, six potentially adverse effects of the transaction were identified:

(a) Satellite makers seem to bid to customers with a mass margin. After the operation, HSC might design this mass margin so as to optimally fit with the payload capacity of Boeing's launchers. This might make the offers of other launch service operators less competitive than Boeing's.

(b) Some DIO contracts give the satellite prime contractor a certain flexibility as to the launch vehicle to be used. After the merger, HSC might try to have all those satellites launched on Boeing or Sea Launch vehicles.

(c) Launching a satellite requires prior integration work between the satellite and the launcher concerned. This integration may be performed on a case-by-case basis, but it appears to be also possible to develop general compatibility agreements between the launcher and the satellite family. After the proposed transaction, HSC might refuse to develop such compatibility agreements, which would increase the costs and time required for the integration of HSC satellites with launchers operated by third parties.

(d) HSC may refuse to provide third-party launch service operators with information relating to its next satellites or to satellite updates, so that those launch service operators cannot easily make their launchers compatible with those satellites.

(e) As a satellite manufacturer, HSC receives competitively sensitive information relating to the launch vehicles with which its satellites will be integrated. Although that information is usually protected by confidentiality clauses, HSC might use it to the detriment of third party launch service operators.

(f) In the longer term, HSC might design its next generation of spacecraft so that they fit with Boeing's launchers better than with other launchers. For instance, HSC might impose unique and proprietary interfaces for its satellites, so as to favour Boeing launchers. HSC might also design its satellites so that they can be launched in such a way that they last longer than satellites usually do.

Effects of the identified behaviour

(83) It appears that, although the behaviour described in paragraph 82 might theoretically lead HSC's customers to favour Boeing's launch vehicles, it could also undermine HSC's competitiveness on the satellite market. For instance, making HSC satellites less compatible with other launch vehicles, or increasing the cost of or delaying the integration between a HSC satellite and a third-party launch vehicle, could be a disadvantage for HSC in respect of those customers requiring their satellites to be integrated on other launch vehicles. In that context, it is necessary to examine whether the merged entity would gain more through additional launch service contracts than it would lose through lost satellite contracts, if it were to engage in such behaviour.

(84) To this effect, the Commission conducted an extensive customer enquiry in order to check whether the various concerns raised by third parties were confirmed and could become a reality in the future. Both major and small satellite customers were contacted and invited to respond on their perception of the competitive situation of the market. The effects of the proposed transaction, not only on the market as a whole but also on customers' businesses, were also investigated in order to determine the likely impact of the competitive behaviour of the players active on the defined market.

(85) As indicated in paragraph 62, the results of the Commission's investigation show that customers devote a lot of attention and care to the selection of the launch vehicle, and usually consider reliability to be of paramount importance when selecting the launch service operator. This is so because of the risks incurred by customers in case of a launch failure. In such a case, the customers would not only lose a satellite (which they may insure), but also all the revenues related to the operation of the satellite until a new satellite is produced and launched (which no insurer is apparently willing to cover). For instance, customers indicated that a launch failure or delay would cost them more than USD 1 million per day in terms of lost revenue.

(86) In that context, customers usually will not accept being launched by a launch vehicle which they do not consider to be sufficiently reliable. That is confirmed by the fact that, after its first two failures, Boeing's Delta III launcher could not find a commercial customer for its third flight, and had to carry a dummy payload. More generally, customers usually try to reduce the launch risks to the minimum level possible, by requiring their satellite to be compatible with a series of launchers to enable them to switch launchers in case of doubts as to the reliability of their selected vehicle, or by having specific clauses in their contracts indicating, for instance, that their satellite will not be the first payload to be launched after a failure of any given launcher, or that the launcher will have to achieve a given success rate in a given period before it can be used for the delivery into space of the satellite concerned. Customers with fleets of satellites also usually spread their launches over a number of vehicles, and often require to be able to switch between launchers or add new launchers at their convenience.

(87) The results of the Commission's investigation therefore confirm that customers will not accept having the choice of launcher imposed on them, and that any attempt by HSC to design satellites compatible with only Delta or Sea Launch would meet with resistance from customers. They also confirm that it would not be profitable for HSC to try to persuade customers to switch to Boeing launchers through higher integration costs for other launchers. This is so because most customers indicated that, should the combination of an HSC satellite and their preferred launch be more expensive than other combinations, they would either choose both their preferred launcher and satellite and pay whatever is reasonable for that selected combination, or choose the cheapest combination of reliable launcher and satellite. In that context, making the integration between HSC satellites and non-Boeing launchers more difficult would either have no impact on the customer choice, or would make launcher combinations with HSC satellites relatively more expensive than with other satellites, thereby weakening HSC's competitive position in satellites.

(88) Furthermore, it should be noted that most of the customers who responded to the Commission investigation indicated that they retain the capability to change launchers should they wish to do so. The costs of this change would obviously increase as the launch date approaches, but, in view of the losses incurred by customers in the event of a launch failure, it can be concluded that customers would probably make use of that provision should they become dissatisfied with the reliability or the service of their pre-selected launcher. Most customers also claimed to be in command of all steps of the launch vehicle selection process and that, in any case, the satellite manufacturer has either very little or no influence at all in the final choice. This would also seriously limit the possibility for the parties to lure customers away from their preferred choice.

(89) Furthermore, it should be noted that DIO customers do not have a lower capability to independently select their launch service operator than DOG customers. First, there is no indication that DIO customers could not currently choose their DIO combination from other satellite manufacturers than HSC. And secondly, experience shows that even DIO customers included contractual provisions for them to be able to change launchers at their convenience.

(90) It is true that, in the past, most customers procuring DIO services from HSC may have been launched on launchers with which HSC had bulk-buy agreements. However, it appears that the contracts concerned were established at a time when, in view of very high market volume anticipations, it was feared that the existing launch capacity would be insufficient to meet demand, and that therefore there would be a shortage of launch services available. This led HSC to enter into bulk-buy agreements with launch service operators, so as to secure available capacity, and this also made DIO offers based on those agreements both cheaper and safer than other contracts. That is probably why so many DIO contracts with HSC have been based on those launchers with which HSC had bulk-buy agreements. There is no indication that the same situation could be reproduced now: first, recent failures appear to have made customers reluctant to contract with those launchers; secondly, as indicated in paragraphs 72, 73 and 74 above, the launch service industry now suffers from substantial excess capacity, so that prices on the spot market are now lower than the prices previously obtained by HSC through its bulk-buy agreements, and launcher availability is no longer seen as a real concern.

(91) Finally, it should also be noted that the risks related to a launch failure are relatively higher for the smaller satellite operators, which usually only have one or two satellites and might therefore risk bankruptcy in the event of a launch failure, than for large satellite operators with several satellites in orbit. This suggests that, while larger customers may have higher buying power than smaller customers, smaller customers have stronger incentives to carefully select their launch service operator and will therefore be even more cautious when selecting their launch vehicle and contracting their launch services.

(92) In the light of the foregoing, it appears that, in the short term, there is very limited scope for HSC to induce customers to have their satellites launched by unproven launch vehicles like Delta III and Sea Launch. In the longer term, there is a high probability that Boeing's current problems of reliability in the launch service supply will be resolved, and therefore that Boeing and Sea Launch will be considered as suitable launchers by satellite operators. This is further indicated by the success of the latest flights of Sea Launch and Delta III. However, even in that case, it appears that the merged entity will not be in a position to lead a substantial number of customers to switch to Boeing or Sea Launch vehicles if that were not their initial intention.

(93) This is further indicated by the fact that even launch service competitors who expressed concerns admit that, in the absence of substantial market power on the satellite markets, the effects identified in paragraph 82 could not profitably take place. In addition, the Commission's assessment of the satellite market is that HSC does not have a dominant position in that market. This is also confirmed by past experience. Indeed, although Lockheed Martin engages both in satellite prime contracting and in launch services operations, there is no indication that it has been able to behave in the manner described in paragraph 82 to its own advantage.

(94) Consequently, it can be concluded that, should the parties engage in the above described behaviour, they would essentially risk losing satellite sales, and any possible effects would be insufficient to overturn the current market situation, characterised by very strong positions by both ILS and Arianespace. This is further confirmed by the fact that ILS is also integrated in satellite and launches, and could therefore reproduce any behaviour by the parties. It follows that the effects identified will not be sufficient in themselves to create or strengthen a dominant position.

Possible snowball effects

(95) Third parties have indicated that even a small number of launches won or lost could cause dramatic changes to their market positions, because of the importance of fixed costs in the launch service business and of the current excess capacity in that sector. In particular, these third parties argued that they already operated close to

their break-even capacity, so that even a few losses could make them unprofitable. In that context, and taking into account the absence of any expected significant growth of the market in terms of volumes, those third parties argued that the possibility that the proposed transaction could deprive them of several contracts would considerably weaken their competitive position and increase their costs. By contrast, the same effect would strengthen Boeing's position and consequently lead to the creation of a dominant position for Boeing on the market for launch services.

(96) In short, the argument of those third parties is that the loss of even a limited number of launches would be sufficient to spur a snowball effect with devastating consequences for their cost structure (and, conversely, hugely beneficial consequences for that of Boeing), thereby undermining their competitive position, and enhancing Boeing's, to such an extent as to create a dominant position. In support of this theory, third parties insisted on the relative importance of the amortisation of fixed costs (as high as USD 30 million compared to an average price launch of around USD 100 million, according to certain third parties), and on the limited number of satellite launches taking place each year.

(97) However, this theory appears to be based on a number of questionable assumptions. First of all, it appears that competition in the launch service sector is not primarily based on price, but, rather, on reliability. Prices for launch services may already differ significantly from one launch service operator to another. In that context, a limited increase in costs would not seem to have the devastating consequences put forward by third parties.

(98) Secondly, the possibility for a snowball effect as identified by third parties crucially depends on the cost structure of those third party launch service operators remaining at its current position. However, it appears that competitors (essentially ILS and Arianespace) have engaged in cost reduction programmes, leading either to a reduction of capacity or an increase of launcher competitiveness.

(99) Thirdly, the identified effects are limited to the commercial sales of the undertakings concerned by the proposed transaction. However, commercial launches do not represent all of the launches, so that a loss of competitiveness on the commercial market could be more than offset by new contracts on the government side. This is particularly true in the United States, where government launches account for a substantial proportion of Lockheed Martin and Boeing's launch business. In that context, and insofar as the launch service industry is usually considered as a critical sector to the governments concerned, which substantially contribute to the development of launchers [1], it seems highly likely that, should Lockheed Martin or Arianespace become less competitive, the governments concerned would take steps to restore those companies' competitiveness.

(100) Fourthly, it is highly questionable whether the launch service sector would be monopolised in the way described by third parties, even HSC were to behave in the manner described in paragraph 82. Given that the price difference between a winning bid and a losing bid is much lower than the amortisation of fixed costs, it appears that, if a launch vehicle supplier were to become less cost-competitive, it would try to cut prices in order to salvage volume and recoup at least a part of its fixed costs rather than accept losing a contract and incur a higher loss. The most likely outcome would therefore be greater price competition rather than market monopolisation. In view of the governments' commitment in their respective space industry (the share of government funding for the development of new launchers is only one sign of this), this would not eliminate Boeing's immediate rivals as effective competitors, and would consequently not create a dominant position for Boeing.

(101) In the light of the foregoing, it appears that the notified operation will not create or strengthen a dominant position on the markets for launch services as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

(102) The Commission notes that, on 31 July 2000, the parties offered certain commitments ensuring (a) that any non-public information relative to launchers (or satellites) which HSC launchers (or Boeing or Sea Launch) could receive will not be provided or disclosed to Boeing or Sea Launch (or HSC); (b) that HSC will make information relating to its satellites available to other launch service operators at the same time as it makes such information available to Boeing or Sea Launch; (c) that HSC will cooperate with launch service operators other than Boeing or Sea Launch for the integration of its satellites with launch vehicles, without discriminating in favour of Boeing or Sea Launch; and (d) that there will be no 'preferred supplier' relationship between the merged entity and Hughes.

[1] For instance, Ariane launchers are usually developed in the context of ESA programmes, and the development of each of the Delta IV and Atlas V launchers appears to have been substantially funded by the United States Government through its Evolved Expendable Launch Vehicle programme.

V. **CONCLUSION**

(103) In the light of the foregoing, the proposed operation does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded within the common market or in a substantial part of it. The operation is therefore to be declared compatible with the common market pursuant to Article 8(2) of the Merger Regulation and with the functioning of the EEA Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby the Boeing Company acquires control of the satellite prime contracting and equipment business of Hughes Electronics Corporation (consisting of all outstanding shares of Hughes Space and Communications Company (HSC), all outstanding shares of Spectrolab Inc., the assets of Hughes Electron Dynamics (HED), and the minority stakes held by Hughes in ICO Global Communications (Holdings) Ltd and in Thuraya Satellite Telecommunications Private Joint Stock Co.) is hereby declared compatible with the common market and the functioning of the EEA Agreement.

Article 2

This Decision is addressed to:

The Boeing Company
7755 East Marginal Way South
Seattle, WE 98108
USA

For the attention of Mr Theodore J Collins
Senior Vice-President, Law and Contracts

Done at Brussels, 29 September 2000.

For the Commission
Mario MONTI
Member of the Commission

DECISION No 3/2004

of 10 February 2004

of the Committee established under the Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment, on the listing of a conformity assessment body under the sectoral chapter for equipment and protective systems intended for use in potentially explosive atmospheres

(2004/196/EC)

THE COMMITTEE,

Having regard to the Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment (the Agreement) signed on 21 June 1999, and in particular Articles 10(4)(a) and 11 thereof,

Whereas the Agreement entered into force on 1 June 2002,

Whereas the Committee is to take a decision to list a conformity assessment body or bodies under a sectoral chapter of Annex 1 to the Agreement,

HAS DECIDED AS FOLLOWS:

1. The conformity assessment body in Annex A is added to the list of Swiss conformity assessment bodies under the sectoral chapter for equipment and protective systems intended for use in potentially explosive atmospheres in Annex 1 to the Agreement.
2. The specific scope of the listing, in terms of products and conformity assessment procedures, of the conformity assessment body indicated in Annex A has been agreed by the Parties and will be maintained by them.
3. This Decision, done in duplicate, shall be signed by the co-Chairs or other persons authorised to act on behalf of the Parties. This Decision shall be effective from the date of the later of these signatures.

Signed in Bern on 10 February 2004.

On behalf of the Swiss Confederation
Heinz HERTIG

Signed in Brussels on 2 February 2004.

On behalf of the European Community
Joanna KIOUSSI

ANNEX A

Conformity assessment body added to the list of Swiss conformity assessment bodies under Sectoral Chapter 8 for equipment and protective systems intended for use in potentially explosive atmospheres in Annex 1 to the Agreement. The specific scope of the listing, in terms of products and conformity assessment procedures, of the conformity assessment body can be found in the relevant designation dossier.

QS Zürich AG Wehntalerstrasse Postfach 211 CH-8057 Zürich

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

COUNCIL DECISION 2004/197/CFSP

of 23 February 2004

establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 13(3) and Article 28(3) thereof,

Whereas:

(1) The European Council, meeting in Helsinki on 10 and 11 December 1999, agreed in particular that, cooperating voluntarily in EU-led operations, Member States must be able by 2003 to deploy within 60 days, and sustain for at least one year, military forces of up to 50 000 to 60 000 persons, capable of the full range of Petersberg tasks.

(2) The European Council, meeting in Thessaloniki on 19 and 20 June 2003, welcomed the conclusions of the Council meeting on 19 May 2003, which in particular confirmed the need for a European Union military rapid-reaction capability.

(3) On 22 September 2003, the Council decided that the European Union should acquire the flexible capacity for managing the financing of common costs of military operations of any scale, complexity or urgency, in particular by setting up, by 1 March 2004, a permanent financing mechanism to assume charge of the financing of common costs of any future Union military operation.

(4) On 17 June 2002, the Council approved Document 10155/02 on the financing of EU-led crisis-management operations having military or defence implications.

(5) The Treaty on European Union provides in its Article 28(3) that Member States whose representatives in the Council have made a formal declaration pursuant to its Article 23(1), second subparagraph, shall not be obliged to contribute to the financing of the operation having military or defence implications concerned.

(6) In conformity with Article 6 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not participate in the elaboration and implementation of decisions and actions of the European Union which have defence implications, and Denmark does not participate in the financing of the mechanism,

HAS DECIDED AS FOLLOWS:

Article 1

Definitions

For the purpose of this Decision:

(a) 'participating Member States' shall mean the Member States of the European Union, except Denmark;

(b) 'contributing States' shall mean the Member States contributing to the financing of the military operation in question in accordance with Article 28(3) of the Treaty on European Union and the third States contributing to the financing of the common costs of this operation pursuant to agreements between themselves and the European Union.

CHAPTER 1

MECHANISM

Article 2

Establishment of the mechanism

1. A mechanism to administer the financing of the common costs of European Union operations having military or defence implications is hereby established.

2. The mechanism shall be called ATHENA.

3. ATHENA shall act on behalf of the participating Member States or, regarding the specific operations, the contributing States as defined in Article 1.

Article 3

Legal capacity

With a view to the administrative management of the financing of European Union operations with military or defence implications, ATHENA shall have the necessary legal capacity, in particular, to hold a bank account, acquire, hold or dispose of property, enter into contracts and administrative arrangements and be a party to legal proceedings. ATHENA shall be non-profit-making.

Article 4

Coordination with third parties

To the extent necessary to achieve its tasks, and in conformity with the objectives and policies of the European Union, ATHENA shall coordinate its activities with the Member States, Community institutions and international organisations.

CHAPTER 2

ORGANISATIONAL STRUCTURE

Article 5

Management bodies and staff

1. ATHENA shall be managed, under the authority of the Special Committee, by:

(a) the administrator;

(b) the commander of each operation, in relation to the operation which he/she commands (hereinafter referred to as the 'operation commander');

(c) the accounting officer.

2. ATHENA shall use existing administrative structures of the European Union to the greatest possible extent. ATHENA shall resort to staff made available as necessary by the EU institutions or seconded by Member States.

3. The Secretary-General of the Council may provide the administrator or the accounting officer with the staff needed for them to carry out their functions, which may be on the basis of a proposal by a participating Member State.

4. ATHENA's bodies and staff shall be activated on the basis of operational needs.

Article 6

The Special Committee

1. A Special Committee composed of one representative of each participating Member State is established (Special Committee). The Commission shall attend the meetings of the Special Committee without taking part in its votes.

2. ATHENA shall be managed under the authority of the Special Committee.

3. When the Special Committee is discussing the financing of the common costs of a given operation:

(a) the Special Committee shall be composed of one representative of each contributing Member State;

(b) the representatives of contributing third States shall participate in the proceedings of the Special Committee. They shall neither take part in nor be present at its votes;

(c) the operation commander or his/her representative shall participate in the proceedings of the Special Committee, without taking part in its votes.

4. The Presidency of the Council of the European Union shall convene and chair the meetings of the Special Committee. The administrator shall provide the secretariat for the Special Committee. He/she shall draw up the minutes of the result of the Committee's discussions. He/she shall not take part in its votes.

5. The accounting officer shall participate as necessary in the proceedings of the Special Committee, without taking part in its votes.

6. If a participating Member State, the administrator or the operation commander so requests, the Presidency shall convene the Special Committee within at most 15 days.

7. The administrator shall suitably inform the Special Committee of any claim or dispute addressed to ATHENA.

8. The Special Committee shall decide unanimously amongst its members, taking into account its composition as defined in paragraphs 1 and 3. Its decisions shall be binding.

9. The Special Committee approves all budgets, taking into account the relevant reference amounts, and generally exercises the competences foreseen by Articles 18, 19, 20, 21, 22, 24, 25, 27, 29, 31, 32, 36, 37, 38, 39 and 41.

10. The Special Committee shall be informed by the administrator, the operation commander and the accounting officer as provided for in the present Decision.

11. The text of the acts approved by the Special Committee pursuant to Articles 18, 19, 20, 21, 22, 24, 27, 29, 31, 32, 37, 38, 39 and 41 shall be signed by the chairman of the Special Committee at the time of their approval and by the administrator.

Article 7

The administrator

1. The Secretary-General of the Council shall appoint the administrator and at least one deputy administrator for a period of three years.

2. The administrator shall discharge his/her duties on behalf of ATHENA.

3. The administrator:

(a) shall draw up and submit to the Special Committee any draft budget. The expenditure section for an operation in any draft budget shall be drawn up on the basis of a proposal from the operation commander;

(b) shall adopt the budgets after their approval by the Special Committee;

(c) shall be the authorising officer for the revenue, common costs incurred in preparation for, or further to, operations and operational common costs incurred outside the active phase of the operation;

(d) as regards revenue, shall implement the financial arrangements made with third parties in relation to the financing of the common costs of the Union's military operations.

4. The administrator shall ensure that the rules established by the present Decision are complied with, and that the decisions of the Special Committee are applied.

5. The administrator shall be authorised to adopt any measures which he/she deems necessary to implement the expenditure financed through ATHENA. He/she shall inform the Special Committee thereof.

6. The administrator shall coordinate work on financial questions relating to the Union's military operations. He/she shall be the contact point with national administrations and, as appropriate, international organisations on these matters.

7. The administrator shall be accountable before the Special Committee.

Article 8

The operation commander

1. The operation commander shall discharge his/her duties on behalf of ATHENA in relation to the financing of the common costs of the operation which he/she commands.

2. For the operation which he/she commands, the operation commander shall:

(a) send the administrator his/her proposals for the 'expenditure — operational common costs' section of the draft budgets;

(b) as authorising officer, implement the appropriations relating to the operational common costs; he/she shall exercise his/her authority over any person participating in the implementation of those appropriations, including pre-financing; he/she may award contracts and enter into contracts on behalf of ATHENA; he/she shall open a bank account on behalf of ATHENA for the operation which he/she commands.

3. The operation commander shall be authorised to adopt any measures which he/she deems necessary to implement the expenditure financed through ATHENA, for the operation which he/she commands. He/she shall inform the administrator and the Special Committee thereof.

Article 9

The accounting officer

1. The Secretary-General of the Council shall appoint the accounting officer and at least one deputy accounting officer for a period of two years.

2. The accounting officer shall discharge his/her duties on behalf of ATHENA.

3. The accounting officer shall be responsible for:

(a) proper implementation of payments, collection of revenue and recovery of amounts established as being receivable;

(b) preparing the accounts for ATHENA each year, and, after completion of each operation, the accounts for that operation;

(c) supporting the administrator when he/she submits the annual accounts or the accounts for an operation to the Special Committee for approval;

(d) keeping the accounts for ATHENA;

(e) laying down the accounting rules and methods and the chart of accounts;

(f) laying down and validating the accounting systems for revenue and, where appropriate, validating systems laid down by the authorising officer to supply or justify accounting information;

(g) keeping supporting documents;

(h) treasury management, jointly with the administrator.

4. The administrator and the operation commander shall provide the accounting officer with all the information necessary for the production of accounts which accurately represent ATHENA's financial assets and budget implementation administered by ATHENA. They shall guarantee its reliability.

5. The accounting officer shall be accountable before the Special Committee.

Article 10

General provisions applicable to the administrator, the accounting officer and ATHENA's staff

1. The functions of administrator or deputy administrator, on the one hand, and accounting officer or deputy accounting officer, on the other, shall be mutually incompatible.

2. Any deputy administrator shall act under the authority of the administrator. Any deputy accounting officer shall act under the authority of the accounting officer.

3. A deputy administrator shall stand in for the administrator when he/she is absent or prevented from attending. A deputy accounting officer shall stand in for the accounting officer when he/she is absent or prevented from attending.

4. Officials and other servants of the European Communities, when carrying out functions on behalf of ATHENA, shall remain subject to the rules and regulations applicable to them.

5. The staff made available to ATHENA by the Member States shall be subject to the same rules as those set out in the Council decision concerning the rules applicable to national experts on secondment, and to the provisions agreed on by their national administration and the Community institution or ATHENA. However, in any case, the seconding Member State shall assume charge of the experts' entitlements defined by such Council decision concerning the rules applicable to national experts on secondment.

6. Before their appointment, the staff of ATHENA must have received clearance for access to classified information up to at least 'Secret UE' level held by the Council, or equivalent clearance by a Member State.

7. The administrator may negotiate and enter into arrangements with the Member States or Community institutions with a view to designating in advance those staff who could, if need be, be made immediately available to ATHENA.

CHAPTER 3

CONTRIBUTING THIRD STATES

Article 11

Standing and ad hoc administrative arrangements on modalities for the payment of third States' contributions

1. In the framework of the agreements concluded between the EU and third States indicated by the Council as potential contributors to EU operations or as contributors to a specific EU operation, the administrator shall negotiate with these third States standing or ad hoc administrative arrangements, respectively. These arrangements shall take the form of an exchange of Letters between ATHENA and the competent administrative services of the third States concerned establishing the modalities necessary to facilitate swift payment of contributions to any future EU military operation.

2. Pending the conclusion of the agreements referred to in paragraph 1, the administrator may take the necessary measures to facilitate payments by the contributing third States.

3. The administrator shall inform the Special Committee in advance of the envisaged arrangements, before signing them on behalf of ATHENA.

4. When a military operation is launched by the Union, the administrator shall, for the amounts of contributions decided by the Council, implement the arrangements with the third States contributing to that operation.

CHAPTER 4

BANK ACCOUNTS

Article 12

Opening and purpose

1. The administrator shall open one or more bank accounts on behalf of ATHENA.

2. Any bank account shall be opened at a first-rate financial institution with its head office in a Member State.

3. The contributions from contributing States shall be paid into these accounts. They shall be used to pay for the costs administered by ATHENA and to make the necessary advances to the operation commander for the implementation of expenditure relating to the common costs of a military operation. No bank account may be overdrawn.

Article 13

Management of funds

1. Any payment from ATHENA's account shall require the joint signature of the administrator or a deputy administrator on the one hand and the accounting officer or a deputy accounting officer on the other.

2. Funds administered by ATHENA, including those entrusted to an operation commander, may not be deposited other than with a first-rate financial institution in euro in a current or short-term account.

CHAPTER 5

COMMON COSTS

Article 14

Definition of common costs and periods for eligibility

1. The common costs listed in Annex I shall be at the expense of ATHENA whenever they are incurred. When entered in an article of the budget showing the operation to which they are most related, they shall be regarded as operational costs of this operation. Otherwise, they shall be regarded as common costs incurred in preparation for, or following, operations.

2. Furthermore, during the preparatory phase of the operation, which begins on the date when the Council decides that the Union will conduct the military operation, unless the Council sets an earlier date, and ends on the day on which the operation commander is appointed, ATHENA shall bear the operational common costs listed in Annex II.

3. During the active phase of an operation, which runs from the date on which the operation commander is appointed to the day on which the operation headquarters ceases its activity, ATHENA shall bear as operational common costs:

(a) the common costs listed in Annex III-A;

(b) the common costs listed in Annex III-B, when the Council so decides.

4. The operational common costs of an operation also include the expenditure necessary to wind it up, as listed in Annex IV.

The operation is wound up when the equipment and infrastructure commonly funded for the operation have found their final destination and the accounts for the operation have been drawn up.

5. No expenditure incurred with a view to covering costs which would in any case have been borne by one or more contributing States, a Community institution or an international organisation, independently of the organisation of an operation, may be eligible as a common cost.

Article 15

Exercises

1. The common costs of the European Union's exercises shall be financed through ATHENA following rules and procedures similar to those for operations to which all participating Member States contribute.

2. These exercise common costs shall be composed of, firstly, incremental costs for deployable or fixed headquarters and, secondly, incremental costs incurred by EU recourse to NATO common assets and capabilities when made available for an exercise.

3. Exercise common costs shall not include costs related to:

(a) capital acquisitions, including those related to buildings, infrastructure and equipment;

(b) the planning and preparatory phase of exercises;

(c) transport, barracks and lodging for forces.

Article 16

Reference amount

Any joint action by which the Council decides that the Union will conduct a military operation and any joint action or decision by which the Council decides to extend a Union operation shall contain a reference amount for the common costs of this operation. The administrator shall, with the support in particular of the Union military staff and, if he/she is in post, the operation commander, evaluate the amount judged necessary to cover the common costs of the operation for the planned period. The administrator shall propose this amount through the Presidency to the Council bodies responsible for examining the draft joint action or decision.

CHAPTER 6

BUDGET

Article 17

Budgetary principles

1. The budget, drawn up in euro, is the act which for each financial year lays down and authorises all the revenue and expenditure administered by ATHENA.

2. All expenditure shall be linked to a specific operation, except where appropriate for the costs listed in Annex I.

3. The appropriations entered in the budget are authorised for the duration of a financial year which begins on 1 January and ends on 31 December of the same year.

4. Budget revenue and expenditure must balance.

5. No revenue nor expenditure may be implemented other than by allocation to a heading in the budget and within the limit of the appropriations entered there.

Article 18

Establishment and adoption of the annual budget

1. Each year the administrator shall draw up a draft budget for the following financial year, with the assistance of each operation commander for the 'operational common costs' section. The administrator shall propose the draft budget to the Special Committee by 31 October at the latest.

2. The draft shall include:

(a) the appropriations deemed necessary to cover the common costs incurred in preparation for, or further to, operations;

(b) the appropriations deemed necessary to cover the operational common costs for ongoing or planned operations, including, where appropriate, to reimburse common costs which have been prefinanced by a State or third party;

(c) a forecast of the revenue needed to cover expenditure.

3. The appropriations shall be classified in titles and chapters grouping expenditure together by type or purpose, subdivided as necessary into articles. Detailed comments by chapter or article shall be included in the draft budget. One specific title shall be dedicated to each operation. One specific title shall be the general part of the budget and shall include the common costs incurred in preparation for, or further to, operations.

4. Each title may include a chapter entitled 'provisional appropriations'. These appropriations shall be entered where there is uncertainty, based on serious grounds, about the amount of appropriations needed or the scope for implementing the appropriations entered.

5. Revenue shall consist of:

(a) contributions payable by the participating and contributing Member States and, where appropriate, by contributing third States;

(b) miscellaneous revenue, subdivided by title, which includes interest received, revenue from sales and the budget outturn from the previous financial year, after it has been determined by the Special Committee.

6. The Special Committee shall approve the draft budget by 31 December. The administrator shall adopt the approved budget and notify the participating and contributing States.

Article 19

Amending budgets

1. In the case of unavoidable, exceptional or unforeseen circumstances, in particular when an operation arises during the course of the financial year, the administrator shall propose a draft amending budget. If the draft amending budget substantially exceeds the reference amount for the operation concerned, the Special Committee may request the Council to approve it.

2. The draft amending budget shall be drawn up, proposed, approved and adopted and notification given in accordance with the same procedure as the annual budget. However, when the amending budget is linked to the launch of a Union military operation, it shall be accompanied by a detailed financial statement on the common costs anticipated for the whole of the operation. The Special Committee shall discuss it taking account of its urgency.

Article 20

Transfers

1. The administrator, where appropriate on the basis of a proposal by the operation commander, may make transfers of appropriations. The administrator shall inform the Special Committee of his/her intention, in so far as the urgency of the situation permits, three weeks in advance.

However, the prior approval of the Special Committee shall be required when:

(a) the planned transfer will amend the total of the appropriations provided for an operation;

or

(b) the planned transfers between chapters during the financial year exceed 10 % of the appropriations entered in the chapter from which the appropriations are being drawn, as appearing in the adopted budget for the financial year on the date when the proposal for the transfer in question is made.

2. When he/she deems this to be necessary for the proper conduct of an operation, in the three months following the date of launching of the operation, the operation commander may make transfers of appropriations allocated for the operation, between articles and between chapters in the 'operational common costs' section of the budget. He/she shall inform the administrator and the Special Committee thereof.

Article 21

Carryover of appropriations

1. In principle, the appropriations intended to cover the common costs incurred in preparation for, or further to, operations, which have not been committed, are cancelled at the end of the financial year.

2. Appropriations intended to cover the cost of storing material and equipment administered by ATHENA may be carried over once to the following financial year, when a commitment to that effect was made before 31 December of the current financial year. Appropriations intended to cover operational common costs may be carried over if they are necessary for an operation which has not been fully wound up.

3. The administrator shall submit proposals for the carrying over of appropriations from the preceding financial year to the Special Committee by 15 February.

Article 22

Anticipated implementation

Once the annual budget has been adopted:

(a) appropriations appearing in that budget may be committed with effect from 1 January of the following year;

(b) expenditure which, by virtue of legal or contractual obligations, must be paid in advance, may be paid from the appropriations provided for the following year, following approval by the Special Committee.

CHAPTER 7

CONTRIBUTIONS AND REIMBURSEMENTS

Article 23

Determination of contributions

1. Appropriations to cover the common costs incurred in preparation for, or further to, operations which are not covered by miscellaneous revenue shall be financed by contributions from the participating Member States.

2. Appropriations to cover the operational common costs of an operation shall be covered by contributions from the Member States and third States contributing to the operation.

3. The contributions payable by the contributing Member States for an operation shall be equal to the amount of the appropriations entered in the budget and intended to cover the operational common costs of that operation, minus the amounts of the contributions payable for the same operation by contributing third States in application of Article 11.

4. The breakdown of contributions between the Member States from whom a contribution is required shall be determined in accordance with the gross national product scale as specified in Article 28(3) of the Treaty on European Union and in accordance with Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the European Communities' own resources [1], or any other Council decision which may replace it.

5. The data for the calculation of contributions shall be those set out in the 'GNI own resources' column in the 'Summary of financing of the general budget by type of own resource and by Member State' table appended to the latest budget adopted by the European Communities. The contribution of each Member State from whom a contribution is due shall be proportional to the share of gross national income (GNI) of that Member State in the total GNI aggregate of the Member States from whom a contribution is due.

Article 24

Schedule for payment of contributions

1. The contributions from participating Member States intended to cover the common costs incurred in preparation for, or further to, operations, shall be payable before 1 March of the financial year concerned.

2. When the Council has adopted a reference amount for a Union military operation, the contributing Member States shall pay their contributions at the level of 30 % of the reference amount, unless the Council decides on a higher percentage.

3. The Special Committee, on the basis of a proposal by the administrator, may decide that additional contributions will be called before the adoption of an amending budget for the operation. The Special Committee may decide to refer the matter to the competent preparatory bodies at the Council.

4. When the appropriations intended to cover the operational common costs of the operation have been entered in the budget, the Member States shall pay the balance of the contributions which they owe for that operation in application of Article 23 after deduction of the contributions already called from them for the same operation in the same financial year.

5. When a reference amount or a budget has been adopted, the administrator shall send the corresponding calls for contributions by letter to the national administrations whose details have been communicated to him/her.

6. Without prejudice to paragraph 1, the contributions shall be paid within 30 days following despatch of the relevant call for contributions.

7. Each contributing State shall pay the bank charges relating to the payment of its own contribution.

Article 25

Early financing of expenditure

1. If expenditure on the common costs of a Union military operation must be paid before the contributions to ATHENA can be received, the Council shall, when it adopts a joint action or an implementing decision on that operation:

(a) designate the Member States responsible for prefinancing such expenditure;

(b) determine alternative advance financing for such expenditure and establish any necessary modalities, if the necessary prefinancing is not available.

2. The Special Committee shall supervise the implementation of this Article and shall act with the necessary urgency.

3. Any advance financing pursuant to paragraph 1(b) shall be reimbursed as soon as the payment of contributions so permits.

Article 26

Reimbursement of prefinancing

1. A Member State, a third State or, as appropriate, an international organisation which has been authorised by the Council to prefinance a part of the common costs of an operation may obtain reimbursement from ATHENA by making a request accompanied by the necessary supporting documents and addressed to the administrator at the latest two months after the date of completion of the operation concerned.

[1] OJ L 253, 7.10.2000, p. 42.

2. No request for reimbursement may be honoured if it has not been approved by the operation commander and by the administrator.

3. If a request for reimbursement presented by a contributing State is approved, it may be deducted from the next call for contributions addressed to that State by the administrator.

4. If no call for contributions is anticipated when the request is approved, or if the approved request for reimbursement would exceed the anticipated contribution, the administrator shall make payment of the amount to be reimbursed within 30 days, taking account of ATHENA's cash flow and of what is needed to finance the common costs of the operation concerned.

5. Reimbursement shall be due in accordance with this Decision even if the operation is cancelled.

Article 27

Management by ATHENA of expenditure not included in common costs

1. The Special Committee, on the basis of a proposal by the administrator or a Member State, may decide that the administrative management of certain expenditure in relation to an operation, particularly in the area of manpower support/messing and laundry, while remaining the responsibility of the Member State which it concerns, should be entrusted to ATHENA.

2. The Special Committee, in its decision, may authorise the operation commander to enter into contracts on behalf of the Member States participating in an operation, for the acquisition of the supplies described. It may authorise ATHENA's budget to prefinance expenditure by the Member States or decide that ATHENA will collect the necessary funds from the Member States in advance to honour the contracts entered into.

3. ATHENA shall keep accounts of the expenditure borne by each Member State the management of which has been entrusted to it. Each month it shall send each Member State a statement of the expenditure borne by it and incurred by it or by its staff during the preceding month, and shall call for the necessary funds to pay for this expenditure. The Member States shall pay ATHENA the funds required within 30 days following despatch of the call for funds.

Article 28

Interest on late payment

If a State does not fulfil its financial obligations, the Community rules on interest on late payment determined by Article 71 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities [1] in relation to the payment of contributions to the Community budget shall be applicable by analogy.

CHAPTER 8

IMPLEMENTATION OF EXPENDITURE

Article 29

Principles

1. ATHENA's appropriations shall be used in accordance with the principles of sound financial management, that is in accordance with the principles of economy, effectiveness and efficiency.

2. Authorising officers shall be responsible for implementing ATHENA's revenue or expenditure in accordance with the principles of sound financial management to ensure that the requirements of legality and regularity are complied with. The authorising officers shall make budgetary and legal commitments, clear and authorise expenditure and carry out actions prior to this implementation of appropriations. An authorising officer may delegate his/her duties by a decision determining:

(a) staff at an appropriate level for such delegation;

(b) the extent of the conferred powers; and

(c) the scope for beneficiaries to subdelegate their powers.

3. The implementation of appropriations according to the principle of the segregation of the authorising officer and the accounting officer shall be ensured. The duties of authorising officer and accounting officer shall be mutually incompatible. Any payment made on funds administered by ATHENA shall require the joint signature of an authorising officer and an accounting officer.

4. Without prejudice to this Decision, when the implementation of common expenditure is entrusted to a Member State, a Community institution or, as appropriate, an international organisation, that State, institution or organisation shall apply the rules applicable to the implementation of its own expenditure. When the administrator implements expenditure directly, it shall comply with the rules applicable to the implementation of the 'Council' section of the general budget of the European Communities.

[1] OJ L 248, 16.9.2002, p. 1.

5. However, the administrator may provide the Presidency with elements for proposal to the Council or the Special Committee on rules for the implementation of common expenditure.

Article 30

Common costs incurred in preparation for, or further to, operations

The administrator shall perform the duties of authorising officer for expenditure covering the common costs incurred in preparation for, or further to, operations.

Article 31

Operational common costs

1. The operation commander shall carry out the duties of authorising officer for expenditure covering the operational common costs of the operation he/she commands. However, the administrator shall carry out the duties of authorising officer for expenditure covering the operational common costs incurred during the preparatory phase of a specific operation, which are implemented directly by ATHENA, or related to the operation after the end of its active phase.

2. The sums required for the implementation of expenditure on an operation shall be transferred by the administrator from ATHENA's bank account to the operation commander, upon his/her request, into the bank account opened on behalf of ATHENA, of which the operation commander has provided the details.

3. By way of derogation from Article 17(5), the adoption of a reference amount shall activate the right of the administrator and the operation commander, each in his/her area of competence, to commit and pay expenses for the operation concerned up to 30 % of the reference amount, unless the Council should set a higher percentage. The Special Committee, on the basis of a proposal from the administrator, may decide that additional expenditure may be committed and paid. The Special Committee may decide to refer the question to the competent preparatory bodies at the Council through the Presidency. This derogation shall no longer apply from the date of adoption of a budget for the operation concerned.

4. During the period prior to the adoption of the budget for an operation, the administrator and the operation commander or his/her representative shall report to the Special Committee every two weeks, each reporting on the matters concerning him/her, as regards the expenses which are eligible as common costs for that operation. The Special Committee, on the basis of a proposal by the administrator, the operation commander or a Member State, may issue directives on the implementation of expenditure during this period.

5. By way of derogation from Article 17(5), in the case of imminent danger to the lives of personnel involved in a Union military operation, the operation commander for that operation may implement the necessary expenditure to save the lives of those personnel, in excess of the appropriations entered in the budget. He/she shall inform the administrator and the Special Committee as soon as possible. In such a case, the administrator shall, liaising with the operation commander, propose the transfers needed to finance this unexpected expenditure. If it is not possible to ensure sufficient funding for such expenditure by means of a transfer, the administrator shall propose an amending budget.

CHAPTER 9

FINAL DESTINATION OF EQUIPMENT AND INFRASTRUCTURE FINANCED IN COMMON

Article 32

1. With a view to winding up the operation which he/she has commanded, the operation commander shall act as necessary to find a final destination for the equipment and infrastructure acquired in common for that operation. He/she shall propose to the Special Committee the relevant rate of depreciation as necessary.

2. The administrator shall manage the equipment and infrastructure remaining after the end of the active phase of the operation, with a view if necessary to finding its final destination. He/she shall propose to the Special Committee the relevant rate of depreciation as necessary.

3. The depreciation rate for equipment, infrastructure and other assets shall be approved by the Special Committee at the earliest time possible.

4. The final destination of equipment and infrastructure financed in common shall be approved by the Special Committee, taking into account operational needs and financial criteria. The final destination may be as follows:

(a) in the case of infrastructure, to be sold or transferred through ATHENA to the host country, a Member State or a third party;

(b) in the case of equipment, to be sold through ATHENA to a Member State, the host country or a third party, or be stored and maintained by ATHENA, a Member State or a third party.

5. Equipment and infrastructure shall be sold to a contributing State, the host country or a third party for their market value, or, where no market value can be determined, taking account of the relevant rate of depreciation.

6. Sale or transfer to the host country or a third party shall be in accordance with the security rules in force, particularly within the Council, the contributing States or NATO, as appropriate.

7. When it is decided that ATHENA shall retain equipment acquired for an operation, the contributing Member States may ask for financial compensation from the other participating Member States. The Special Committee, composed of the representatives of all the participating Member States, shall take the appropriate decisions on the basis of a proposal from the administrator.

CHAPTER 10

ACCOUNTING AND INVENTORY

Article 33

Principles

When the implementation of common expenditure has been entrusted to a Member State, a Community institution or, as appropriate, an international organisation, that State, institution or organisation shall apply the rules which are applicable to accounting for its own expenditure and its own inventory.

Article 34

Accounting for operational common costs

The operation commander shall keep accounts of transfers received from ATHENA, of expenditure he/she has committed and of payments made, as well as an inventory of the movable property financed by the ATHENA budget and used for the operation which he/she commands.

Article 35

Consolidated accounts

1. The accounting officer shall keep the accounts of contributions called for and transfers made. He/she shall also draw up the accounts for the common costs incurred in preparation for, or further to, operations, and for operational expenditure implemented under the direct responsibility of the administrator.

2. The accounting officer shall draw up the consolidated accounts for ATHENA's revenue and expenditure. Each operation commander shall send him/her the accounts for the expenditure he/she has committed and the payments he/she has made, as well as for the prefinancing he/she has approved to cover the operational common costs of the operation which he/she commands.

CHAPTER 11

AUDIT AND PRESENTATION OF ACCOUNTS

Article 36

Regular reports to the Special Committee

Every three months, the administrator shall present to the Special Committee a report on the implementation of revenue and expenditure during the preceding three months and since the beginning of the financial year. To this end, every operation commander shall provide the administrator in good time with a report on expenditure relating to the operational common costs of the operation which he/she commands.

Article 37

Auditing the accounts

1. When the implementation of ATHENA's expenditure has been entrusted to a Member State, a Community institution or an international organisation, that State, institution or organisation shall apply the rules which apply to the auditing of its own expenditure.

2. However, the administrator or persons appointed by him/her may at any time carry out an audit of the common costs of ATHENA incurred in preparation for, or further to, operations, or the operational common costs of an operation. Furthermore, the Special Committee, on the basis of a proposal by the administrator or a Member State, may at any time appoint external auditors, whose tasks and conditions of employment it shall determine.

3. An audit of the expenditure relating to common costs incurred in preparation for, or further to, operations, and operational costs which have not yet been audited by external auditors acting on behalf of ATHENA shall be carried out in the two months following the end of each financial year.

4. With a view to external audits, a six-member college of auditors shall be established. Each year the Special Committee shall appoint two members for a non-renewable three-year period, from candidates proposed by the Member States. The candidates must be members of a national audit body in a Member State and offer adequate guarantees of security and independence. They must be available to carry out tasks on behalf of ATHENA as needed. In carrying out these tasks:

(a) the members of the college shall continue to be paid by their audit body of origin and shall only receive from ATHENA reimbursement of their mission expenses in accordance with the rules applicable to officials of the European Communities of an equivalent grade;

(b) they shall neither request nor receive instructions other than from the Special Committee; within its audit mandate the College of Auditors and its members shall be completely independent and solely responsible for the conduct of the external audit;

(c) they shall only report on their task to the Special Committee;

(d) they shall check that expenditure financed by ATHENA has been implemented in conformity with the applicable legislation and the principles of sound financial management, that is in accordance with the principles of economy, effectiveness and efficiency.

Each year the College of Auditors shall elect its chairman for the forthcoming financial year. It shall adopt the rules applicable to audits carried out by its members in accordance with the highest international standards. The College of Auditors shall approve the audit reports drawn up by its members before their transmission to the administrator and to the Special Committee.

5. The Special Committee may decide on a case-by-case basis and upon specific motivations to use other external bodies.

6. The persons responsible for auditing ATHENA's expenditure must, before carrying out their task, have received clearance for access to classified information up to at least 'Secret UE' level held by the Council, or equivalent clearance from a Member State or NATO, as appropriate. Those persons shall ensure that they respect the confidentiality of the information and protect the data of which they acquire knowledge during their audit task, in accordance with the rules applicable to that information and data.

7. The administrator and the persons responsible for auditing ATHENA's expenditure shall have access without delay and without giving prior notice to the documents and to the contents of all data supports relating to that expenditure, and to the premises where those documents and supports are kept. They may make copies. The persons involved in implementing ATHENA's expenditure shall give the administrator and the persons responsible for the audit of that expenditure the necessary assistance in performing their task.

8. The cost of the audits carried out by auditors acting on behalf of ATHENA shall be considered as a common cost to be borne by ATHENA.

Article 38

Annual presentation of accounts

1. The administrator, with the assistance of the accounting officer and each operation commander, shall draw up and submit to the Special Committee, by April following the end of the financial year, the annual management accounts, the annual balance sheet for ATHENA, and an activity report. The annual management accounts shall distinguish between the common costs of ATHENA incurred in preparation for, or further to, operations, and the operational common costs of each operation conducted during the financial year in question, as well as miscellaneous revenue and revenue from Member States and third States. The balance sheet shall show as assets all the assets belonging to ATHENA, taking account of their depreciation and any losses or decommissioning, and shall show its reserves as liabilities. The administrator shall submit the management accounts to the College of Auditors for examination and opinion by February following the end of the financial year.

2. The Special Committee shall approve the annual management accounts and the balance sheets. It shall grant a discharge to the administrator, the accounting officer and each operation commander for the financial year in question.

3. All accounts and inventories shall be retained, each at his/her level, by the accounting officer and each operation commander for a period of five years from the date on which the corresponding discharge was granted.

4. The Special Committee shall decide to enter the balance of the budget outturn for a financial year for which the accounts have been approved in the budget for the following financial year, as revenue or expenditure depending on the circumstances, by means of an amending budget.

5. That part of the balance of the budget outturn for a financial year which comes from the implementation of appropriations intended to cover common costs incurred in preparation for, or further to, operations, shall be entered against the next contributions from participating Member States.

6. That part of the balance of the budget outturn which comes from the implementation of appropriations intended to cover the operational common costs of a given operation shall be entered against the next contributions from the Member States which have contributed to that operation.

7. If reimbursement cannot be done by deduction from the contributions due to ATHENA, the balance of the budget outturn shall be repaid to the Member States concerned.

Article 39

Presentation of the accounts of an operation

1. When an operation is complete, the Special Committee may decide, on the basis of a proposal by the administrator or by a Member State, that the administrator, with the assistance of the accounting officer and of the operation commander, shall submit to the Special Committee the management accounts and the balance sheet for that operation, at least up to the date on which it was completed, and, if possible, up to the date on which it was wound up. The deadline imposed on the administrator may not be less than four months from the date on which the operation was completed.

2. If the management accounts and balance sheet cannot, within the given deadline, include the revenue and expenditure connected with the winding up of that operation, then that revenue and expenditure shall appear in the annual management account and balance sheet for ATHENA and shall be examined by the Special Committee in connection with the annual presentation of accounts.

3. The Special Committee shall approve the management account and balance sheet for the operation which have been submitted to it. It shall grant a discharge to the administrator, the accounting officer and each operation commander for the operation in question.

4. If reimbursement cannot be done by deduction from the contributions due to ATHENA, the balance of the budget outturn shall be repaid to the Member States concerned.

CHAPTER 12

LEGAL LIABILITY

Article 40

1. The conditions governing the disciplinary or criminal liability of the operation commander, the administrator and other staff made available in particular by the Community institutions or Member States in the event of misconduct or negligence in the implementation of the budget shall be governed by the Staff Regulations or the arrangements applicable to them. In addition, ATHENA may at its own initiative or at the request of a contributing State bring a civil action against the abovementioned staff.

2. In no case may the European Communities or the Secretary-General of the Council be held liable by a contributing State as a result of the performance of their duties by the administrator, the accounting officer or the staff assigned to them.

3. The contractual liability which may arise from contracts concluded in the context of implementation of the budget shall be covered through ATHENA by the contributing States. It shall be governed by the law applicable to the contracts in question.

4. In the case of non-contractual liability, any damage caused by the operation, headquarters, force headquarters and component headquarters of the crisis structure, the composition of which shall be approved by the operation commander, or by their staff in the course of their duties shall be covered through ATHENA by the contributing States, in accordance with the general principles common to the laws of the Member States and the Staff Regulations of the forces, applicable in the theatre of operations.

5. In no case may the European Communities or the Member States be held liable by a contributing State for contracts concluded in the framework of budget implementation or for damage caused by the units and departments of the crisis structure, the composition of which shall be approved by the operation commander, or by their staff in the course of their duties.

Article 41

Transitional provisions

1. The initial budget shall be adopted by 1 June 2004. The first financial year shall begin on the date of adoption of the initial budget and shall end on the following 31 December.

2. By 1 June 2004, the Special Committee shall appoint the first six members of the College of Auditors provided for in Article 37(4). Two members whose term in office will be one year, and two members whose term in office will be two years, will be decided by lot. The term in office of the other two members will be three years.

Article 42

Review

This Decision, including its Annexes, shall be reviewed after every operation and at least every 18 months. The first review shall take place before the end of 2004 at the latest. ATHENA's management bodies shall contribute to such reviews.

Article 43

Final provisions

This Decision shall enter into force on 1 March 2004. It shall be published in the *Official Journal of the European Union*.

Done at Brussels, 23 February 2004.

For the Council

The President

B. COWEN

ANNEX I

Common costs borne by ATHENA whenever they are incurred

In cases when the following common costs cannot be linked directly to a specific operation, the Special Committee may decide to allocate the corresponding appropriations to the general part of the annual budget. These appropriations should, as much as possible, be entered in articles showing the operation to which they are most related.

1. Auditing costs
2. Mission expenditure incurred by the operation commander and his/her staff for submitting an operation's accounts to the Special Committee
3. Indemnities for damages and costs resulting from claims and actions to be paid through ATHENA
4. Banking costs (common costs will always be included in the general part of the annual budget)
5. Costs pursuant to any decision to store material which was acquired in common for an operation (where these costs are attributed to the general part of the annual budget, a link to a specific operation shall be indicated)

ANNEX II

Operational common costs relative to the preparatory phase of an operation borne by ATHENA

Incremental costs of transport and accommodation necessary for exploratory missions and preparations by military forces with a view to a specific Union military operation.

Medical services: the cost of emergency medical evacuations (Medevac) of persons taking part in exploratory missions and preparations by military forces with a view to a specific Union military operation, when medical treatment cannot be provided in theatre.

ANNEX III

III-A

Operational common costs relative to the active phase of operations always borne by ATHENA

For any Union military operation, ATHENA will bear as operational common costs the incremental costs required for the operation defined below.

1. Incremental costs for (deployable or fixed) headquarters for EU-led operations or exercises

(a) Headquarters (HQ):	operation, force and component headquarters;
(b) Operation Headquarters (OHQ):	the static, out-of-area headquarters of the operation commander, which is responsible for building up, launching, sustaining, and recovering an EU force. The definition of common costs applicable to an OHQ for an operation shall also be applicable to the General Secretariat of the Council and ATHENA in so far as they are acting directly for that operation;
(c) Force Headquarters (FHQ):	the headquarters of an EU force deployed to the area of operations;
(d) Component Headquarters (CCHQ):	the headquarters of an EU component commander deployed for the operation (i.e. air, land, maritime and other specific functions commanders that could be deemed necessary to designate depending on the nature of the operation);
(e) transport costs:	transport to and from the theatre of operations to deploy, sustain and recover FHQs and CCHQs; transport costs incurred by the OHQ necessary to an operation;
(f) administration:	additional office and accommodation equipment, contractual services and utilities, maintenance costs of the buildings;
(g) locally hired personnel:	civilian personnel, international consultants and locally hired (national and expatriate) personnel needed for the conduct of the operation over and above the normal operational requirements (including any overtime compensation payments);
(h) communications:	capital expenditure for the purchase and the use of additional communications and IT equipment and costs for rendered services (lease and maintenance of modems, telephone lines, satphones, cryptofax, secure lines, internet providers, data lines, local area networks);
(i) transportation/travel (excluding 'per diem' costs) within the operations area of HQs:	expenditure related to vehicle transportation and other travel by other means and freight costs, including travel by national augmentees and visitors; incremental costs of fuel over and above what normal operations would have cost; lease of additional vehicles; costs of official journeys between the operational location and Brussels and/or EU-organised meetings; third-party insurance costs imposed by some countries upon international organisations conducting operations on their territory;
(j) barracks and lodging/infrastructure:	expenditure for acquisition, rental or refurbishing of required HQ facilities in theatre (rental of buildings, shelters, tents), if required;
(k) public information:	costs related to information campaigns and to inform media at OHQ and FHQ, in accordance with the information strategy developed by the operational HQ;
(l) representation and hospitality:	representational costs; costs at HQ level necessary for the conduct of an operation.

2. Incremental costs incurred for providing support to the force as a whole

The costs defined below are those incurred following the force deployment to its location:

(a) infrastructure:	expenditure absolutely needed for the force as a whole to fulfil its mission (common used airport, railway, harbours, roads, power and water supply);
(b) essential additional equipment:	the rental or purchase in the course of the operation of unforeseen specific equipment essential for the execution of the operation, decided by the operation commander and approved by the Special Committee, in so far as the purchased equipment is not repatriated at the end of the mission;
(c) identification marking:	specific identification marks, 'European Union' identity cards, badges, medals, flags in European Union colours or other Force or HQ identification marking (excluding clothes, hats or uniforms);
(d) medical services:	the cost of emergency medical evacuations (Medevac) when medical treatment cannot be provided in theatre.

3. Incremental costs incurred by EU recourse to NATO common assets and capabilities made available for an EU-led operation

The cost for the European Union of the application for one of its military operations of the arrangements between the EU and NATO relating to release, monitoring and return or recall of NATO common assets and capabilities made available for an EU-led operation.

III-B

Operational common costs relative to the active phase of a specific operation, borne by ATHENA when the Council so decides

Transport costs:	transport to and from the theatre of operations to deploy, support and recover the forces necessary for the operation;
Barracks and lodging/infrastructure:	expenditure for acquisition, rental or refurbishing of premises in theatre (rental of buildings, shelters, tents), as necessary for the forces deployed for the operation.

ANNEX IV

Operational common costs relative to the winding-up of an operation, borne by ATHENA

Costs incurred for finding the final destination for the equipment and infrastructure commonly funded for the operation.

Incremental costs of drawing up the accounts for the operation. The eligible common costs shall be determined in accordance with Annex III, keeping in view the fact that the staff needed to draw up the accounts belong to the headquarters for that operation, even after the latter has ceased its activities.

CORRIGENDA

Corrigendum to Commission Recommendation 2004/2/Euratom of 18 December 2003 on standardised information on radioactive airborne and liquid discharges into the environment from nuclear power reactors and reprocessing plants in normal operation

(Official Journal of the European Union L 2 of 6 January 2004)

On page 39, in the Annex, third column, the entry against 'Kr-85':

for: '1E – 04',

read: '1E + 04'.