

# Official Journal

## of the European Communities

English edition

## Legislation

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## I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 398/94**

of 21 February 1994

**amending Regulation (EEC) No 3433/91 imposing a definitive anti-dumping duty on imports of gas-fuelled, non-refillable pocket flint lighters originating in Japan, the People's Republic of China, the Republic of Korea and Thailand and authorizing the definitive collection of a provisional anti-dumping duty**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community<sup>(1)</sup>, and in particular Article 12 thereof,

Having regard to the Commission proposal, submitted after consultation within the Advisory Committee as provided for under the aforementioned Regulation,

Whereas,

**A. Provisional measures**

- (1) The Council, by Regulation (EEC) No 3433/91<sup>(2)</sup>, imposed a definitive anti-dumping duty on imports of gas-fuelled, non-refillable pocket flint lighters originating in Japan, the People's Republic of China, the Republic of Korea and Thailand. The Commission, by Decision 91/604/EEC<sup>(3)</sup>, accepted an undertaking offered by Thai Merry Co. Ltd, a Thai producer, the imports of which were consequently excluded from the payment of anti-dumping duties.
- (2) Thai Merry Co. Ltd has, by correspondence dated 18 August 1993, withdrawn its undertaking. Subsequently the Commission imposed, by Regulation (EEC) No 2957/93<sup>(4)</sup>, a provisional duty on imports into the Community of gas-fuelled, non-refillable pocket flint lighters, falling within CN code ex 9613 10 00 (Taric code 9613 10 00 \* 10), originating in Thailand, and produced by Thai Merry Co. Ltd, (Taric additional code : 8740).

**B. Subsequent Procedure**

- (3) Following the imposition of the provisional anti-dumping duty, the Community industry requested,

and was granted, an opportunity to be heard by the Commission and made its views known.

- (4) No new arguments were put forward in connection with the withdrawal of the undertaking by Thai Merry Co. Ltd. The findings of Regulation (EEC) No 2957/93 in this respect are therefore confirmed by the Council.

Furthermore, the Council has no reason to believe that the definitive findings made during the investigation leading to the adoption of Regulation (EEC) No 3433/91 require modification. No arguments were presented by any interested party in this respect.

**C. Duties**

- (5) Since the general country-wide duty established by Regulation (EEC) No 3433/91 was based on the situation of Thai Merry Co. Ltd, the only amendment to that Regulation which is necessary is to remove the exemption of Thai Merry Co. Ltd from this duty.

**D. Collection of provisional duty**

- (6) By virtue of the extent of the dumping margin established and the seriousness of the injury caused to the Community producers, it is also necessary to collect definitively and in their entirety the amounts secured by way of provisional anti-dumping duty,

HAS ADOPTED THIS REGULATION :

*Article 1*

Article 1 (3) of Regulation (EEC) No 3433/91 shall be deleted.

*Article 2*

The amounts secured by way of the provisional anti-dumping duty imposed pursuant to Regulation (EEC) No 2957/93 shall be definitively collected.

*Article 3*

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

<sup>(1)</sup> OJ No L 209, 2. 8. 1988, p. 1.

<sup>(2)</sup> OJ No L 326, 28. 11. 1991, p. 1.

<sup>(3)</sup> OJ No L 326, 28. 11. 1991, p. 31.

<sup>(4)</sup> OJ No L 267, 28. 10. 1993, p. 2.

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

Done at Brussels, 21 February 1994.

*For the Council*

*The President*

Th. PANGALOS

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**COUNCIL REGULATION (EC) No 399/94**  
**of 21 February 1994**  
**concerning specific measures for dried grapes**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas dried grapes are faced with marketing difficulties in spite of the production aid and border protection measures applicable to them; whereas these difficulties are attributable mainly to the gradual deterioration in the competitiveness of the product; whereas, in order to remedy the situation, measures should be implemented for improving its quality and marketing;

Whereas, in view of the production, storage and processing conditions in the main region producing dried grapes, the first of these objectives can be achieved only by means of vocational training for those employed in the sector and by developing more effective procedures for carrying out the operations which take place after the product is harvested; whereas, moreover, a better understanding of the marketing channels will help pinpoint the checks on the increase in the sales of dried grapes produced in the Community;

Whereas the aim of the measures thus envisaged is to achieve the objectives of Article 39 of the Treaty; whereas they should be regarded therefore as intervention measures designed to regularize the market; whereas the vocational training and promotion measures are to be financed out of the savings made as a result of the application of the withholding rates referred to in Article 1 (1) of Council Regulation (EEC) No 1206/90 of 7 May 1990 laying down general rules for the system of production aid for processed fruit and vegetables <sup>(4)</sup>,

HAS ADOPTED THIS REGULATION:

*Article 1*

Specific measures relating to the quality and the promotion of dried grapes produced in the Community and

covered by CN codes 0806 20 11, 0806 20 12, 0806 20 91 and 0806 20 92 shall be adopted in accordance with the procedure referred to in Article 4.

The measures shall comprise:

- in relation to quality:
  - (a) vocational training measures;
  - (b) measures to improve transport and storage conditions;
  - (c) measures for the technical development of new quality and classification parameters and for the development of effective procedures for carrying out drying, cleaning, sorting and storage operations on the holding or at the plant;
- in relation to promotion:
  - (d) a study of the European market;
  - (e) an information programme focusing on the specific nature of the Community product and based on the results of the abovementioned measures.

*Article 2*

1. The measures referred to in Article 1 shall be carried out by representative groups with members in various branches of the industry and offering assurances that the proposed measures will be properly implemented. The representativeness of groups will be judged in terms of the objective pursued.

However, the measures referred to in points (d) and (e) may be carried out by the Commission.

2. The Community shall contribute up to 70 % towards the financing of the measures referred to in Article 1.

However, in the case of the measures referred to in points (a), (d) and (e) of Article 1, this contribution may be increased to 90 %, 100 % and 100 % respectively.

*Article 3*

Expenditure arising from the measures referred to in Article 1 shall be regarded as intervention expenditure designed to regularize the agricultural markets within the meaning of Article 3 (1) of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the

<sup>(1)</sup> OJ No C 211, 5. 8. 1993, p. 20.

<sup>(2)</sup> Opinion delivered on 8 February 1994 (not yet published in the Official Journal).

<sup>(3)</sup> OJ No C 352, 30. 12. 1993, p. 29.

<sup>(4)</sup> OJ No L 119, 11. 5. 1990, p. 74.

common agricultural policy<sup>(1)</sup>. It shall be financed by the Guarantee Section of the EAGGF.

*Article 4*

Detailed rules for the application of this Regulation shall be laid down in accordance with the procedure provided for in Article 22 of Council Regulation (EEC) No 426/86

of 24 February 1986 on the common organization of the market in products processed from fruit and vegetables<sup>(2)</sup>.

*Article 5*

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

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

Done at Brussels, 21 February 1994.

*For the Council*

*The President*

G. MORAITIS

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<sup>(1)</sup> OJ No L 94, 28. 4. 1970, p. 13. Regulation as last amended by Regulation (EEC) No 2048/88 (OJ No L 185, 15. 7. 1988, p. 1).

<sup>(2)</sup> OJ No L 49, 27. 2. 1986, p. 1. Regulation as last amended by Regulation (EEC) No 1569/92 (OJ No L 166, 20. 6. 1992, p. 5).

## COUNCIL REGULATION (EC) No 400/94

of 21 February 1994

extending Regulation (EEC) No 1615/89 establishing a European Forestry Information and Communication System (Efics)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 213 thereof,

Having regard to the proposal from the Commission,

Whereas Council Regulation (EEC) No 1615/89 of 29 May 1989 establishing a European Forestry Information and Communication System (Efics)<sup>(1)</sup> provided for the setting up of a system the objective of which is to collect, co-ordinate, standardize and process data concerning the forestry sector and its development;

Whereas it has proved impossible to set up the system within the period laid down in that Regulation;

Whereas the need for such a system has become more pressing in the light of the current situation in the forestry sector;

Whereas, moreover, both the United Nations Conference on Environment and Development in June 1992 in Rio and the Ministerial Conference on the Protection of Forests in Europe in Helsinki in June 1993 highlighted the need to have at Community level comparable and objective data on the forestry sector;

Whereas the said Regulation should therefore be extended, while adapting it to the current state of Community legislation,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EEC) No 1615/89 shall be amended as follows:

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

Done at Brussels, 21 February 1994.

*For the Council*  
*The President*  
G. MORAITIS

1. In Article 1, the words 'Regulations (EEC) No 1609/89, (EEC) No 1610/89, (EEC) No 1611/89, and (EEC) No 1612/89, of Decision 89/367/EEC and Regulations (EEC) No 1613/89 and (EEC) No 1614/89' shall be replaced by the words: 'Regulations (EEC) No 1610/89, (EEC) No 2080/92<sup>(2)</sup> and (EEC) No 867/90<sup>(3)</sup>, of Decision 89/367/EEC and of Regulations (EEC) No 2157/92<sup>(3)</sup> and (EEC) No 2158/92<sup>(4)</sup>.

<sup>(1)</sup> OJ No L 215, 30. 7. 1992, p. 96.

<sup>(2)</sup> OJ No L 91, 6. 4. 1990, p. 7.

<sup>(3)</sup> OJ No L 217, 3. 7. 1992, p. 1.

<sup>(4)</sup> OJ No L 217, 3. 7. 1992, p. 3.

2. In Article 3, the words 'four-year stage' shall be replaced by 'stage' and the date '31 December 1992' shall be replaced by '31 December 1997';
3. In Article 4, '1992' shall be replaced by '1997';
4. In the first sentence of Article 5, '1993' shall be replaced by '1998'. In the second sentence of Article 5, '1993' shall be replaced by '1998' and '1998' by '2002'.

*Article 2*

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

It shall apply with effect from 1 January 1993.

<sup>(1)</sup> OJ No L 165, 15. 6. 1989, p. 12.

## COMMISSION REGULATION (EC) No 401/94

of 24 February 1994

fixing the minimum levies on the importation of olive oil and levies on the importation of other olive oil sector products

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 organization of the market in oils and fats<sup>(1)</sup>, as last amended by Regulation (EC) No 3179/93<sup>(2)</sup>, and in particular Article 16 (2) thereof,

Having regard to Council Regulation (EEC) No 1514/76 of 24 June 1976 on imports of olive oil originating in Algeria<sup>(3)</sup>, as last amended by Regulation (EEC) No 1900/92<sup>(4)</sup>, and in particular Article 5 thereof,

Having regard to Council Regulation (EEC) No 1521/76 of 24 June 1976 on imports of olive oil originating in Morocco<sup>(5)</sup>, as last amended by Regulation (EEC) No 1901/92<sup>(6)</sup>, and in particular Article 5 thereof,

Having regard to Council Regulation (EEC) No 1508/76 of 24 June 1976 on imports of olive oil originating in Tunisia<sup>(7)</sup>, as last amended by Regulation (EEC) No 413/86<sup>(8)</sup>, and in particular Article 5 thereof,

Having regard to Council Regulation (EEC) No 1180/77 of 17 May 1977 on imports into the Community of certain agricultural products originating in Turkey<sup>(9)</sup>, as last amended by Regulation (EEC) No 1902/92<sup>(10)</sup>, and in particular Article 10 (2) thereof,

Having regard to Council Regulation (EEC) No 1620/77 of 18 July 1977 laying down detailed rules for the importation of olive oil from Lebanon<sup>(11)</sup>,

Whereas by Regulation (EEC) No 3131/78<sup>(12)</sup>, as amended by the Act of Accession of Greece, the Commission decided to use the tendering procedure to fix levies on olive oil;

Whereas Article 3 of Council Regulation (EEC) No 2751/78 of 23 November 1978 laying down general rules for fixing the import levy on olive oil by tender<sup>(13)</sup> specifies that the minimum levy rate shall be fixed for each of the products concerned on the basis of the situation on the world market and the Community market and of the levy rates indicated by tenderers;

Whereas, in the collection of the levy, account should be taken of the provisions in the Agreements between the Community and certain third countries; whereas in particular the levy applicable for those countries must be fixed, taking as a basis for calculation the levy to be collected on imports from the other third countries;

Whereas, pursuant to Article 101 (1) of Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community<sup>(14)</sup>, no levies shall apply on imports of products originating in the overseas countries and territories;

Whereas application of the rules recalled above to the levy rates indicated by tenderers on 21 and 22 February 1994 leads to the minimum levies being fixed as indicated in Annex I to this Regulation;

Whereas the import levy on olives falling within CN codes 0709 90 39 and 0711 20 90 and on products falling within CN codes 1522 00 31, 1522 00 39 and 2306 90 19 must be calculated from the minimum levy applicable on the olive oil contained in these products; whereas, however, the levy charged for olive oil may not be less than an amount equal to 8 % of the value of the

<sup>(1)</sup> OJ No 172, 30. 9. 1966, p. 3025/66.

<sup>(2)</sup> OJ No L 285, 20. 11. 1993, p. 9.

<sup>(3)</sup> OJ No L 169, 28. 6. 1976, p. 24.

<sup>(4)</sup> OJ No L 192, 11. 7. 1992, p. 1.

<sup>(5)</sup> OJ No L 169, 28. 6. 1976, p. 43.

<sup>(6)</sup> OJ No L 192, 11. 7. 1992, p. 2.

<sup>(7)</sup> OJ No L 169, 28. 6. 1976, p. 9.

<sup>(8)</sup> OJ No L 48, 26. 2. 1986, p. 1.

<sup>(9)</sup> OJ No L 142, 9. 6. 1977, p. 10.

<sup>(10)</sup> OJ No L 192, 11. 7. 1992, p. 3.

<sup>(11)</sup> OJ No L 181, 21. 7. 1977, p. 4.

<sup>(12)</sup> OJ No L 370, 30. 12. 1978, p. 60.

<sup>(13)</sup> OJ No L 331, 28. 11. 1978, p. 6.

<sup>(14)</sup> OJ No L 263, 19. 9. 1991, p. 1.



imported product, such amount to be fixed at a standard rate ; whereas application of these provisions leads to the levies being fixed as indicated in Annex II to this Regulation,

*Article 2*

The levies applicable on imports of other olive oil sector products are fixed in Annex II.

HAS ADOPTED THIS REGULATION :

*Article 1*

The minimum levies on olive oil imports are fixed in Annex I.

*Article 3*

This Regulation shall enter into force on 25 February 1994.

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

Done at Brussels, 24 February 1994.

*For the Commission*

René STEICHEN

*Member of the Commission*

## ANNEX I

Minimum import levies on olive oil<sup>(1)</sup>

(ECU/100 kg)

CN code	Non-member countries
1509 10 10	79,00 <sup>(2)</sup>
1509 10 90	79,00 <sup>(2)</sup>
1509 90 00	92,00 <sup>(3)</sup>
1510 00 10	77,00 <sup>(2)</sup>
1510 00 90	122,00 <sup>(4)</sup>

<sup>(1)</sup> No levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC.

<sup>(2)</sup> For imports of oil falling within this CN code and produced entirely in one of the countries listed below and transported directly from any of those countries to the Community, the levy to be collected is reduced by:

- (a) Lebanon: ECU 0,60 per 100 kg;
- (b) Tunisia: ECU 12,69 per 100 kg provided that the operator furnishes proof of having paid the export tax applied by that country; however, the repayment may not exceed the amount of the tax in force;
- (c) Turkey: ECU 22,36 per 100 kg provided that the operator furnishes proof of having paid the export tax applied by that country; however, the repayment may not exceed the amount of the tax in force;
- (d) Algeria and Morocco: ECU 24,78 per 100 kg provided that the operator furnishes proof of having paid the export tax applied by that country; however, the repayment may not exceed the amount of the tax in force.

<sup>(3)</sup> For imports of oil falling within this CN code:

- (a) produced entirely in Algeria, Morocco or Tunisia and transported directly from any of those countries to the Community, the levy to be collected is reduced by ECU 3,86 per 100 kg;
- (b) produced entirely in Turkey and transported directly from that country to the Community, the levy to be collected is reduced by ECU 3,09 per 100 kg.

<sup>(4)</sup> For imports of oil falling within this CN code:

- (a) produced entirely in Algeria, Morocco or Tunisia and transported directly from any of those countries to the Community, the levy to be collected is reduced by ECU 7,25 per 100 kg;
- (b) produced entirely in Turkey and transported directly from that country to the Community, the levy to be collected is reduced by ECU 5,80 per 100 kg.

## ANNEX II

Import levies on other olive oil sector products<sup>(1)</sup>

(ECU/100 kg)

CN code	Non-member countries
0709 90 39	17,38
0711 20 90	17,38
1522 00 31	39,50
1522 00 39	63,20
2306 90 19	6,16

<sup>(1)</sup> No levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC.

## COMMISSION REGULATION (EC) No 402/94

of 23 February 1994

amending Regulation (EEC) No 1866/90 on arrangements for using the ecu for the purposes of the budgetary management of the Structural Funds

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments<sup>(1)</sup>, as amended by Regulation (EEC) No 2082/93<sup>(2)</sup>, and in particular Article 22 thereof,

After consultation of the Committee for the Development and conversion of Regions and the Committee referred to in Article 124 of the Treaty,

Whereas Commission Regulation (EEC) No 1866/90<sup>(3)</sup> should be amended so as to permit sufficient flexibility in the implementation of the method of indexation applied in respect of the Structural Funds; whereas, therefore, neither the plans for financing Community support frameworks and the single programming document nor the amount of the grants decided upon and their financing plans should continue to give rise to indexation;

Whereas, on the other hand, the Community assistance available for the entire period should be calculated in a manner compatible with the progressive increase in the commitment appropriations shown in Annex II to Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments<sup>(4)</sup>, as amended by Regulation (EEC) No 2081/93<sup>(5)</sup>; whereas this assistance, set out in the decisions approving the Community support frameworks, in the single programming document and in decisions offering Community initiatives to the Member States, must therefore be indexed;

Whereas the new system should apply immediately;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee on Agricultural Structures and Rural Development and the Standing Management Committee on Fisheries Structures,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EEC) No 1866/90 is amended as follows:

1. Article 2 is replaced by the following:

*Article 2*

**Community support frameworks, the single programming document and proposals for Community initiatives**

Financing plans for Community support frameworks and the single programming document shall be drawn up in ecus and shall not give rise to indexation, subject to the second paragraph.

In Commission decisions approving the Community support frameworks, the single programming document and decisions proposing Community initiatives to the Member States, the amount of Community assistance decided upon for the entire period and the annual breakdown thereof shall be set out in ecus, at prices for the year in which each decision is taken, and shall be subject to indexation.

2. Article 4 is replaced by the following:

*Article 4*

**Grant decisions by the Commission**

The amount of the grant and the financing plan approved by the Commission shall be expressed in ecus and shall not be subject to indexation.

*Article 2*

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

<sup>(1)</sup> OJ No L 374, 31. 12. 1988, p. 1.

<sup>(2)</sup> OJ No L 193, 31. 7. 1993, p. 20.

<sup>(3)</sup> OJ No L 170, 3. 7. 1990, p. 36.

<sup>(4)</sup> OJ No L 185, 15. 7. 1988, p. 9.

<sup>(5)</sup> OJ No L 193, 31. 7. 1993, p. 5.

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

Done at Brussels, 23 February 1994.

*For the Commission*  
Bruce MILLAN  
*Member of the Commission*

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**COMMISSION REGULATION (EC) No 403/94**

of 24 February 1994

**amending Regulation (EEC) No 2094/93 introducing preventive distillation as provided for in Article 38 of Regulation (EEC) No 822/87 for the 1993/94 wine year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine <sup>(1)</sup>, as last amended by Regulation (EEC) No 1566/93 <sup>(2)</sup>, and in particular Article 38 (5) thereof,Whereas Commission Regulation (EEC) No 2094/93 <sup>(3)</sup>, as last amended by Regulation (EEC) No 3225/93 <sup>(4)</sup>, provides that quantities for which contracts and declarations have been signed and approved must be delivered to the distillery by 15 March 1994 at the latest; whereas, in view of the small quantities for support distillation anticipated, the deadline for deliveries of wine to the distillery should be extended so that deliveries may be staggered and distillery operation made smoother;

Whereas the measures provided for in Regulation are in accordance with the opinion of the Management Committee for Wine,

HAS ADOPTED THIS REGULATION:

*Article 1*

In Article 2 (2) of Regulation (EEC) No 2094/93, '15 March 1994' is hereby replaced by '15 April 1994'.

*Article 2*This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 24 February 1994.

*For the Commission*

René STEICHEN

*Member of the Commission*<sup>(1)</sup> OJ No L 84, 27. 3. 1987, p. 1.<sup>(2)</sup> OJ No L 154, 25. 6. 1993, p. 39.<sup>(3)</sup> OJ No L 190, 30. 7. 1993, p. 23.<sup>(4)</sup> OJ No L 292, 26. 11. 1993, p. 16.

## COMMISSION REGULATION (EC) No 404/94

of 24 February 1994

introducing a countervailing charge on artichokes originating in Egypt

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables<sup>(1)</sup>, as last amended by Regulation (EC) No 3669/93<sup>(2)</sup>, and in particular the second subparagraph of Article 27 (2) thereof,

Whereas Article 25 (1) of Regulation (EEC) No 1035/72 provides that, if the entry price of a product imported from a third country remains at least ECU 0,6 below the reference price for two consecutive market days, a countervailing charge must be introduced in respect of the exporting country concerned, save in exceptional circumstances; whereas this charge is equal to the difference between the reference price and the arithmetic mean of the last two entry prices available for that exporting country;

Whereas Commission Regulation (EEC) No 2931/93 of 25 October 1993 fixing for the 1993/94 marketing year the reference prices for artichokes<sup>(3)</sup> fixed the reference price for products of class I for the period 1 January to 30 April 1994 at ECU 79,35 per 100 kilograms net;

Whereas the entry price for a given exporting country is equal to the lowest representative prices recorded for at least 30 % of the quantities from the exporting country concerned which are marketed on all representative markets for which prices are available less the duties and the charges indicated in Article 24 (3) of Regulation (EEC) No 1035/72; whereas the meaning of representative price is defined in Article 24 (2) of Regulation (EEC) No 1035/72;

Whereas, in accordance with Article 3 (1) of Commission Regulation (EEC) No 2118/74<sup>(4)</sup>, as last amended by

Regulation (EEC) No 249/93<sup>(5)</sup>, the prices to be taken into consideration must be recorded on the representative markets or, in certain circumstances, on other markets;

Whereas, for artichokes originating in Egypt the entry price calculated in this way has remained at least ECU 0,6 below the reference price for two consecutive market days; whereas a countervailing charge should therefore be introduced for these artichokes;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92<sup>(6)</sup>, as amended by Regulation (EC) No 3528/93<sup>(7)</sup>, are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93<sup>(8)</sup>,

HAS ADOPTED THIS REGULATION:

*Article 1*

A countervailing charge of ECU 1,38 per 100 kilograms net is applied to artichokes (CN code 0709 10 00) originating in Egypt.

*Article 2*

This Regulation shall enter into force on 26 February 1994.

<sup>(1)</sup> OJ No L 118, 20. 5. 1972, p. 1.

<sup>(2)</sup> OJ No L 338, 31. 12. 1993, p. 26.

<sup>(3)</sup> OJ No L 265, 26. 10. 1993, p. 10.

<sup>(4)</sup> OJ No L 220, 10. 8. 1974, p. 20.

<sup>(5)</sup> OJ No L 28, 5. 2. 1993, p. 45.

<sup>(6)</sup> OJ No L 387, 31. 12. 1992, p. 1.

<sup>(7)</sup> OJ No L 320, 22. 12. 1993, p. 32.

<sup>(8)</sup> OJ No L 108, 1. 5. 1993, p. 106.

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

Done at Brussels, 24 February 1994.

*For the Commission*  
René STEICHEN  
*Member of the Commission*

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**COMMISSION REGULATION (EC) No 405/94**  
**of 24 February 1994**  
**fixing the import levies on white sugar and raw sugar**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,  
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector <sup>(1)</sup>, as last amended by Regulation (EEC) No 133/94 <sup>(2)</sup>, and in particular Article 16 (8) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy <sup>(3)</sup>, as amended by Regulation (EC) No 3528/93 <sup>(4)</sup>, and in particular Article 5 thereof,

Whereas the import levies on white sugar and raw sugar were fixed by Commission Regulation (EEC) No 1695/93 <sup>(5)</sup>, as last amended by Regulation (EC) No 381/94 <sup>(6)</sup>;

Whereas it follows from applying the detailed rules contained in Commission Regulation (EEC) No 1695/93 to the information known to the Commission that the

levies at present in force should be altered to the amounts set out in the Annex hereto;

Whereas, in order to make it possible for the levy arrangements to function normally, the representative market rate established during the reference period from 23 February 1994, as regards floating currencies, should be used to calculate the levies,

HAS ADOPTED THIS REGULATION:

*Article 1*

The import levies referred to in Article 16 (1) of Regulation (EEC) No 1785/81 shall be, in respect of white sugar and standard quality raw sugar, as set out in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 25 February 1994.

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

Done at Brussels, 24 February 1994.

*For the Commission*

René STEICHEN

*Member of the Commission*

<sup>(1)</sup> OJ No L 177, 1. 7. 1981, p. 4.

<sup>(2)</sup> OJ No L 22, 27. 1. 1994, p. 7.

<sup>(3)</sup> OJ No L 387, 31. 12. 1992, p. 1.

<sup>(4)</sup> OJ No L 320, 22. 12. 1993, p. 32.

<sup>(5)</sup> OJ No L 159, 1. 7. 1993, p. 40.

<sup>(6)</sup> OJ No L 48, 19. 2. 1994, p. 42.



## ANNEX

## to the Commission Regulation of 24 February 1994 fixing the import levies on white sugar and raw sugar

*(ECU/100 kg)*

CN code	Levy <sup>(1)</sup>
1701 11 10	33,30 <sup>(1)</sup>
1701 11 90	33,30 <sup>(1)</sup>
1701 12 10	33,30 <sup>(1)</sup>
1701 12 90	33,30 <sup>(1)</sup>
1701 91 00	39,15
1701 99 10	39,15
1701 99 90	39,15 <sup>(2)</sup>

<sup>(1)</sup> The levy applicable is calculated in accordance with the provisions of Article 2 or 3 of Commission Regulation (EEC) No 837/68 (OJ No L 151, 30. 6. 1968, p. 42), as last amended by Regulation (EEC) No 1428/78 (OJ No L 171, 28. 6. 1978, p. 34).

<sup>(2)</sup> In accordance with Article 16 (2) of Regulation (EEC) No 1785/81 this amount is also applicable to sugar obtained from white and raw sugar containing added substances other than flavouring or colouring matter.

<sup>(3)</sup> No import levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC.

## COMMISSION REGULATION (EC) No 406/94

of 24 February 1994

## fixing the import levies on cereals and on wheat or rye flour, groats and meal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,  
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals <sup>(1)</sup>, as amended by Regulation (EEC) No 2193/93 <sup>(2)</sup>, and in particular Articles 10 (5) and 11 (3) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy <sup>(3)</sup>, as amended by Regulation (EC) No 3528/93 <sup>(4)</sup>,

Whereas the import levies on cereals, wheat and rye flour, and wheat groats and meal were fixed by Commission Regulation (EEC) No 2703/93 <sup>(5)</sup> and subsequent amending Regulations;

Whereas, in order to make it possible for the levy arrangements to function normally, the representative market rate established during the reference period from 23

February 1994, as regards floating currencies, should be used to calculate the levies;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 2703/93 to today's offer prices and quotations known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

*Article 1*

The import levies to be charged on products listed in Article 1 (1) (a), (b) and (c) of Regulation (EEC) No 1766/92 shall be as set out in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 25 February 1994.

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

Done at Brussels, 24 February 1994.

*For the Commission*

René STEICHEN

*Member of the Commission*

<sup>(1)</sup> OJ No L 181, 1. 7. 1992, p. 21.

<sup>(2)</sup> OJ No L 196, 5. 8. 1993, p. 22.

<sup>(3)</sup> OJ No L 387, 31. 12. 1992, p. 1.

<sup>(4)</sup> OJ No L 320, 22. 12. 1993, p. 32.

<sup>(5)</sup> OJ No L 245, 1. 10. 1993, p. 108.

## ANNEX

## to the Commission Regulation of 24 February 1994 fixing the import levies on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)

CN code	Third countries (*)
0709 90 60	83,60 (*) (*)
0712 90 19	83,60 (*) (*)
1001 10 00	0 (*) (*)
1001 90 91	94,71
1001 90 99	94,71 (*)
1002 00 00	116,11 (*)
1003 00 10	119,81
1003 00 90	119,81 (*)
1004 00 00	94,04
1005 10 90	83,60 (*) (*)
1005 90 00	83,60 (*) (*)
1007 00 90	95,52 (*)
1008 10 00	27,98 (*)
1008 20 00	42,31 (*)
1008 30 00	0 (*)
1008 90 10	(7)
1008 90 90	0
1101 00 00	170,85 (*)
1102 10 00	200,23
1103 11 10	30,93
1103 11 90	194,32
1107 10 11	179,46
1107 10 19	136,84
1107 10 91	224,14 (10)
1107 10 99	170,23 (*)
1107 20 00	196,59 (10)

(1) Where durum wheat originating in Morocco is transported directly from that country to the Community, the levy is reduced by ECU 0,60/tonne.

(2) In accordance with Regulation (EEC) No 715/90 the levies are not applied to products imported directly into the French overseas departments, originating in the African, Caribbean and Pacific States.

(3) Where maize originating in the ACP is imported into the Community the levy is reduced by ECU 1,81/tonne.

(4) Where millet and sorghum originating in the ACP is imported into the Community the levy is applied in accordance with Regulation (EEC) No 715/90.

(5) Where durum wheat and canary seed produced in Turkey are transported directly from that country to the Community, the levy is reduced by ECU 0,60/tonne.

(6) The import levy charged on rye produced in Turkey and transported directly from that country to the Community is laid down in Council Regulation (EEC) No 1180/77 (OJ No L 142, 9. 6. 1977, p. 10), as last amended by Regulation (EEC) No 1902/92 (OJ No L 192, 11. 7. 1992, p. 3), and Commission Regulation (EEC) No 2622/71 (OJ No L 271, 10. 12. 1971, p. 22), as amended by Regulation (EEC) No 560/91 (OJ No L 62, 8. 3. 1991, p. 26).

(7) The levy applicable to rye shall be charged on imports of the product falling within CN code 1008 90 10 (triticale).

(8) No levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC.

(9) Products falling within this code, imported from Poland, Czechoslovakia or Hungary under the Interim Agreements concluded between those countries and the Community, and in respect of which EUR.1 certificates issued in accordance with Regulation (EEC) No 585/92 have been presented, are subject to the levies set out in the Annex to that Regulation.

(10) In accordance with Council Regulation (EEC) No 1180/77 this levy is reduced by ECU 5,44 per tonne for products originating in Turkey.

## COMMISSION REGULATION (EC) No 407/94

of 24 February 1994

fixing the premiums to be added to the import levies on cereals, flour and malt

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals <sup>(1)</sup>, as amended by Regulation (EEC) No 2193/93 <sup>(2)</sup>, and in particular Article 12 (4) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy <sup>(3)</sup>, as amended by Regulation (EC) No 3528/93 <sup>(4)</sup>,

Whereas the premiums to be added to the levies on cereals and malt were fixed by Commission Regulation (EEC) No 1681/93 <sup>(5)</sup> and subsequent amending Regulations;

Whereas, in order to make it possible for the levy arrangements to function normally, the representative market rate established during the reference period from 23

February 1994, as regards floating currencies, should be used to calculate the levies;

Whereas, on the basis of today's cif prices and cif forward delivery prices, the premiums at present in force, which are to be added to the levies, should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

*Article 1*

The premiums to be added to the levies fixed in advance for the import in respect of the products listed in Article 1 (1) (a), (b) and (c) of Regulation (EEC) No 1766/92 shall be as set out in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 25 February 1994.

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

Done at Brussels, 24 February 1994.

*For the Commission*

René STEICHEN

*Member of the Commission*

<sup>(1)</sup> OJ No L 181, 1. 7. 1992, p. 21.

<sup>(2)</sup> OJ No L 196, 5. 8. 1993, p. 22.

<sup>(3)</sup> OJ No L 387, 31. 12. 1992, p. 1.

<sup>(4)</sup> OJ No L 320, 22. 12. 1993, p. 32.

<sup>(5)</sup> OJ No L 159, 1. 7. 1993, p. 11.

## ANNEX

to the Commission Regulation of 24 February 1994 fixing the premiums to be added to the import levies on cereals, flour and malt

## A. Cereals and flour

*(ECU/tonne)*

CN code	Current	1st period	2nd period	3rd period
	2	3	4	5
0709 90 60	0	0	0	0
0712 90 19	0	0	0	0
1001 10 00	0	0	0	0
1001 90 91	0	0	0	0
1001 90 99	0	0	0	0
1002 00 00	0	0	0	0
1003 00 10	0	0	0	0
1003 00 90	0	0	0	0
1004 00 00	0	0	0	0
1005 10 90	0	0	0	0
1005 90 00	0	0	0	0
1007 00 90	0	0	0	0
1008 10 00	0	0	0	0
1008 20 00	0	0	0	0
1008 30 00	0	0	0	0
1008 90 90	0	0	0	0
1101 00 00	0	0	0	0
1102 10 00	0	0	0	0
1103 11 10	0	0	0	0
1103 11 90	0	0	0	0

## B. Malt

*(ECU/tonne)*

CN code	Current	1st period	2nd period	3rd period	4th period
	2	3	4	5	6
1107 10 11	0	0	0	0	0
1107 10 19	0	0	0	0	0
1107 10 91	0	0	0	0	0
1107 10 99	0	0	0	0	0
1107 20 00	0	0	0	0	0

## COMMISSION REGULATION (EC) No 408/94

of 24 February 1994

## fixing the export refunds on cereals and on wheat or rye flour, groats and meal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals<sup>(1)</sup>, as amended by Regulation (EEC) No 2193/93<sup>(2)</sup>, and in particular the third subparagraph of Article 13 (2) thereof,

Whereas Article 13 of Regulation (EEC) No 1766/92 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products in the Community may be covered by an export refund;

Whereas the refunds must be fixed taking into account the factors referred to in Article 2 of Commission Regulation (EEC) No 1533/93 of 22 June 1993 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals<sup>(3)</sup>, amended by Regulation (EC) No 120/94<sup>(4)</sup>;

Whereas export possibilities exist for a quantity of 80 000 tonnes of wheat flour to certain destinations; whereas the procedure laid down in Article 9 (4) of Commission Regulation (EEC) No 891/89<sup>(5)</sup>, as last amended by Regulation (EC) No 3579/93<sup>(6)</sup>, should be used; whereas account should be taken of this when the refunds are fixed;

Whereas, as far as wheat and rye flour, groats and meal are concerned, when the refund on these products is being calculated, account must be taken of the quantities of cereals required for their manufacture; whereas these quantities were fixed in Regulation (EEC) No 1533/93;

Whereas the world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination;

Whereas the refund must be fixed once a month; whereas it may be altered in the intervening period;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92<sup>(7)</sup>, as amended by Regulation (EC) No 3528/93<sup>(8)</sup>, are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93<sup>(9)</sup>;

Whereas it follows from applying the detailed rules set out above to the present situation on the market in cereals, and in particular to quotations or prices for these products within the Community and on the world market, that the refunds should be as set out in the Annex hereto;

Whereas Council Regulation (EEC) No 990/93<sup>(10)</sup> prohibits trade between the European Community and the Federal Republic of Yugoslavia (Serbia and Montenegro); whereas this prohibition does not apply in certain situations as comprehensively listed in Articles 2, 4, 5 and 7 thereof; whereas account should be taken of this fact when fixing the refunds;

Whereas 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 export refunds on the products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 1766/92, excluding malt, exported in the natural state, shall be as set out in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 25 February 1994.

<sup>(1)</sup> OJ No L 181, 1. 7. 1992, p. 21.

<sup>(2)</sup> OJ No L 196, 5. 8. 1993, p. 22.

<sup>(3)</sup> OJ No L 151, 23. 6. 1993, p. 15.

<sup>(4)</sup> OJ No L 21, 26. 1. 1994, p. 1.

<sup>(5)</sup> OJ No L 94, 7. 4. 1989, p. 13.

<sup>(6)</sup> OJ No L 326, 28. 12. 1993, p. 15.

<sup>(7)</sup> OJ No L 387, 31. 12. 1992, p. 1.

<sup>(8)</sup> OJ No L 320, 22. 12. 1993, p. 32.

<sup>(9)</sup> OJ No L 108, 1. 5. 1993, p. 106.

<sup>(10)</sup> OJ No L 102, 28. 4. 1993, p. 14.

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

Done at Brussels, 24 February 1994.

*For the Commission*

René STEICHEN

*Member of the Commission*

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## ANNEX

## to the Commission Regulation of 24 February 1994 fixing the export refunds on cereals and on wheat or rye flour, groats and meal

<i>(ECU/tonne)</i>			<i>(ECU/tonne)</i>		
Product code	Destination (1)	Amount of refund (2)	Product code	Destination (1)	Amount of refund (2)
0709 90 60 000	—	—	1007 00 90 000	—	—
0712 90 19 000	—	—	1008 20 00 000	—	—
1001 10 00 200	—	—	1101 00 00 100	05	71,25 (*)
1001 10 00 400	05	0		02	45,00
	02	—	1101 00 00 130	01	42,00
1001 90 91 000	—	—	1101 00 00 150	01	37,00
1001 90 99 000	03	37,00	1101 00 00 170	01	33,00
	05	20,00	1101 00 00 180	01	29,00
	06	17,00	1101 00 00 190	—	—
	02	15,00	1101 00 00 900	—	—
1002 00 00 000	03	25,00	1102 10 00 500	01	45,00
	02	15,00	1102 10 00 700	—	—
1003 00 10 000	—	—	1102 10 00 900	—	—
1003 00 90 000	03	64,00	1103 11 10 200	01	— (3)
	02	15,00	1103 11 10 400	—	—
1004 00 00 200	—	—	1103 11 10 900	—	—
1004 00 00 400	—	—	1103 11 90 200	01	— (3)
1005 10 90 000	—	—	1103 11 90 800	—	—
1005 90 00 000	03	30,00			
	04	15,00			
	02	0			

(1) The destinations are identified as follows:

- 01 All third countries,
- 02 Other third countries,
- 03 Switzerland, Austria, Liechtenstein, Ceuta and Melilla,
- 04 Zones I, II a), b) and c), III a) and b), V, VI and VIII and Cuba,
- 05 Algeria,
- 06 Morocco and Egypt.

(2) Refunds on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) may be granted only where the conditions laid down in Regulation (EEC) No 990/93 are observed.

(3) No refund is granted when this product contains compressed meal.

(4) Refund fixed under the procedure laid down in Article 9 (4) of amended Regulation (EEC) No 891/89, in respect of a quantity of 80 000 tonnes of wheat flour destined for Algeria.

**NB:** The zones are those defined in Commission Regulation (EEC) No 2145/92 (OJ No L 214, 30. 7. 1992, p. 20).



## COMMISSION REGULATION (EC) No 409/94

of 24 February 1994

fixing the corrective amount applicable to the refund on cereals

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals<sup>(1)</sup>, as amended by Regulation (EEC) No 2193/93<sup>(2)</sup>, and in particular Article 13 (4) thereof,

Whereas Article 13 (4) of Regulation (EEC) No 1766/92 provides that the export refund applicable to cereals on the day on which application for an export licence is made, adjusted for the threshold price in force during the month of exportation, must be applied on request to exports to be effected during the period of validity of the export licence; whereas, in this case, a corrective amount must be applied to the refund;

Whereas Commission Regulation (EEC) No 1533/93 of 22 June 1993 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the cereals and the measures to be taken in the event of disturbance on the market for cereals<sup>(3)</sup>, as amended by Regulation (EC) No 120/94<sup>(4)</sup>, allows for the fixing of a corrective amount for the products listed in Article 1 (1) (c) of Regulation (EEC) No 1766/92; whereas that corrective amount must be calculated taking account of the factors referred to in Article 2 of Regulation (EEC) No 1533/93;

Whereas the world market situation or the specific requirements of certain markets may make it necessary to vary the corrective amount according to destination;

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

Done at Brussels, 24 February 1994.

*For the Commission*

René STEICHEN

*Member of the Commission*

Whereas the corrective amount must be fixed at the same time as the refund and according to the same procedure; whereas it may be altered in the period between fixings;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92<sup>(5)</sup>, as amended by Regulation (EC) No 3528/93<sup>(6)</sup>, are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93<sup>(7)</sup>;

Whereas it follows from applying the provisions set out above that the corrective amount must be as set out in the Annex hereto;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

*Article 1*

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

*Article 2*

This Regulation shall enter into force on 25 February 1994.

<sup>(1)</sup> OJ No L 181, 1. 7. 1992, p. 21.

<sup>(2)</sup> OJ No L 196, 5. 8. 1993, p. 22.

<sup>(3)</sup> OJ No L 151, 23. 6. 1993, p. 15.

<sup>(4)</sup> OJ No L 21, 26. 1. 1994, p. 1.

<sup>(5)</sup> OJ No L 387, 31. 12. 1992, p. 1.

<sup>(6)</sup> OJ No L 320, 22. 12. 1993, p. 32.

<sup>(7)</sup> OJ No L 108, 1. 5. 1993, p. 106.

## ANNEX

to the Commission Regulation of 24 February 1994 fixing the corrective amount applicable to the refund on cereals

*(ECU/tonne)*

Product code	Destination (!)	Current	1st period	2nd period	3rd period	4th period	5th period	6th period
		2	3	4	5	6	7	8
0709 90 60 000	—	—	—	—	—	—	—	—
0712 90 19 000	—	—	—	—	—	—	—	—
1001 10 00 200	—	—	—	—	—	—	—	—
1001 10 00 400	03	0	- 1,425	- 2,85	- 4,275	—	—	—
	02	—	—	—	—	—	—	—
1001 90 91 000	—	—	—	—	—	—	—	—
1001 90 99 000	01	0	0	0	0	0	—	—
1002 00 00 000	01	0	0	0	0	0	—	—
1003 00 10 000	—	—	—	—	—	—	—	—
1003 00 90 000	01	0	0	0	0	- 20,00	—	—
1004 00 00 200	—	—	—	—	—	—	—	—
1004 00 00 400	—	—	—	—	—	—	—	—
1005 10 90 000	—	—	—	—	—	—	—	—
1005 90 00 000	01	0	0	0	0	0	—	—
1007 00 90 000	—	—	—	—	—	—	—	—
1008 20 00 000	—	—	—	—	—	—	—	—
1101 00 00 100	03	0	0	0	- 30,00	- 30,00	—	—
	02	0	0	0	0	0	—	—
1101 00 00 130	01	0	0	0	0	0	—	—
1101 00 00 150	01	0	0	0	0	0	—	—
1101 00 00 170	01	0	0	0	0	0	—	—
1101 00 00 180	01	0	0	0	0	0	—	—
1101 00 00 190	—	—	—	—	—	—	—	—
1101 00 00 900	—	—	—	—	—	—	—	—
1102 10 00 500	01	0	0	0	0	0	—	—
1102 10 00 700	—	—	—	—	—	—	—	—
1102 10 00 900	—	—	—	—	—	—	—	—
1103 11 10 200	—	—	—	—	—	—	—	—
1103 11 10 400	—	—	—	—	—	—	—	—
1103 11 10 900	—	—	—	—	—	—	—	—
1103 11 90 200	—	—	—	—	—	—	—	—
1103 11 90 800	—	—	—	—	—	—	—	—

(!) The destinations are identified as follows:

- 01 all third countries,
- 02 other third countries,
- 03 Algeria.

NB: The zones are those defined in Commission Regulation (EEC) No 2145/92 (OJ No L 214, 30. 7. 1992, p. 20).

## II

(Acts whose publication is not obligatory)

## COUNCIL

## COUNCIL DECISION

of 7 February 1994

approving the Decision of the European Parliament on the regulations and general conditions governing the performance of the Ombudsman's duties

(94/114/ECSC, EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 138e (4) thereof,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 20d (4) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 107d (4) thereof,

Having regard to the opinion of the Commission,

Having regard to the Decision of the European Parliament of 17 November 1993,

HAS ADOPTED THIS REGULATION:

*Article 1*

The draft Decision of the European Parliament of 17 November 1993 on the regulations and general condi-

tions governing the performance of the Ombudsman's duties is hereby approved.

*Article 2*

This Decision shall be notified to the European Parliament and published in the *Official Journal of the European Communities*.

Done at Brussels, 7 February 1994.

*For the Council*

*The President*

Th. PANGALOS

**COUNCIL DECISION**  
**of 7 February 1994**  
**appointing members of the Court of Auditors**

(94/115/ECSC, EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 45b (3) thereof,

Having regard to the Treaty establishing the European Community, and in particular Article 188b (3) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 160b (3) thereof,

Having regard to the Treaty establishing a Single Council and a Single Commission of the European Communities, and in particular Article 22 thereof,

Having regard to the opinion of the European Parliament<sup>(1)</sup>,

Whereas the terms of office of Mr Roger Camus, Mr Ole Warberg, Mr Giorgio Clemente, Mr Carlos Manuel Botelho Moreno, Mr Richie Ryan and Mr Josep Subirats Pinana expired on 17 October 1993;

Whereas further appointments should be made swiftly,

HAS DECIDED AS FOLLOWS :

*Sole Article*

Mr Patrick Everard, Mr Ole Warberg, Mr Giorgio Clemente, Mr Armindo de Jesus De Sousa Ribeiro, Mr Barry Desmond and Mr Antoni Castells Oliveres are hereby appointed members of the Court of Auditors for the period from 10 February 1994 up to and including 9 February 2000.

Done at Brussels, 7 February 1994.

*For the Council*

*The President*

Th. PANGALOS

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<sup>(1)</sup> OJ No C 20, 24. 1. 1994 and opinions delivered on 15 December 1993 and 20 January 1994 (not yet published in the Official Journal).

**COUNCIL DECISION**  
**of 14 February 1994**  
**appointing a member of the Economic and Social Committee**  
**(94/116/EC, Euratom)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles G 194 and I 166 thereof,

Having regard to the Council Decision of 24 September 1990 appointing the members of the Economic and Social Committee for the period ending on 20 September 1994 <sup>(1)</sup>,

Whereas a seat has become vacant on the Economic and Social Committee following the death of Mr Tomàs Roseingrave, notified to the Council on 6 September 1993;

Having regard to the nominations submitted by the Irish Government on 16 December 1993,

Having obtained the opinion of the Commission of the European Communities,

HAS DECIDED AS FOLLOWS:

*Sole Article*

Mr Michael J. Lynch is hereby appointed member of the Economic and Social Committee in place of Mr Tomàs Roseingrave for the remainder of the latter's term of office, which runs until 20 September 1994.

Done at Brussels, 14 February 1994.

*For the Council*

*The President*

Y. PAPANTONIOU

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<sup>(1)</sup> OJ No L 290, 23. 10. 1990, p. 13.

## COUNCIL DECISION

of 21 February 1994

**laying down the minimum requirements as regards structure and equipment to be met by certain small establishments ensuring the distribution of fishery products in Greece**

(94/117/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/493/EEC of 22 July 1991 laying down the health conditions for the production and the placing on the market of fishery products<sup>(1)</sup>, and in particular Article 14 thereof,

Having regard to the proposal from the Commission,

Whereas some islands and certain coastal regions in Greece may, by reason of their isolation or remoteness, be subject to specific constraints as far as their supply is concerned;

Whereas, on these islands and in these regions, there are small smoking and salting establishments for fishery products which play a vital role in supplying the local market of the place in which they are situated;

Whereas it is necessary, in order to prevent these small establishments from disappearing, that less stringent minimum structural and equipment requirements be applied to them than those laid down in Directive 91/493/EEC, until those specific constraints disappear from those islands and regions of Greece;

Whereas, in order to avoid distortions of competition within the Community, to these minimum requirements must be added limits as regards the establishments' production volume and the marketing area of the products in question;

Whereas the fishery products processed by these small establishments are to be reserved for the supply of the local market and are not to bear the identification mark referred to in Article 3 (1) (f) of Directive 91/493/EEC,

HAS ADOPTED THIS DECISION:

### *Article 1*

This Decision shall apply to certain establishments exclusively carrying out smoking and salting operations on

fishery products on islands or in certain coastal regions in Greece which are subject to particular supply constraints.

### *Article 2*

The establishments referred to in Article 1 shall meet the minimum requirements with regard to structure and equipment set out in the Annex.

### *Article 3*

The Greek competent authority shall ensure that the minimum requirements set out in the Annex shall apply to the establishments referred to in Article 1, provided the following conditions are met:

- the annual production of the establishment's salted or smoked products does not exceed 36 tonnes,
- the marketing area of the products in question is either limited to the territory of the island on which the establishment is situated or is within a radius of 50 kilometres of the establishment,
- the products do not bear the identification mark referred to in Article 3 (1) (f) of Directive 91/493/EEC, but do bear a national mark which allows the monitoring of the distribution by the competent authority.

### *Article 4*

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

It shall apply from 1 January 1993.

### *Article 5*

This Decision is addressed to the Member States.

Done at Brussels, 21 February 1994.

*For the Council*

*The President*

G. MORAITIS

<sup>(1)</sup> OJ No L 268, 24. 9. 1991, p. 15.

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*ANNEX***Minimum requirements with regard to structure and equipment**

The general conditions relating to premises and equipment provided for in Chapter III, section I, of the Annex to Directive 91/493/EEC shall apply, with the exception of the following provisions:

1. Under point 2 (c) insofar as the existence of ceilings or roof linings is concerned and point 2 (g) insofar as non-hand-operable taps are concerned;
  2. Under point 3, insofar as the existence of a cold room in each establishment is concerned, provided establishments have the possibility of using a collective cold room which meets the requirements of Directive 91/493/EEC and is located close to the establishments;
  3. Under point 6, insofar as waste containers and premises for the storage therefore are concerned;
  4. Under point 9, insofar as changing rooms, wash basins and lavatories are concerned;
  5. Under point 10, insofar as lockable room for the exclusive use of inspection staff is concerned;
  6. Under point 11, insofar as adequate facilities for cleaning and disinfecting means of transport are concerned.
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# COMMISSION

## COMMISSION DECISION

of 21 December 1993

concerning aid to be provided by the Irish Government to the Aer Lingus group,  
an undertaking mainly providing air transport services

(Only the English text is authentic)

(Text with EEA relevance)

(94/118/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having given notice in accordance with the above Article to interested parties to submit their comments and having regard to those comments,

Whereas :

I

By letter of 12 August 1993 registered with the Commission's Secretariat-General on 2 September 1993, the Irish authorities, upon a written request from the Commission, notified the Commission, in accordance with Article 93 (3) of the Treaty, of their intention to inject £ Irl 175 million equity into the Aer Lingus group (hereinafter 'Aer Lingus') over a period of three years.

The proposed equity injection forms part of a restructuring plan called 'Strategy for the Future' (hereinafter 'the plan'), which the Irish authorities enclosed with the notification. The plan was approved by the Irish authorities on 6 July 1993 and the Irish Minister for Finance, as shareholder, was authorized to inject £ Irl 175 million equity into Aer Lingus. This injection is to be carried out as follows : £ Irl 75 million in 1993, £ Irl 50 million in 1994 and £ Irl 50 million in 1995.

The timing and amount of the equity injection are subject to the following conditions :

- (a) the conclusion of an agreement with the appropriate Irish unions on an essential £ Irl 50 million annual reduction in Aer Lingus' costs ;
- (b) production of satisfactory evidence that the proposed measures are being implemented in full ;
- (c) formal acceptance by the Commission of the strategic plan and the proposed equity injection.

The purpose of the equity injection is to reduce Aer Lingus' burden of debt and help to restore its interest cover and debt equity ratios to prudent levels within an applicable period.

In the notification the Irish authorities expressly recognized that the proposed equity injection in Aer Lingus is an aid pursuant to Article 92 of the Treaty. However, they maintained that the aid might be considered compatible with the common market pursuant to both Article 92 (3) (a) as regional aid and Article 92 (3) (c) as aid to facilitate the development of certain activities.

On 13 October 1993 the Commission decided to initiate the procedure pursuant to Article 93 (2) of the Treaty with regard to the planned £ Irl 175 million equity injection in favour of Aer Lingus. In view of the severe negative financial position of Aer Lingus at the time of the notification, the Commission decided, under the market economy investor principle, that the provision of capital contained aid elements pursuant to Article 92 (1). Moreover, the aid character of the equity injection was not contested by the Irish Government. The main reasons for initiating the procedure were the Commission's doubts on several aspects of the restructuring plan and its effects on competition. In particular, the Commission needed to be assured that :

- the cost reductions, which involve a number of measures including negotiated redundancies, are realized as envisaged in the plan,



- the payment of the second and third tranches of the aid are subject to the company achieving specific targets, in particular with regard to productivity improvements,
- the aid is the last for the period in question,
- the objectives pursued by the new policy adopted by Aer Lingus at Shannon Airport do not prejudice the viability of the plan,
- the aid is not used to transfer Aer Lingus' difficulties to its competitors and, particularly, does not have unacceptable adverse competitive effects on certain routes where traffic level is very high and competition is intense, such as the London-Dublin route,
- the aid does not have the effect of strengthening Aer Lingus' position to an extent contrary to the common interest in ground handling activities at Irish airports,
- the corporate restructuring of the company into four divisions is subject to the stamp and capital duties which apply to similar corporate operations in Ireland.

By letter of 20 October 1993 the Commission informed the Irish Government of its decision and gave it due notice to submit its comments. This letter was published in the Official Journal <sup>(1)</sup>, and pursuant to Article 93 (2) of the Treaty, the other Member States and interested parties were also invited to submit their comments.

## II

The Irish authorities presented their comments within the procedure by letters of 24 November and 9 and 13 December 1993, by fax of 8 December 1993 and during several meetings held with the relevant officials of Directorate-General VII of the Commission in Dublin and Brussels. The Irish authorities did not contest the legal and economic analysis which led the Commission to qualify the equity injection as aid pursuant to Article 92 (1) and open the Article 93 (2) procedure. The Irish authorities addressed all the issues that the Commission raised in the opening of the procedure and which required further clarification. In particular:

1. with regard to the reduction in costs, the Irish Government confirmed to the Commission that 'it will not make the equity injection unless it is satisfied that the £ Irl 50 million annual reduction in costs in Aer Lingus is being implemented in full ... and will require independent verification that the £ Irl 50 million annual reduction in costs in Aer Lingus is being implemented in full.' Moreover, the Irish Government informed the Commission that 'the cost

cutting programme has been negotiated and agreed between the company and the relevant unions' and that 'the way is now clear for Aer Lingus to successfully implement the necessary £ Irl 50 million cost cutting programme ...';

2. with regard to the linkage between the payment of the second and third tranches of the aid and the achievement of some more specified targets, the Irish Government undertook that it 'will report to the Commission on the progress of the restructuring programme, on the financial and economic development of the Aer Lingus group and its companies, and on the achievement of the commitments' made in previous correspondence with the Commission with regard to productivity improvements. Moreover, the Irish Government undertook that 'the report will be given at least four weeks before the payments of the second and third tranches of the aid in 1994 and 1995 in order to give the Commission the possibility to comment if necessary';
3. with regard to the final character of the aid, the Irish Government assured the Commission that the present aid to Aer Lingus 'is the last one for the period of the restructuring' and clarified its 'intention not to grant any further aid to Aer Lingus in the future';
4. according to the Irish Government the new strategy envisaged for Shannon Airport reflects the commercial and financial considerations of the airline. The strategy would have been freely chosen by Aer Lingus among several 'options ranging from the status quo (leading to eventual closure) to full integration with a United States carrier'. The corresponding forecast financial results have been based on very conservative assumptions. In the light of the latest information on the traffic trend on the routes between Ireland and the USA, the Irish Government is confident that the new strategy will produce strong financial results. As regards Boston, the Irish Government assured the Commission that 'it has not imposed any obligation on Aer Lingus to fly the Shannon-Boston route during the non-tourist season.' Moreover the Irish Government stated that 'Boston is a niche market for Aer Lingus and winter cancellation would have a negative impact on summer performance, particularly in the context of business traffic and cargo';
5. as regards the effects of the aid on Community trade, the Irish Government maintains that 'they are not interfering and will not interfere with the commercial management of the airline'. The Irish Government states that the equity injection will not be used to subsidize loss-making routes. As a follow-up to the restructuring, the Government will require the airline to operate on each major route group in a commercially viable fashion. Moreover, the plan will not be over-

<sup>(1)</sup> OJ No C 291, 28. 10. 1993, p. 4.

expansive and will not enable Aer Lingus to increase its Community market share at its competitors' expense. Aer Lingus will not expand its existing operating fleet<sup>(1)</sup> over the restructuring period, other than for the transatlantic routes where additional aircraft may be required for the peak summer season to maintain capacity levels, in the event that the 747-100 aircraft currently operated is replaced by a smaller aircraft. Aer Lingus does not intend to change the general pattern of its operations over the restructuring period. Furthermore, it does not have market share objectives and its operations will be based solely on profit motives.

The Irish Government confirmed that the money received will be used entirely to meet the restructuring costs and reduce the debts of Aer Lingus in order to restore the company's financial position. Moreover, the Irish Government stated that 'Aer Lingus will not, for the duration of the programme buy shareholdings in any other Community airline.'

The Irish authorities state that under the proposed restructuring of the group the new divisions, including Aer Lingus Express, if and when established, 'will become and operate as separate legal entities'. To ensure transparency the accounts of these companies will be separately audited.

Regarding Aer Lingus Express the Irish Government informed the Commission that the establishment of this low-cost operation has not, for the time being, been decided. The Government gave the assurance that the operation of Aer Lingus Express 'will only be put in place when the airline can demonstrate in full detail (i.e. on both costs and revenues) that such a low cost operation can operate profitably in an already very competitive low cost market.' Moreover, if created before the end of the restructuring period Aer Lingus Express will operate within the framework of Aer Lingus' existing operating fleet.

The Irish Government states, with regard to the traffic situation on the Dublin-London route that data on load factors show that this route is not affected by overcapacity and that '... it could be argued that the fact that two extra carriers are planning to start services on the route and that sea carriers have increased passenger numbers by 8 % in 1993 on 1992, shows that there is a shortage of air capacity.'

<sup>(1)</sup> The fleet operating scheduled services consists of three B747-100, six B737-400, ten B737-500, six Fokker 50, four SAAB-340B; in addition the company may use two B767 for peak services only, as well as four freighters (one B737, three DC8).

However, the Irish Government gave assurances concerning capacity not to be exceeded in 1994 and 1995. In this respect the Irish Government stated that 'for the calendar year 1994 ... the number of seats offered for sale to the public on Aer Lingus scheduled services will not be more than 3,42 million for Ireland/United Kingdom routes and 1,43 million on the Dublin/Heathrow route.' These figures reflect Aer Lingus' capacity in the 12 months prior to notification of the aid. The Irish Government informed the Commission that by agreement between the Commission and Ireland, independent assessors will be appointed by mid-1994 to review actual and prospective performance for 1994. Should the growth of the United Kingdom/Ireland market so warrant, the capacity figures mentioned above would be adjusted to reflect such growth. At the same time, an independent assessment of actual and prospective market growth will be carried out for 1995 so as to permit Aer Lingus additional capacity in line with any increase in the total market;

6. regarding exclusive rights for ground handling at Irish airports, the Irish Government stated that 'it is inaccurate to say that Aer Lingus has exclusive rights at the Irish airports'. Every airline is allowed to self handle at Irish airports and the percentage of third party traffic which is handled by Aer Lingus is very low;
7. as regards duties, the Irish Government gave the Commission the assurance that, 'under Irish legislative provisions, neither stamp duty nor capital duty will be payable on the proposed restructuring and equity injection.'

### III

The United Kingdom Government, a number of Aer Lingus's competitors on the United Kingdom/Ireland routes, in particular Ryanair and British Midland, and other interested parties commented on the case. In general all these parties supported the Commission's decision to open the Article 93 (2) procedure and raised a number of issues which are partly linked to the doubts expressed by the Commission's decision. The third parties' common concerns were mainly related to the fact that the aid to Aer Lingus may affect trading conditions to an extent contrary to the common interest. These concerns may be summarized as follows:

— the restructuring of Aer Lingus, and particularly the establishment of Aer Lingus Express, may maintain or create overcapacity on certain United Kingdom-Ireland routes. The equity injection would enable Aer Lingus to maintain on these routes the same level of capacity or increase the present capacity at uneconomic fares. Aer Lingus might with the help of the aid operate new routes or re-enter routes previously abandoned. The creation of overcapacity would harm the competitors' position by reducing their load-factors, obliging them to offer uneconomically low fares or forcing them out of business<sup>(1)</sup>,

— the possibility for Aer Lingus to use the aid to set its fares at a level below its costs. This price practice on a Community route would be carried out in order to compete with carriers which are more efficient or which offer a cheaper service on that route,

— the possible lack of transparency of the financial relations between the companies belonging to the Aer Lingus group. Some of the interested parties maintain that as a consequence of the restructuring Aer Lingus will set up a low-cost carrier (Aer Lingus Express) which will not operate independently but will be cross-subsidized. The introduction of low-cost operations on routes which are cost driven could harm the competitive position of the competitors and in certain cases could even force them out of business,

— the possibility for Aer Lingus to use the aid to buy additional shareholdings in Community airlines,

— minor concerns related to Aer Lingus' privileged position at Irish airports and the fiscal treatment of the corporate restructuring.

Moreover, Aer Lingus' union (CRC) also intervened within the procedure arguing that no aid was involved and that in any case the State intervention could be authorized pursuant to Article 92 (3) (a) and (c) without conditions.

<sup>(1)</sup> It is worth noting that another competitor submitted a complaint to the Commission on 19 April 1993, alleging that Aer Lingus has infringed Article 86 of the Treaty by engaging in predatory pricing on the London Heathrow-Dublin route, which the Commission is at present investigating.

All these comments were transmitted to the Irish Government, which replied to the above arguments within the procedure.

#### IV

The Aer Lingus group currently comprises two companies, Aer Lingus plc and Airlinte Eireann plc. These two companies share common ownership, a common management and board of directors, and their accounts are combined.

Besides air transport services, the major activities pursued by the group are :

- (a) airline services (maintenance, ground handling and other ancillary services to aviation). The main subsidiary is TEAM Aer Lingus (hereinafter 'TEAM') which employs some 2 000 people and is engaged in aircraft services, component overhaul and engineering support services ;
- (b) hotels. Aer Lingus own and manages, under the Copthorne brand name, a number of hotels situated in the major cities of the United Kingdom and some European cities such as Paris and Brussels ;
- (c) commercial holdings. Aer Lingus manages a portfolio of companies engaged in computer services, personnel service industries, and a minority share holding in GPA, the aircraft lease company.

Air transport is the core and by far the most important activity of the group. Aer Lingus is one of the smallest of the former 'flag-carriers' of the Community. It operates 29 airplanes for scheduled passenger services. The group employs about 12 700 people, 5 000 of which are in the airline sector, the group's turnover was £ Irl 817 million in the financial year 1992/93 (£ Irl 522 million for the airline).

Aer Lingus is the main provider of services within, to and from Ireland. The main routes operated by Aer Lingus are in order of importance : Ireland-London (this is the largest network. In 1992/93 the passengers carried by all the airlines were 2 980 000 of which 61 % was carried by Aer Lingus. However, Aer Lingus' market share on the London-Dublin routes has declined sharply to 46 % in the April/September 1993 period), Ireland-Continental Europe, Ireland-United Kingdom provincial destinations, and the transatlantic routes (New York and Boston are the only two destinations). The routes flown are predominantly short-haul, even the north Atlantic ones are the

shortest flown by any Community carrier. Accordingly, the airline's fleet is mainly composed of B737 planes, which were acquired at the end of the 1980s and the beginning of the 1990s, and make up an extremely young short-haul fleet indeed. On the contrary, the fleet for the transatlantic routes consists of three Boeing 747-100 aircraft dating from 1970/71, which it is intended to replace before 1995/96. Overall, Aer Lingus has, with an average age of 5,3 years, one of the youngest fleets in Europe.

Aer Lingus, after nine years of profitability, has been making losses since 1991/92. For the financial year 1991/92 the group posted a pre-tax loss of £ Irl 3,1 million and a £ Irl 11,8 million net loss. In the financial year 1992/93 the net loss increased to £ Irl 188 million. Such a negative result is mainly due to the poor operating results, restructuring costs and the entire write-off of shares in GPA, due to the collapse of its flotation a year ago<sup>(1)</sup>. The collapse of the value of GPA shares contributed £ Irl 44 million to the 1992/93 losses and impacted negatively on Aer Lingus' reserves by a further £ Irl 69,6 million. Apart from GPA the negative result is also due to the poor performances of the other divisions. The services division profit before exceptional items and tax plummeted from some £ Irl 14 million in 1991/92 to £ Irl 6 million one year later. In 1992/93 TEAM made a loss, before tax, of £ Irl 2,5 million following a profit of over £ Irl 3 million in the previous year.

Aer Lingus' main problems are however caused by the airline division which has been loss-making since 1989/90 posting pre-tax losses of £ Irl 42 million in 1990/91, £ Irl 38 million in 1991/92, and £ Irl 50 million in 1992/93 (in addition to £ Irl 60 million for exceptional items, including restructuring costs and the write-off of the GPA participation). Comparisons with other European airlines show that the Irish carrier appears in a worse position than some major competitors.

Aer Lingus has been affected by the downturn in the sector as have some other airlines, as well as by the major structural changes arising from liberalization.

This situation is not expected to improve in the near future. The forecast loss before tax and exceptional items,

(1) It must be noted that despite its negative outcome the investment in GPA made in 1975 has been largely positive. Past sales of GPA shares and dividends paid by GPA to Aer Lingus have brought to Aer Lingus' balance sheet £ Irl 70 million profit over the cost of the original investment.

if restructuring measures are not promptly undertaken, is £ Irl 58 million in 1993/94 (£ Irl 64 million for the air transport division).

The negative impact of the recent results on the financial position of Aer Lingus has been very serious. The shareholders funds (equity) have decreased from £ Irl 361 million in 1991/92 to £ Irl 93 million in 1992/93. The group's net debt has increased from £ Irl 494 million in 1991/92 to £ Irl 539 million in 1992/93. The debt/equity ratio has increased by 378 %, from 1,37 in 1991/92 to 5,18 in 1992/93.

This shows that because of its poor results Aer Lingus is facing a serious financial crisis.

Aer Lingus' problems seem, for a large part, due to external factors, notwithstanding some important internally controllable factors which are discussed below. The most evident external factor lies in the structural character of Aer Lingus' markets which, to a great degree, are dominated by leisure traffic.

Aer Lingus' home market is very small and generally loss making. In fact, the Irish Government intends to impose public service obligations on the major domestic routes to guarantee a sufficient level of air traffic.

Aer Lingus' key market, Ireland-United Kingdom, following an agreement between the Irish and British governments, was significantly liberalized from 1986. The deregulation and the designation by the Irish Government of other Irish carriers led to increased capacity and competition on the Ireland-United Kingdom routes. British Airways withdrew its services on the London/Dublin route in 1991 because of the poor profit perspectives. Aer Lingus has been facing fierce competition from privately owned low-cost carriers (such as British Midland and Ryanair), resulting in lower yields and operating margins. To face such a situation Aer Lingus had reduced, by the end of 1992, its capacity on several of its Community routes. The most significant reduction was a 20 % decrease of the airline's capacity on the Dublin-London route. This was achieved by ending flights between Dublin and Gatwick and reducing the number of flights between Dublin and Heathrow.

The airline's position on the north Atlantic market has been seriously harmed by the intensified competition on the United Kingdom-USA routes. The American mega-carriers have introduced new services to and from London, and direct flights to the USA from northern British cities such as Manchester and Glasgow which are closed to Ireland. As a consequence the share of travellers using indirect flights to Ireland increased from 40 to 55 % in 1992. The competitive position of the airline on the north Atlantic has also been weakened by the policy pursued by the Irish Government with regard to Shannon airport which serves the west and the mid-west of Ireland. This policy, which required every transatlantic flight to and from Ireland to touch down at Shannon, has its origins at the time when a stop-over in Shannon was necessary for technical reasons; it has been maintained over almost 50 years to support employment and to contribute to the development of the Irish mid-west region. It has, however, also denied Aer Lingus the possibility of operating direct flights from Dublin, where the airline is based. The compulsory Shannon stopover has prevented Aer Lingus from developing Dublin as a hub, caused additional costs, and made Aer Lingus lose traffic on the Dublin-USA routes which has had an important negative impact on the airline's overall results. In fact, Aer Lingus has been losing about £ Irl 10 million per year on transatlantic routes in recent years.

A further cause of the present crisis is the fleet renewal programme which was started, as with many other airlines, on a basis of over-optimistic economic forecasts in the 1980s. There was also a need at that time to replace old aircraft. New planes were delivered starting in late 1987 throughout the crisis till April 1993 and had to be financed through high-interest loans at a moment when the worldwide economy was entering a slump.

Aer Lingus is also suffering from its high-cost structure and relatively poor productivity, which leaves room for substantial improvements. The lack of productivity is particularly problematic if one takes into account that the airline is carrying a high degree of the leisure traffic which puts pressure on its yields. The carrier, therefore, is in a difficult situation where the 'scissor' of low yields and low productivity is cutting into its operating results.

The seasonality of Aer Lingus' business is a further problem.

The Irish authorities enclosed with their notification a plan, which is to be implemented by 1995, for the restructuring of Aer Lingus' financial situation and commercial viability. The plan is mainly aimed at restructuring the core airline business. This objective is to be achieved by:

- (a) restructuring the group into four operating divisions :
  - Aer Lingus, which will continue to operate the existing routes within Ireland, to the United Kingdom, and to continental Europe,
  - Aer Lingus Shannon, based at Shannon airport, which will operate on the transatlantic routes to the USA,
  - Aer Lingus Express, which will be a low-cost/low-fare carrier operating mainly on the highly competitive Ireland-United Kingdom market,
  - subsidiary and support companies (e.g. TEAM), which will become independent profit centres responsible for their own cost structure;
- (b) amending the Shannon stopover policy. Under the new plan the transatlantic fleet is to be entirely based at Shannon. Shannon will continue to be directly linked to New York and Boston (a twice weekly non-stop service to Boston in the winter which increases to six weekly services in the summer with connection to Dublin all year round and a daily non-stop service to New York during the summer period only). In addition a service will be operated all the year from Shannon to Dublin and then non-stop to New York;
- (c) reducing the group's cost base by some £ Irl 50 million per year. This target is to be achieved by cutting payroll and overhead expenditures. Of the total saving, an amount of some £ Irl 34 million relates to the payroll (which represent 80 % of Aer Lingus' controllable costs.) For this purpose up to 1 530 redundancies (12 % of the group total workforce) may be necessary (1 280 jobs in the airline sector and 250 at TEAM);
- (d) disposal of non-core assets, mainly the Copthorne Hotel chain, which was valued in the 1991/92 annual report at £ Irl 235 million (before taking account of associated debt).

As a consequence of this new strategy Aer Lingus expects to return to profitability in 1994/95, and to reduce its net debt from £ Irl 539 million at 31 March 1993 to £ Irl 102 million at 31 March 1997.

The split-up of the group into four independent divisions should help to increase flexibility as well as transparency regarding profit and loss making.

## V

Article 92 of the Treaty provides that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the common market in so far as it affects trade between the Member States.

In the present case the Irish authorities have planned to inject £ Irl 175 million equity into the State-owned company Aer Lingus by way of a capital increase, in three tranches.

The Treaty establishes the principle of neutrality with regard to the system of property ownership existing in the Member States and the principle of equality between public and private undertakings (Article 222). As a consequence of these principles the Commission's action cannot prejudice or advantage public entities when they inject capital into undertakings. However, the Commission must investigate financial intervention from public funds into companies to prevent Member States from infringing, through State aid, fair competition within the common market.

The Commission considers that in the case of financial injections from public funds no aid is involved if there are some private minority shareholders who participate in the operation proportionately to their shareholdings. It is essential that the private investors' shareholdings have economic relevance<sup>(1)</sup>. The present case cannot, however, be examined under this principle because Aer Lingus, with the exception of the directors' qualifying shares, is 100 % owned by the Irish Government.

In determining whether State aid is involved the Commission bases its assessment on the market economy investor principle. According to this principle no State aid is involved when fresh capital is contributed in circumstances that would be acceptable to a private investor operating under normal market economy conditions<sup>(2)</sup>.

The Court of Justice has stated that the conduct of a private investor, with which the intervention of the public

investor must be compared, must be at least the conduct of a private holding company or of a public holding or of a private group pursuing a structural policy whether general or sectoral, and guided by prospects of profitability in the longer term<sup>(3)</sup>.

In the present case the Commission is of the opinion that, in the light of the particularly difficult financial position of Aer Lingus, no private investor would have accepted to invest equity in the airline.

The Irish authorities have decided to intervene at a particularly difficult moment when the airline, burdened by debts, was threatened with insolvency. In the light of Aer Lingus' financial weakness and liquidity crisis the intervention is aimed at rescuing the company and ensuring its survival.

Aer Lingus' financial situation and the structure and volume of its debts are such that no private investor, operating under market conditions, would have been able to expect a normal return on the capital invested within a reasonable time.

The aid, given the strong and lively degree of competition existing on most of Aer Lingus' routes, could distort competition between Community carriers. Moreover, the aid, given the cross-border characteristics of the sector involved, which by its nature is internationally orientated, affects trade between the Member States. This is particularly true for the United Kingdom-Ireland market, which was liberalized in 1986. The United Kingdom-Ireland market, which is the most important market for Aer Lingus, is characterized by very high traffic volumes and fierce competition. This is the geographical market where, because of its peculiarities, aid may have stronger repercussions on trade and on Aer Lingus' competitors.

Therefore the Commission is of the opinion that the projected equity injection into Aer Lingus, which has been notified by the Irish authorities as aid in accordance with Article 93 (3) of the Treaty, is an aid pursuant to Article 92 (1).

The aid to Aer Lingus cannot be considered as compatible with the common market pursuant to Article 92 (2) of the Treaty, since the aid does not correspond to any of the hypotheses provided under that provision.

<sup>(1)</sup> See Commission communication to the Member States concerning public authorities holdings in company capital of 17 September 1984, Bulletin of the European Communities 9-1984.

<sup>(2)</sup> See Commission communication concerning public authorities holdings, *op. cit.* Judgment of the Court of Justice in Joined Cases 296 and 318/82, The Netherlands and Leeuwarder Papierwarenfabrik v. Commission [1985] ECR 809, p. 823, paragraph 17.

<sup>(3)</sup> See judgment of 21 March 1991 in Case 305/89, Italy v. Commission, [1991] ECR I-1603, p. 1640, paragraph 20.

Article 92 (3) (a) and (c) provide for exceptions in respect of aid to promote or facilitate the development of certain regions. The Irish authorities maintain that the aid may be exempted pursuant to Article 92 (3) (a) as regional aid. This statement is based on the assumption that Ireland is within the European Regional Development Fund, an Objective 1 region, being a disadvantaged region with a per capita GDP below 75 % of the Community average. The Irish authorities argue that an efficient system of access transport is so crucial to the economy of the country that Ireland cannot risk becoming dependent on airlines based abroad. Should Aer Lingus fail to survive, the result would be devastating for the Irish economy in terms of access transport, industry, trade, tourism, employment, and the Irish aviation sector generally.

The Commission does not share the Irish authorities' opinion on the applicability of Article 92 (3) (a) to the aid to Aer Lingus. Even though Ireland is a region within the scope of Article 92 (3) (a), the aid under scrutiny is not a general scheme from which all the airlines based in Ireland, linking it with the rest of the world, may benefit. The aid is an *ad hoc* measure which helps the State-owned carrier to overcome its deep financial crisis and maintains Aer Lingus on the market. Therefore, Article 92 (3) (a) cannot be applied to the present case.

As regards Article 92 (3) (b) it is apparent that the aid is not intended to promote the execution of an important project of common European interest nor to remedy a serious disturbance in the Irish economy. In any case the Irish authorities have not invoked this provision.

With regard to the exception pursuant to Article 92 (3) (c) for 'aid to facilitate the development of certain economic activities', the Commission may consider some restructuring aid as compatible with the common market if it meets a number of conditions<sup>(1)</sup>. These conditions must be seen in the context of the two principles enunciated in Article 92 (3) (c): the aid must be required for developing the activity from the standpoint of the Community and the aid may not adversely affect trading conditions to an extent contrary to the common interest<sup>(2)</sup>.

These criteria have been interpreted in a sectoral (aviation) context in Memorandum No 2 which stipulates that the

Commission may, in certain cases, decide in accordance with Article 92 that aid may be granted to individual airlines which have serious financial difficulties, provided certain conditions are met:

- (a) the aid must form part of a programme, to be approved by the Commission, to restore the airline's commercial viability, so that it can, within a reasonably short period, be expected to operate viably without further aid;
- (b) the aid in question must not transfer the difficulties from that Member State to the rest of the Community;
- (c) any such aid must be structured so that it is transparent and can be verified.

In the context of increased competition, and in particular of the liberalization introduced in the Community in the air transport sector, following the adoption of the third package<sup>(3)</sup>, the Commission must follow a strict policy of control of State aid to avoid any effects which would be contrary to the common interest.

The Irish authorities invoked the Article 92 (3) (c) exemption in favour of the notified aid. According to the Irish authorities the equity injection, forming part of a one-off financial restructuring package aimed at restoring the airline's viability within a short period, should benefit from an exemption as aid to promote the development of certain economic activities. This intervention would enable the airline to deal with the financial burden of the past and finance the necessary transition towards viability. Moreover, the financial restructuring would not affect trading conditions between the Member States to an extent contrary to the common interest. On the contrary, the aid will have the effect of preserving and promoting competition through the continuity of Aer Lingus and maintaining a high-quality and reliable air service between Ireland and the Community partners.

It is doubtless that Aer Lingus, like some other State-owned Community carriers, has been forced to create jobs, keep fares low and in general carry out obligations that the airline would not have assumed taking into consideration only its commercial interests.

<sup>(1)</sup> Eighth report on competition policy, point 176.

<sup>(2)</sup> See the Judgment of the Court of Justice of 17 September 1980 in Case 730/79, Philip Morris v Commission, [1980] ECR 2671.

<sup>(3)</sup> Council Regulations (EEC) No 2407/92, (EEC) No 2408/92, and (EEC) No 2409/92 (OJ No L 240, 24. 8. 1992, pp. 1, 8 and 15).

The criteria set out by Article 92 (3) (c) were systematically verified in order to assess the compatibility of the restructuring aid for Aer Lingus.

1. The Commission verified whether the aid was justified by the circumstances of the industry concerned.

The Community aviation industry appears, at the end of 1993, to have overcome the worst of the economic crisis which started with the Gulf war in 1990 and which has been further aggravated by worldwide economic recession. Most airlines are still experiencing a drastic downturn or stagnation of revenues and profits which has lasted much longer than expected. However, in 1992 passenger traffic increased by 14 % (AEA airlines) thereby recovering more than the loss in passengers of the previous year. This trend has been confirmed in 1993 when scheduled passenger traffic increased by about 9 % over 1992 figures.

Despite traffic growth most of the Community airlines' financial results are still unsatisfactory. One of the main reasons for this is that the aircraft ordered at the end of the 1980s, on the basis of over-optimistic forecasts, are now being delivered and put into operation. As a consequence, capacity offered has been growing faster than demand and therefore load factors are, for many airlines, still below the break-even point. In order to fill the seats offered, the airlines are compelled to offer promotional fares particularly during the winter season. The decrease in business traffic, which is a consequence of the general economic recession contributes to a large extent to the reduction of profits and is another reason for the poor results of most Community airlines.

However, the forecast for the aviation industry is, in the long run, quite positive. If the general economy manages to recover, better results are expected over the next two years. Overcapacity appears to be a temporary phenomenon which might be overcome around 1995. It is worth noting that some analysts even foresee, as a consequence of the growth in passenger demand and increase in the retirement of old aircraft in the 1990s, a capacity shortage by 1997<sup>(1)</sup>.

Therefore, the Commission does not believe that the aviation market of the Community is in a situation of general structural overcapacity; this conclusion is *a fortiori* valid for the United Kingdom/Ireland market, which was liberalized seven years earlier than the Community market, and is characterized by traffic

levels higher than the Community average. At any rate for the restoration of Aer Lingus' financial and economic viability, capacity reductions are not required. In fact, the Aer Lingus fleet which consists, as mentioned above of 29 planes used for scheduled services does not appear excessive in view of the different markets reserved by the company.

As regards the common interest and in the light of the above, the Commission considers that the restructuring of Aer Lingus will contribute to the development of air transport activity in a peripheral area of the Community. The Commission acknowledges the importance of Aer Lingus, as the largest Irish air carrier, which has traditionally been entrusted with the task of ensuring the links between Ireland and the rest of the Community and between Ireland and United States. The information collected in the course of the Article 93 (2) procedure has enabled the Commission to consider that the plan is sufficiently well structured and aims at a radical restructuring of the airline, which will be beneficial for both the Irish economy and for the interest of the Community as a whole.

In the light of the foregoing, the Commission considers that the genuine restructuring of Aer Lingus contributes to the development of the air transport sector from a Community standpoint.

2. The Commission has verified whether the aid is linked to the restructuring of Aer Lingus.

The restructuring plan forwarded by the Irish authorities covers a short period, mid-1993 to 1995. The central objective of the plan is to focus Aer Lingus' activities on air transport by disposing of the other non-transport related activities. Should Aer Lingus succeed in carrying out the restructuring envisaged in the plan it should become an efficient carrier able to restore its long-term viability within a reasonable time. The aid consists of £ Irl 175 million to be paid in three tranches. Aer Lingus will use 75 % of the first tranche (£ Irl 75 million), to finance voluntary redundancies and the remaining part to reduce its outstanding debt. The payment of the second and third tranches are subject to the condition, imposed by the Irish Government, that Aer Lingus will achieve the cost reductions envisaged in the plan. Moreover the Irish Government has undertaken not to grant any other aid to Aer Lingus over the restructuring period. The Irish Government has also declared that they do not intend to grant any further aid in the future. Under these circumstances it is beyond doubt that the capital injection is directly linked to the restructuring of the airline.

<sup>(1)</sup> ESG Aviation Services, see article in *The Avmark Aviation Economist* of September 1993, p. 15.



3. The Commission verified whether the aid is proportionate to the problem which it is designed to resolve so that distortion to competition is kept to the minimum and does not affect trading conditions to an extent contrary to the common interest.

The amount of aid involved (£Irl 175 million) appears to be adequate and proportionate to the aim of financing the transition and restore the airline's commercial viability. £Irl 175 million will be used to finance voluntary redundancies and to reduce debts. The equity injected into Aer Lingus will not lead to an overcapitalization of the airline but will simply bring its financial ratios into more prudent limits and, therefore, restore the financial balance. The Aer Lingus group will mainly finance its own recapitalization through its own resources and, in particular, through the sale of the Copthorne hotels<sup>(1)</sup>.

The strategy pursued by Aer Lingus in its restructuring plan is not over-expansionist. The Irish Government informed the Commission that the Aer Lingus group will not expand its operating fleet (as defined above) during the period of its restructuring and does not intend to change the general pattern of its operation over the same period. Aer Lingus does not, as the Irish Government confirmed, aim at increasing market shares and its operations will be profit orientated.

However, the Commission must ensure that the aid does not have certain adverse effects on Community trade by harming the competitive positions of some of Aer Lingus' competitors on the United Kingdom/Ireland market. This market is currently operated at very high levels of capacity utilization and is characterized by the entry of new 'regional' carriers. Moreover, considering that the United Kingdom is progressively recovering from recession the medium and long-term traffic perspectives are optimistic for all the routes from and to the United Kingdom. This is particularly true for the United Kingdom/Ireland market which is ethnically orientated and where demand is very strong.

In the light of the above, and taking into consideration that because of fierce price competition, load factors on the United Kingdom/Ireland market are higher than the Community average, the Commission does not consider that this market is at present affected by

(1) The restructuring should impact on the group's gearing ratio as follows: 499 % in 1993/94, 264 % in 1994/95, 75 % in 1995/96, and 41 % in 1996/97. The last two figures are mainly dependent on Aer Lingus' selling the hotels in the 1995/96 fiscal year.

overcapacity. The Commission does not share some of the third parties' allegations that the capacity levels on the United Kingdom/Ireland market as a whole or on some of its routes are artificially high. According to these parties these routes would be affected by overcapacity if Aer Lingus did not continue its uneconomically low fare policy. These allegations are based on mere hypotheses and not on a thorough economic analysis of the demand. However, the Commission acknowledges that in a dynamic market, characterized by intense competition, the risk of overcapacity is always present. The Commission, thus, is of the opinion that the assurances given by the Irish Government are of such a nature as to prevent the aid being used, for example, to drive off smaller competitors or increase capacity to unacceptable levels on the Ireland/United Kingdom market.

Therefore, the Commission takes note of the Irish Government's assurances that Aer Lingus will, for the duration of the restructuring programme, not increase capacity (expressed as number of seats offered), either on the United Kingdom/Ireland market as a whole, or on the Dublin-London Heathrow route, beyond the level realized in the 12 months prior to notification and that the money received will only be used as established in the restructuring plan. This does not preclude Aer Lingus from increasing the capacity should the traffic grow on that particular geographical market.

The Commission believes that the Irish Government's assurances are necessary conditions to prevent the aid affecting trading conditions to an extent contrary to the common interest and will enable Aer Lingus to compete fairly and freely in the common market, taking account of existing demand and future market growth.

4. The Commission verified whether its concerns expressed in its decision to open the Article 93 (2) procedure were well founded.

Apart from the issue relating to the effects of the aid on trade, which has been addressed above, the Commission is satisfied by the Irish Government's assurances on the other points set out in the letter opening the Article 93 (2) procedure. This decision is therefore adopted on the basis of the following assumptions:

- the cost reduction, as envisaged in the plan, is an essential condition of the payment of the second and third tranches of the aid,

- the cost reduction will be audited separately by an independent consultant,
- the company has reached and concluded an agreement with the unions on staff reductions,
- the new strategy pursued at Shannon Airport was freely chosen by the company and reflects its commercial considerations,
- the Irish Government will refrain from granting any other aid to Aer Lingus over the restructuring period,
- the corporate restructuring is not, under Irish law, subject to stamp and capital duty and this is not an individual or sectoral privilege in favour of Aer Lingus.

As regards ground handling at the Irish airports, the Commission, in the absence of Community legislation regulating this activity, is satisfied with the Irish comments and, in particular, with the fact that third parties are allowed to self-handle at Irish airports.

## VI

In the light of the foregoing, the aid, in the form of an equity injection to be awarded by the Irish Government to the Aer Lingus group to support its restructuring programme, may benefit from the derogation provided for pursuant to Article 92 (3) (c) of the Treaty provided that a number of requirements are fulfilled to ensure that the aid does not adversely affect trading conditions to an extent contrary to the common interest,

HAS ADOPTED THIS DECISION:

### *Article 1*

The restructuring aid to Aer Lingus in the form of £Irl 175 million equity injection to be awarded in three tranches in 1993, 1994, and 1995 is considered to be compatible with the common market pursuant to Article 92 (3) (c), provided that the Irish Government:

- (a) fulfils its commitment not to proceed with the payment of the second and third tranches should Aer Lingus fail to achieve the £Irl 50 million annual reduction in costs, and obtains an independent verification that the cost reductions are implemented in full;
- (b) fulfils its commitment to provide a report to the Commission on the progress of the restructuring programme, on the financial and economic development of the Aer Lingus group and its companies, in particular with regard to the productivity improvements as referred to in their letter of 24 November 1993. The report will be given at least four weeks before the payment of the second and third tranches of the aid in 1994 and 1995 in order to give the Commission, if necessary, the possibility to comment;
- (c) fulfils its commitment not to grant any further aid either in the form of equity injection or any other form to the Aer Lingus group;
- (d) fulfils its commitment not to expand Aer Lingus' operating fleet over the period of the restructuring plan other than for transatlantic operations where additional aircraft may be required to maintain capacity levels;
- (e) fulfils its commitment that, if created, Aer Lingus Express shall operate within the framework of Aer Lingus' operating fleet;
- (f) fulfils its commitment that under the restructuring, the European operations, the transatlantic operations, and if and when established Aer Lingus Express, will become and operate as separate legal entities with separate audited accounts which will allow for a transparent analysis of their various operations;
- (g) fulfils its commitment that the number of seats offered for sale to the public on Aer Lingus' scheduled services will not exceed in the calendar year 1994, for United Kingdom/Ireland routes, 3,42 million seats as a whole and, for the Dublin-London Heathrow route, 1,43 million seats for the same year;
- (h) fulfils its commitment that by agreement between the Commission and Ireland, independent assessors will be appointed in mid-1994 to review actual and prospective performance for 1994. If the growth of the Ireland/United Kingdom market so warrants, the figures set out in (g) will be adjusted to reflect such growth. At the same time, an independent assessment of actual and prospective market growth will be drawn up in order to determine Aer Lingus' additional capacity for 1995 in line with any increase in the total market;
- (i) fulfils its commitment not to interfere in the management of Aer Lingus for other than commercial reasons;

- (j) fulfils its commitment that Aer Lingus will refrain from acquiring shareholdings in any Community air carrier with the aid.

*Article 2*

The commitments provided for pursuant to Article 1 shall remain valid until 31 December 1995.

*Article 3*

This Decision is addressed to Ireland.

Done at Brussels, 21 December 1993.

*For the Commission*

Abel MATUTES

*Member of the Commission*

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