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[1] Text with EEA relevance

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[1] Text with EEA relevance

I

(Acts whose publication is obligatory)

DECISION No 466/2002/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 1 March 2002 laying down a Community action programme promoting non-governmental organisations primarily active in the field of environmental protection

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

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

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

Following consultation of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas:

(1) The Treaty provides for the development and the implementation of a Community environment policy and sets out the objectives and principles which guide that policy.

(2) The Action Programme introduced by Council Decision 97/872/EC of 16 December 1997 on a Community action programme promoting non-governmental organisations primarily active in the field of environmental protection [4] comes to an end on 31 December 2001. The Programme has been evaluated by the Commission and present and previous beneficiaries, revealing a strong support for its renewal or revision.

(3) The Sixth Environment Action Programme recognises the need for empowering citizens, and the measures proposed include extensive and wide-ranging dialogue with stakeholders in environmental policy-making. In order to make it possible for non-governmental organisations (hereinafter referred to as 'NGOs') to take part in such a dialogue, the Sixth Environment Action Programme envisages the need for appropriate support, including Community finance, to NGOs.

(4) NGOs active in the field of environmental protection have already demonstrated that they can contribute to the environment policy of the Community, as laid down in Article 174 of the Treaty, by active involvement in concrete environmental protection measures and in activities to increase the general awareness of the need for the protection of the environment with a view to sustainable development. NGOs also active in the field of animal protection, provided that such activities serve to achieve environmental protection objectives, may also participate in this Programme.

(5) NGOs are essential to coordinate and channel to the Commission information and views on the new and emerging perspectives, such as on nature protection and transboundary environmental problems, which cannot be, or are not being, fully dealt with at the Member State or subordinate level. NGOs have good understanding of public concerns on the environment and can thus promote these views and channel them back to the Commission.

(6) Environmental NGOs participate in experts groups, in preparatory and implementation committees of the Community institutions, providing important input to Community policies, programmes and initiatives and necessary balance in relation to the interests of other actors in the environment, including industry/business, trade unions and consumer groups.

(7) NGOs with a capacity to stimulate exchange of perspectives, problems and possible solutions and to implement relevant activities related to environmental problems with a Community dimension, involving stakeholders at national, regional and local level, should be promoted. For this purpose only NGOs and NGO networks active at a European level will be targeted.

[1] OJ C 270 E, 25.9.2001, p. 125.
[2] Opinion delivered on 18 October 2001 (not yet published in the Official Journal).
[3] Opinion of the European Parliament of 23 October 2001 (not yet published in the Official Journal), Council Common Position of 6 December 2001 (not yet published in the Official Journal) and Decision of the European Parliament of 16 January 2002 (not yet published in the Official Journal).
[4] OJ L 354, 30.12.1997, p. 25.

(8) The geographical expansion of the Programme is necessary in order to include Candidate Countries' NGOs in the light of their importance in gaining public acceptance for the environmental 'acquis' and strengthening its implementation.

(9) In the light of the experience gained in the first three years of implementation of this Decision, an assessment of the operation of the Programme should be undertaken in order to decide on its continuation.

(10) The annual appropriations should be decided upon by the budgetary authority in the budgetary procedure.

(11) This Decision lays down, for the entire duration of the Programme, a financial framework constituting the prime reference, within the meaning of point 33 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure [1], for the budgetary authority during the annual budgetary procedure,

HAVE DECIDED AS FOLLOWS:

Article 1

1. A Community action programme promoting non-governmental organisations (NGOs) primarily active in the field of environmental protection is hereby established.

2. The general objective of this Programme shall be to promote NGOs which are primarily active in the field of environmental protection and enhancement at a European level. Such activities should involve contributing, or being able to contribute, to the development and implementation of Community environmental policy and legislation in different regions of Europe.

3. The Programme shall also promote the systematic involvement of NGOs at all stages of the Community environmental policy-making process, by ensuring relevant representation in stakeholder consultation meetings and public hearings. The Programme shall also contribute to the strengthening of small regional or local associations working to apply the *acquis communautaire* in relation to the environment and sustainable development in their local area.

Article 2

In order to qualify for a grant, an NGO shall have the following characteristics and comply with the Annex:

(a) it must be an independent and non-profit-making legal person primarily active in the field of environmental protection and enhancement with an environmental objective aimed at the public good and with a view to sustainable development;

(b) it must be active at a European level, either singly or in the form of several coordinated associations with a structure (membership base) and activities covering at least three European countries. However, coverage of two European countries is acceptable, provided that the primary objective of the activities is to support the development and implementation of Community environmental policy, as detailed in Article 1(2) and (3);

(c) its activities must meet, in particular, the principles underlying the Sixth Environment Action Programme and be in line with the priority areas identified in Article 5;

(d) it must have been legally constituted for more than two years and have had its annual statement of accounts for the two preceding years certified by a registered auditor. In cases of exceptional circumstances, the Commission may grant a derogation from these two requirements, provided that to do so would not compromise the protection of Community financial interests.

Article 3

The Programme shall be open to the participation of European NGOs established in either:

(a) the Member States;

(b) the Associated Countries [2] in accordance with the conditions established in the respective Europe Agreements, in the additional protocols thereto and in the decisions of the respective Association Councils;

(c) Cyprus, Malta or Turkey in accordance with conditions and procedures to be agreed with those countries; or

(d) the Balkan countries forming part of the Stabilisation and Association process for countries of South-Eastern Europe [3] in accordance with conditions and procedures to be agreed with those countries.

Article 4

1. The Commission shall publish a Call for Proposals in the *Official Journal of the European Communities* by 30 September each year, for grants in the following calendar year. In addition, the Commission shall use other appropriate means available to make the programme known to potential beneficiaries, including the electronic media.

2. The Call for Proposals shall include an information package and set out the eligibility, selection and award criteria (including details of the proposed weighting system) and the application, assessment and approval procedure.

[1] OJ C 172, 18.6.1999, p. 1.

[2] Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, the Slovak Republic and Slovenia.

[3] Former Yugoslav Republic of Macedonia, Albania, Federal Republic of Yugoslavia, Bosnia-Herzegovina, and Croatia.

3. After assessing the proposals, the Commission shall decide which organisations are to receive financing in the following year, by 31 December each year, save for a delay in the adoption of the Community budget. The decision shall give rise to an agreement between the Commission and the beneficiary, fixing the maximum amount of the grant, the methods of payment, the control and monitoring measures and the objectives to be achieved by the grant. Payments shall be made immediately.

Article 5

1. Given the importance of sustainable development and the health and quality of life of European citizens, support from this Programme shall target in particular the priority areas from the Sixth Environment Action Programme, grouped under four main headings as follows:

(a) limiting climate change;

(b) nature and bio-diversity — protecting a unique resource;

(c) health and environment;

(d) ensuring the sustainable management of natural resources and waste.

The Sixth Environment Action Programme will be subject to a review in the fourth year of operation and revised and updated, as necessary, to take account of new developments and information.

In addition to the abovementioned areas, environmental education and implementation and enforcement of Community environmental legislation shall also be priorities.

2. The selection and award process shall be carried out in four steps, as detailed in A of the Annex.

Article 6

1. A grant shall not exceed 70 % of the applicant's average audited annual eligible expenses during the preceding two years, in the case of NGOs based in the Community, or 80 % in the case of NGOs based in the candidate countries and the Balkan countries, nor 80 % of the applicant's eligible expenses for the current year.

The amount shall be determined annually according to a fixed weighting system, which takes into account the score values resulting from the assessment referred to in Article 5(2) and described in A of the Annex and the principles as outlined in C of the Annex.

2. A beneficiary under this Programme shall be free to use the grant to cover its eligible expenses as it deems appropriate, over the grant year. All expenses incurred by the beneficiary during the grant year shall be considered eligible, except for those specified in section 2 of D of the Annex. Beneficiaries may also disburse funds to partners or member organisations in accordance with details specified in the approved work programme.

3. The amount of the grant shall become final only once the audited financial statement has been accepted by the Commission, ensuring that Community funds have been used in accordance with the relevant provisions of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities ([1]).

The final payment shall be reduced accordingly if the total of Community grants, from this and any other programmes, exceeds 80 % of the audited eligible expenses of the beneficiary for the year.

4. Moreover, if the audited financial statement of the grant year shows that the total revenues of the beneficiary, save revenues regularly earmarked for ineligible expenses, exceed the eligible expenses, the final payment shall be reduced or, if necessary, the excess amount shall be recovered accordingly. Pursuant to Article 256 of the Treaty, recovery orders shall be enforceable.

5. In order to ensure the effectiveness of the grants to environmental NGOs, the Commission shall take the necessary measures to verify that a selected organisation still satisfies the requirements for being awarded the grant throughout the grant year. In particular, a systematic scheme to monitor the beneficiaries' performance during the grant year, as well as an ex-post performance evaluation, shall be put in place.

6. The Commission shall provide unsuccessful applicants with reasons for the failure of the NGO to meet the requirements, giving sufficient explanation to enable them to identify reforms needed before making new applications.

Article 7

1. This Programme shall start on 1 January 2002 and end on 31 December 2006.

2. The financial framework for the implementation of this Programme for the period 2002 to 2006 is hereby set at EUR 32 million.

3. The annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspective.

Article 8

1. In order to protect the Communities' financial interests against fraud and other irregularities, the Commission may carry out on-the-spot checks and inspections under this Programme in accordance with Council Regulation (Euratom, EC) No 2185/96 ([2]). If appropriate, the European Anti-Fraud Office (OLAF) shall carry out investigations, which shall be governed by Regulation (EC) No 1073/1999 of the European Parliament and of the Council ([3]).

([1]) OJ L 356, 31.12.1977, p. 1. Regulation as last amended by Regulation (EC) No 762/2001 (OJ L 111, 20.4.2001, p. 1).
([2]) OJ L 292, 15.11.1996, p. 2.
([3]) OJ L 136, 31.5.1999, p. 1.

2. The beneficiary of a grant shall keep available for the Commission all the supporting documents, including the audited financial statement, regarding expenditure incurred during the grant year for a period of five years following the last payment. The beneficiary of a grant shall see to it that, where appropriate, supporting documents that are in the hands of partners or members are available for the Commission.

Article 9

1. Failure to meet expected results, as evidenced by obligatory reports, may lead to ineligibility for funding under this Programme in the following year. Repeated failure in two successive years shall result in ineligibility for the remaining years of the programme.

2. If an NGO becomes the subject of a Commission recovery order due to intentional irregularities, irregularities caused by negligence or fraud, it shall automatically be excluded from funding under the remaining years of the Programme.

3. If the Commission discovers irregularities, mismanagement or fraud in relation to a grant, either by audits or on-the-spot checks, the beneficiary shall be subject to one or several of the following administrative measures and penalties in proportion to the severity of the case (and with a right to appeal against the decision):

(a) annulment of the grant;

(b) payment of a fine of up to 50 % of the amount of the recovery order;

(c) exclusion from other Community funding opportunity, for the remaining years of the Programme;

(d) exclusion from the relevant dialogue mechanisms of the Commission, for the remaining years of the Programme.

Article 10

A list of the beneficiaries to be financed under this Programme, together with the amount allocated, shall be published each year in the *Official Journal of the European Communities*.

Article 11

The Commission shall provide a report to the Member States and the European Parliament by 30 April each year on the process of allocating grants for the current year, and outcomes from grants for the previous year. The report shall include an explanation of how the Commission has selected beneficiaries for the current year. The Commission shall convene a meeting of stakeholders to discuss this report by 30 June each year.

By 31 December 2004 at the latest, the Commission shall submit a report to the European Parliament and the Council on the achievement of the objectives of this Programme during the first three years and shall, if appropriate, make proposals for any adjustment to be made with a view to continuing or not continuing the Programme. This Report shall be based on the reports concerning beneficiaries' performance and assess, in particular, their effectiveness in contributing to the objectives stated in Article 1 and the Annex.

The European Parliament and the Council, in accordance with the Treaty, shall decide on the continuation of the Programme as from 1 January 2007. Before putting forward proposals to this end, the Commission shall conduct an external evaluation of the results achieved by the Programme.

Article 12

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

Done at Brussels, 1 March 2002.

For the European Parliament	*For the Council*
The President	*The President*
P. COX	R. DE MIGUEL

ANNEX

A. THE FOUR STEPS OF THE SELECTION AND AWARD PROCESS

1. Elimination of applications which do not comply with the technical/administrative requirements for submitting a request for funding under this Programme. In particular, incomplete or insufficiently detailed applications, or applications which have not been filled in according to the instructions given on the application form or which have been submitted after the publicised deadline, shall be ineligible under this Programme.

2. Elimination of applications which do not comply with the eligibility criteria as outlined in Articles 2 and 3.

3. Comparative assessment of the remaining eligible applications evaluated against the following criteria, which are further specified in B:

   (a) extent to which the application and, more specifically, the proposed work programme meet the objectives of the Programme as described in Article 1 and the priorities of the Programme as described in Article 5;

   (b) management and product quality;

   (c) outreach, effectiveness and efficiency.

   Comparative score values will be assigned to each retained applicant.

4. Fixing the set of applications, which will enter the award procedure by retaining only those which have received score values above thresholds defined by the Commission.

B. CHARACTERISTICS AGAINST WHICH APPLICANTS WILL BE ASSESSED

Applicants having successfully passed the first two selection steps accounted for in A shall be measured against the following criteria:

1. **Extent to which the application meets the objectives of the Programme**

   Characteristics of the applicant, including his proposed work programme, which will be evaluated, shall include:

   (a) Policy relevance (in relation to the Sixth Environment Action programme, a new European Governance, Sustainable Development, Enlargement, the Stabilisation and Association process for countries of South-Eastern Europe, the development of the Euro-Mediterranean Partnership, Integration, Gender Mainstreaming).

   (b) Relevance and potential impact of involvement in Community environmental policy-shaping and implementation.

   (c) Representational ability as to voicing the public's concerns from different regions of Europe and as to feeding in these ideas and proposals for the solution of environmental problems.

   (d) Relevance in environment-awareness raising and knowledge-enhancement activities, both in general and in relation to Community environmental policies.

   (e) Ability to: develop networks between organisations in Member States and in candidate countries; encourage cooperation with organisations in the public and private sector; and attract part financing from external sources.

   For each of the abovementioned characteristics, consideration shall be given to the strength of the applicant with regard to fulfilling the associated NGO roles indicated in the examples given in D.

2. **Management and product quality**

   Characteristics to be assessed shall include:

   (a) Organisational structure, adequacy in staffing and management of human resources.

   (b) Internal decision-making process, relationship with members, including arrangements to ensure involvement of membership in policy development and policy pronouncements.

   (c) Strategic approach, goal-orientation and planning practices.

   (d) Administration, budget control and financial management.

   (e) Reporting practices (internal and external).

   (f) Self-assessment and quality control, feedback of experience (learning).

   (g) Technical/scientific competence.

3. **Outreach, effectiveness, efficiency**

   Characteristics to be assessed shall include:

   (a) General visibility of the organisation and its activities.

   (b) External relations and effectiveness (with other actors in the field of the environment, such as local and regional authorities, business and industry, consumer groups, trade unions, other NGOs and the general public).

C. DETERMINATION OF GRANTS

The grant is calculated on the applicant's forecasted total eligible expenses for the grant year, taking explicitly into account his average audited expenses over the preceding two years, according to the following principles:

1. When all other parameters are equal, the grant amount for NGOs with larger volumes of relevant activities (as measured by the average value of their preceding two years' audited annual expenses and the forecasted total eligible expenses for the grant year) will normally be higher than the grant amounts for NGOs with smaller volumes of relevant activities. However, the distribution will be made on a non-linear basis and so beneficiaries with smaller volumes of relevant activities will receive a relatively higher rate of support.
2. When all other parameters are equal, NGOs getting higher comparative assessment scores will receive larger amounts than lower scoring applicants.
3. When an NGO has requested a specified amount, under no circumstances shall the grant awarded exceed that amount.

D. ELIGIBLE EXPENSES

1. All expenses incurred by the beneficiary during the grant year shall be considered eligible except those listed in section 2. Eligible expenses could include some of the following, illustrative, examples of activities:
   (a) coordinating and channelling to the Commission information and views, based on the concerns and opinions of the general public, on new and emerging perspectives, which cannot be, or are not being, fully dealt with at the Member State or appropriate level;
   (b) preparatory work and research required for participation in experts groups, in preparatory and implementation committees of the Community institutions, providing important input to Community policies, programmes and initiatives and the necessary balance in relation to the interests of other actors in the environment, including industry/business, trade unions and consumer groups;
   (c) stimulation of exchange of views, problems and possible solutions, related to environmental problems with a Community dimension, involving stakeholders at national, regional and local level. This could also include transfer of knowledge and ensuring synergy via networking;
   (d) awareness-raising and knowledge-enhancement regarding both general aspects of the environment and Community environmental policy;
   (e) capacity building, in particular to reinforce the involvement of small NGOs, new NGO networks and NGOs in the candidate countries and the Balkan countries at European level.
2. Payments made by the beneficiary and contracts awarded to third parties, which comprise elements of the categories below, will be deemed ineligible:
   (a) entertainment, hospitality, unnecessary or ill considered expenses;
   (b) expenses clearly outside the agreed work programme of the beneficiary for the grant year;
   (c) debt reimbursements, interest owed, carried over deficits;
   (d) costs related to the capital employed, investments or reserves set aside to strengthen the assets of the beneficiary;
   (e) contributions in kind;
   (f) private expenses;
   (g) criminal/illegal activities.

COMMISSION REGULATION (EC) No 467/2002

of 15 March 2002

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables [1], as last amended by Regulation (EC) No 1498/98 [2], and in particular Article 4(1) thereof,

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 16 March 2002.

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

Done at Brussels, 15 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

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

ANNEX

to the Commission Regulation of 15 March 2002 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	052	192,8
	204	164,9
	212	169,4
	624	193,8
	999	180,2
0707 00 05	052	175,4
	204	55,3
	624	119,8
	999	116,8
0709 90 70	052	142,3
	204	73,1
	999	107,7
0805 10 10, 0805 10 30, 0805 10 50	052	60,7
	204	50,6
	212	46,3
	220	48,8
	600	63,2
	624	85,7
	999	59,2
0805 50 10	052	45,5
	600	49,6
	999	47,5
0808 10 20, 0808 10 50, 0808 10 90	060	41,6
	388	110,0
	400	125,8
	404	95,3
	508	77,3
	512	81,8
	528	93,0
	720	115,8
	728	133,7
	999	97,1
0808 20 50	388	81,8
	400	134,1
	512	71,7
	528	76,4
	999	91,0

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

COMMISSION REGULATION (EC) No 468/2002

of 15 March 2002

fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 93rd individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products [1], as last amended by Regulation (EC) No 1670/2000 [2], and in particular Article 10 thereof,

Whereas:

(1) The intervention agencies are, pursuant to Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs [3], as last amended by Regulation (EC) No 635/2000 [4], to sell by invitation to tender certain quantities of butter that they hold and to grant aid for cream, butter and concentrated butter. Article 18 of that Regulation stipulates that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter. It is further stipulated that the price or aid may vary according to the intended use of the butter, its fat content and the incorporation procedure, and that a decision may also be taken to make no award in response to the tenders submitted. The amount(s) of the processing securities must be fixed accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

The minimum selling prices and the maximum aid and processing securities applying for the 93rd individual invitation to tender, under the standing invitation to tender provided for in Regulation (EC) No 2571/97, shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 16 March 2002.

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

Done at Brussels, 15 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 160, 26.6.1999, p. 48.
[2] OJ L 193, 29.7.2000, p. 10.
[3] OJ L 350, 20.12.1997, p. 3.
[4] OJ L 76, 25.3.2000, p. 9.

ANNEX

to the Commission Regulation of 15 March 2002 fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 93rd individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

(EUR/100 kg)

Formula			A		B	
Incorporation procedure			With tracers	Without tracers	With tracers	Without tracers
Minimum selling price	Butter ≥ 82 %	Unaltered	—	—	—	—
		Concentrated	—	—	—	—
Processing security		Unaltered	—	—	—	—
		Concentrated	—	—	—	—
Maximum aid	Butter ≥ 82 %		85	81	85	81
	Butter < 82 %		83	79	—	79
	Concentrated butter		105	101	105	101
	Cream		—	—	36	34
Processing security	Butter		94	—	94	—
	Concentrated butter		116	—	116	—
	Cream		—	—	40	—

COMMISSION REGULATION (EC) No 469/2002

of 15 March 2002

fixing the maximum purchasing price for butter for the 46th invitation to tender carried out under the standing invitation to tender governed by Regulation (EC) No 2771/1999

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products [1], as last amended by Commission Regulation (EC) No 1670/2000 [2], and in particular Article 10 thereof,

Whereas:

(1) Article 13 of Commission Regulation (EC) No 2771/1999 of 16 December 1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream [3], as last amended by Regulation (EC) No 1614/2001 [4], provides that, in the light of the tenders received for each invitation to tender, a maximum buying-in price is to be fixed in relation to the intervention price applicable and that it may also be decided not to proceed with the invitation to tender.

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

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 46th invitation to tender issued under Regulation (EC) No 2771/1999, for which tenders had to be submitted not later than 12 March 2002, the maximum buying-in price is fixed at 295,38 EUR/100 kg.

Article 2

This Regulation shall enter into force on 16 March 2002.

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

Done at Brussels, 15 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 160, 26.6.1999, p. 48.
[2] OJ L 193, 29.7.2000, p. 10.
[3] OJ L 333, 24.12.1999, p. 11.
[4] OJ L 214, 8.8.2001, p. 20.

COMMISSION REGULATION (EC) No 470/2002

of 15 March 2002

fixing the maximum aid for concentrated butter for the 265th special invitation to tender opened under the standing invitation to tender provided for in Regulation (EEC) No 429/90

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products [1], as last amended by Regulation (EC) No 1670/2000 [2], and in particular Article 10 thereof,

Whereas:

(1) In accordance with Commission Regulation (EEC) No 429/90 of 20 February 1990 on the granting by invitation to tender of an aid for concentrated butter intended for direct consumption in the Community [3], as last amended by Regulation (EC) No 124/1999 [4], the intervention agencies are opening a standing invitation to tender for the granting of aid for concentrated butter; Article 6 of that Regulation provides that in the light of the tenders received in response to each special invitation to tender, a maximum amount of aid is to be fixed for concentrated butter with a minimum fat content of 96 % or a decision is to be taken to make no award; the end-use security must be fixed accordingly.

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

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 265th special invitation to tender under the standing invitation to tender opened by Regulation (EEC) No 429/90, the maximum aid and the amount of the end-use security shall be as follows:

— maximum aid: EUR 105/100 kg,

— end-use security: EUR 116/100 kg.

Article 2

This Regulation shall enter into force on 16 March 2002.

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

Done at Brussels, 15 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 160, 26.6.1999, p. 48.
[2] OJ L 193, 29.7.2000, p. 10.
[3] OJ L 45, 21.2.1990, p. 8.
[4] OJ L 16, 21.1.1999, p. 19.

COMMISSION REGULATION (EC) No 471/2002
of 15 March 2002
concerning the classification of certain goods in the Combined Nomenclature

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff [1], as last amended by Regulation (EC) No 2433/2001 [2], and in particular Article 9 thereof,

Whereas:

(1) In order to ensure uniform application of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.

(2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules also apply to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific Community provisions, with a view to the application of tariff and other measures relating to trade in goods.

(3) Pursuant to those general rules, the goods described in column 1 of the table annexed to this Regulation should be classified under the CN codes indicated in column 2, by virtue of the reasons set out in column 3.

(4) For the goods listed under item Nos 1, 3, 4 and 5 of the table in the Annex to this Regulation, it is appropriate that, subject to the measures in force in the Community relating to double-checking systems and to prior and retrospective Community surveillance of textile products on importation into the Community, binding tariff information which is issued by the customs authorities of Member States in respect of the classification of goods in the Combined Nomenclature and which does not conform to the provisions mentioned under item Nos 1, 3, 4 and 5 in the table of the Annex to this Regulation, can continue to be invoked for a period of 60 days by the holder under the provisions in Article 12(6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [3], as last amended by European Parliament and Council Regulation (EC) No 2700/2000 [4]l.

(5) For the goods listed under item No 2 of the table in the Annex to this Regulation, it is appropriate that binding tariff information issued by the customs authorities of Member States in respect of the classification of goods in the Combined Nomenclature and which does not conform to the provisions mentioned under item No 2 in the table of the Annex to this Regulation, can continue to be invoked for a period of three months by the holder, under the provisions in Article 12(6) of Regulation (EEC) No 2913/92.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column 1 of the Annex are classified within the Combined Nomenclature under the CN codes indicated in column 2 of the Annex.

Article 2

Subject to the measures in force in the Community relating to double-checking systems and to prior and retrospective Community surveillance of textile products on importation into the Community, binding tariff information issued by the customs authorities of Member States which does not conform to the provisions mentioned under item Nos 1, 3, 4 and 5 in the table of the Annex to this Regulation can continue to be invoked for a period of 60 days, under the provisions of Article 12(6) of Regulation (EEC) No 2913/92.

Binding tariff information issued by the customs authorities of Member States which does not conform to the provisions mentioned under item No 2 in the table of the Annex to this Regulation can continue to be invoked for a period of three months, under the provisions of Article 12(6) of Regulation (EEC) No 2913/92.

Article 3

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

[1] OJ L 256, 7.9.1987, p. 1.
[2] OJ L 329, 14.12.2001, p. 4.
[3] OJ L 302, 19.10.1992, p. 1.
[4] OJ L 311, 12.12.2000, p. 17.

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

Done at Brussels, 15 March 2002.

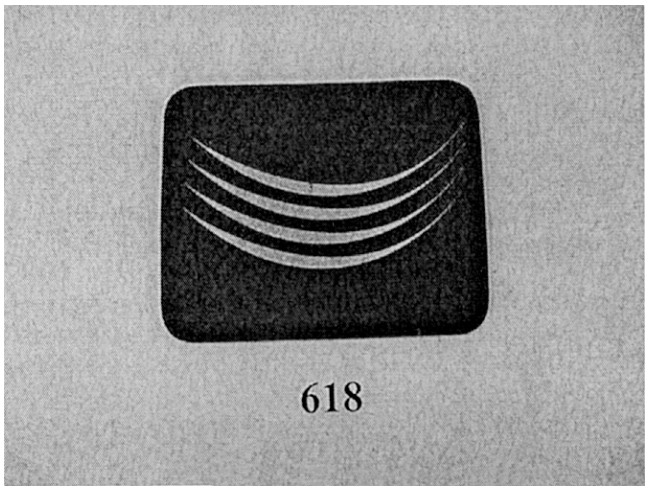
For the Commission
Frederik BOLKESTEIN
Member of the Commission

ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
1. Article made of cellular plastic, approximately 4 mm thick, (measuring approximately 20 × 24 cm), nearly rectangular, because of its rounded corners, covered on one side with a layer of approximately 0,2 mm of multi-coloured printed knitted textile fabric (Mouse-pads and similar articles) (See photograph No 618) (*)	6307 90 10	Classification is determined by general rules 1 and 6 for the interpretation of the Combined Nomenclature, notes 7(a) and 8(a) to Section XI, notes 1 and 2(a)(5) to Chapter 59, notes 1 and 2(a) to Chapter 63 and by the wording of CN codes 6307, 6307 90 and 6307 90 10 The article is 'made-up' within the meaning of note 7(a) to Section XI because it is cut otherwise than into squares or rectangles Classification in Chapter 39 is excluded according to note 2(a)(5) to Chapter 59, because the knitted fabric is not present merely for reinforcing purposes. See also the Harmonised System explanatory notes to Chapter 39, general considerations (plastics and textile combinations), (d) According to note 8(a) to Section XI made-up articles belong to Chapters 61 to 63
2. Article made of cellular plastic, approximately 4 mm thick, (measuring approximately 20 × 24 cm), nearly rectangular, because of its rounded comers, covered on one side with a layer of approximately 0,2 mm of single coloured knitted textile fabric (Mouse-pads and similar articles) (See photographs Nos 612 A + B) (*)	3926 90 99	Classification is determined by general rules 1 and 6 for the intepretation of the Combined Nomenclature, note 1 to Chapter 39, note 1(h) to Section XI, notes 1 and 2(a)(5) to Chapter 59 and by the wording of CN codes 3926, 3926 90 and 3926 90 99 Classification in Section XI is excluded according to note 2(a)(5) to Chapter 59, because the knitted fabric is present merely for reinforcing purposes. See also the Harmonised System explanatory notes to Chapter 39, general considerations (plastics and textile combinations), (d)
3. Rectangular, approximately 4 mm thick cellular plastic (polyurethane) (measuring approximately 20 × 21 cm), covered on one side with a layer of approximately 0,2 mm of multi-coloured printed knitted textile fabric (Mouse-pads and similar articles) (See photograph No 619) (*)	5903 20 90	Classification is determined by general rules 1 and 6 for the interpretation of the Combined Nomenclature, note 7(a) to Section XI, notes 1 and 2(a)(5) to Chapter 59 and by the wording of CN codes 5903, 5903 20 and 5903 20 90 The goods are not 'made-up' within the meaning of Note 7(a) to Section XI because they are cut in rectangular form Classification in Chapter 39 is excluded according to note 2(a)(5) to Chapter 59, because the knitted fabric is multi-coloured printed and therefore is not present merely for reinforcing purposes. See also the Harmonised System explanatory notes to Chapter 39, general considerations (plastics and textile combinations), (d)

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
4. Self-coloured lightweight knitted article for women or girls (86 % nylon, 14 % elastane), to be worn next to the skin, reaching down to just below the bust, with narrow adjustable shoulder straps. It has a low-cut neckline at the front and the back, without opening. There are bands of knitted fabric sewn onto the neckline and the armpits There are knitted side-panels of varying elasticity on the article, as well as an elasticated reinforcement at the front There is stitching just below the bust, reinforced on the inside, following the natural shape of the bust There is an elasticated band of a width of about 2 cm on the lower edge of the article, to make sure that the article clings to the body (Brassiere) (See photograph No 615) (*)	6212 10 90	Classificaton is determined by general rules 1 and 6 for the interpretation of the Combined Nomenclature, note 2(a) to Chapter 61 and the wording of CN codes 6212, 6212 10 and 6212 10 90 The elasticated reinforcement at the front, which gathers the fabric and contributes to the convex form of the cups, leads to the separation of the breasts which is characteristic of a brassiere The stitching follows the shape of the bust and gathers the fabric into the form of the cups The reinforcement of the stitching on the inside of the article serves as a stiffener and, together with the elasticated side panels, provides the support required for brassieres, in accordance with the Harmonised System explanatory notes to heading 6212, first paragraph
5. Rectangular shaped made-up article (measuring approximately 110 × 160 cm) of woven textile fabric (100 % cotton), attached on the two short sides of the woven fabric to each edge of a wooden pole (length: approximately 110 cm) by means of braided cords. Due to the different lengths of the cords the woven textile fabric obtains an asymmetric shape. Above the wooden pole there is a fixing device consisting of two braided cords and a metal ring, which allows the article to be fixed e.g. to a hook. The article does not have a defined seating area (Article similar to a hammock) (See photograph No 617) (*)	6306 91 00	Classification is determined by general rules 1 and 6 for the interpretation of the Combined Nomeclature, notes 7(e) and 8(a) to Section XI, note 1 to Chapter 63 and by the wording of CN codes 6306 and 6306 91 00 Ohr made-up woven textile articles belong to Chapter 63 according to note 8(a) to Section XI and note 1 to Chapter 63 According to general rules 1 and 6, the article is classified under camping goods, because — considering its objective characteristics — the article is made of a rectangular made-up woven textile fabric which is suspended on both sides by means of braided cords and because the article assumes the body shape of the person who sits or lies in it, since the product does not have a defined seating area. The article can be used indoors and outdoors Therefore, the article has to be classified — like a hammock — under camping goods in heading 6306. See the Harmonised System explanatory notes to heading 6306 (5), according to which camping goods include, among others, hammocks. Moreover, the Harmonised System explanatory notes to heading 9403 (other furniture etc.), (e), exclude hammocks from heading 9403 and assign them — depending on the material of the good — to headings 6306 or 5608 (made-up nets)

(*) The photographs are purely for information.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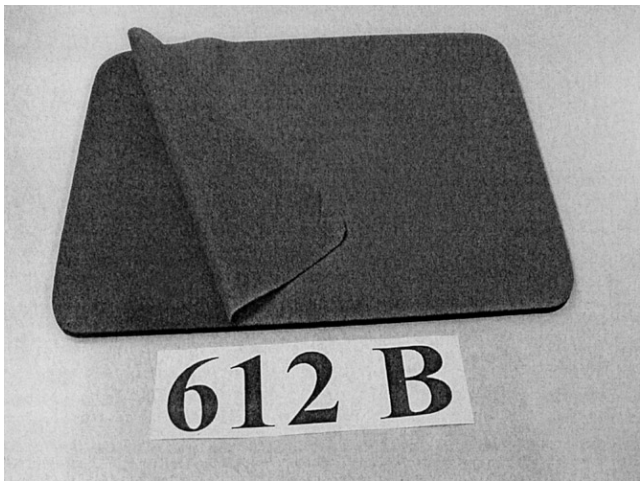
612 A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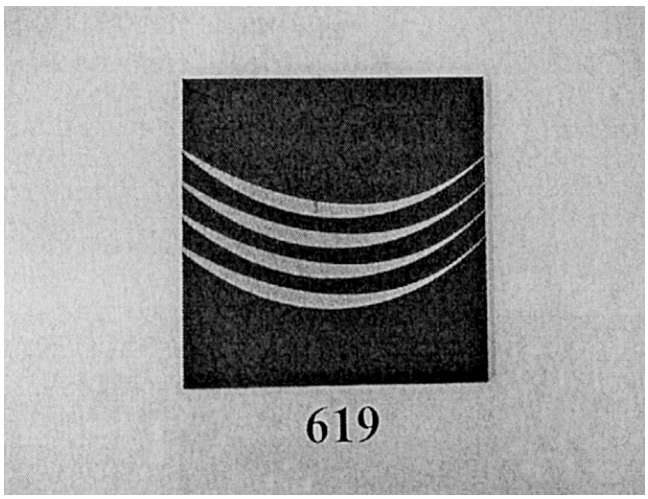
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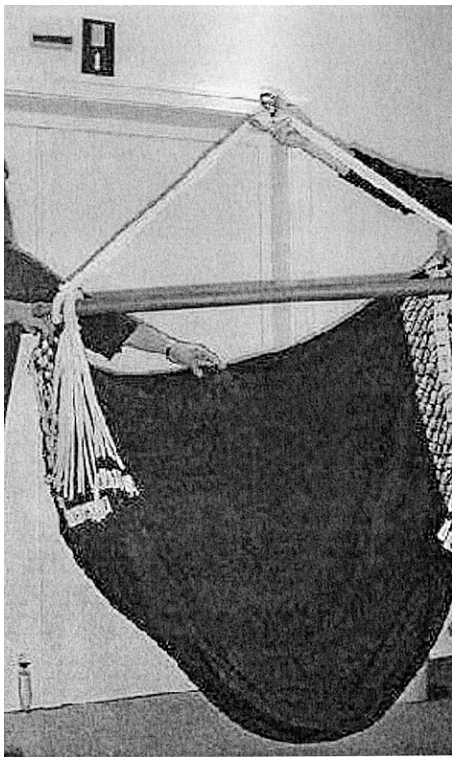

COMMISSION REGULATION (EC) No 472/2002

of 12 March 2002

amending Regulation (EC) No 466/2001 setting maximum levels for certain contaminants in foodstuffs

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food [1], and in particular Article 2(3) thereof,

After consulting the Scientific Committee for Food (SCF),

Whereas:

(1) Regulation (EEC) No 315/93 provides that maximum levels must be set for contaminants in foodstuffs in order to protect public health.

(2) Commission Regulation (EC) No 466/2001 [2], as last amended by Regulation (EC) No 257/2002 [3], sets maximum levels for certain contaminants in foodstuffs to apply from 5 April 2002.

(3) Some Member States have adopted, or plan to adopt, maximum levels for aflatoxins in spices and maximum levels for ochratoxin A in certain foodstuffs. In view of the disparities between Member States and the consequent risk of distortion of competition, Community measures are necessary in order to ensure market unity while abiding by the principle of proportionality.

(4) Aflatoxins, in particular aflatoxin B1, are genotoxic carcinogenic substances. For substances of this type there is no threshold below which no harmful effect is observed and therefore no admissible daily intake can be set. Current scientific and technical knowledge and improvements in production and storage techniques do not prevent the development of these moulds and consequently do not enable the presence of the aflatoxins in spices to be eliminated entirely. Limits should therefore be set which are as low as reasonably achievable.

(5) The results of a coordinated control programme, performed by the Member States in accordance with Commission Recommendation 97/77/EC of 8 January 1997 concerning a coordinated programme for the official control of foodstuffs for 1997 [4] have become available since the maximum levels for aflatoxins in other foodstuffs were established. They show that several species of spices contain a high level of aflatoxins. It is therefore appropriate to establish maximum limits for the species of spices which are used in large quantity and which have a high incidence of contamination.

(6) The maximum limits should be reviewed and, if necessary, reduced before 31 December 2003 taking into account possibilities to reduce aflatoxin contamination in spices by improvements in production, harvesting and storage methods and the progress of scientific and technological knowledge.

(7) Ochratoxin A is a mycotoxin produced by several fungi (*Penicillium* and *Aspergillus* species). It occurs naturally in a variety of plant products, such as cereals, coffee beans, cocoa beans, and dried fruit, all over the world. It has been detected in products such as cereal products, coffee, wine, beer, spices and grape juice but also in products of animal origin, namely pig kidneys. Investigations of the frequency and levels of occurrence of ochratoxin A in food and human blood samples indicate that foodstuffs are frequently contaminated.

(8) Ochratoxin A is a mycotoxin with carcinogenic, nephrotoxic, teratogenic, immunotoxic and possibly neurotoxic properties. It has been linked to nephropathy in humans. Ochratoxin A may have a long half-life in humans.

(9) The Scientific Committee for Food considered in its opinion on ochratoxin A of 17 September 1998 that it would be prudent to reduce exposure to ochratoxin A as much as possible, ensuring that exposures are towards the lower end of the range of tolerable daily intakes of 1,2-14 ng/kg bw/day which have been estimated by other bodies, e.g. below 5 ng/kg bw/day.

(10) With current scientific and technical knowledge, and despite improvements in production and storage techniques, it is not possible to prevent the development of these moulds altogether. Consequently ochratoxin A cannot be eliminated from food entirely. Limits should therefore be set which are as low as reasonably achievable.

[1] OJ L 37, 13.2.1993, p. 1.
[2] OJ L 77, 16.3.2001, p. 1.
[3] OJ L 41, 13.2.2002, p. 12.
[4] OJ L 22, 24.1.1997, p. 27.

(11) The main contributors to the dietary intake of ochratoxin A are cereals and cereal products. Prevention is of major importance to avoid contamination as much as possible and to protect the consumer. In addition, it is appropriate to establish maximum limits for cereals and cereal products at a level reasonably achievable on condition that preventive actions to avoid contamination at all stages in the production and commercialisation chain are applied.

(12) Dried vine fruit (currants, raisins and sultanas) has been found to be highly contaminated. Dried vine fruit is an important dietary source of ochratoxin A for people with high levels of consumption, in particular children. While it is therefore appropriate to establish for the time being a limit at a level which is technologically achievable, it is imperative to further improve practices to reduce contamination.

(13) The presence of ochratoxin A has also been observed in coffee, wine, beer, grape juice, cocoa and spices. Investigations and research should be undertaken by Member States and interested parties (such as professional organisations) to determine the different factors involved in the formation of ochratoxin A and to determine the prevention measures to be taken to reduce the presence of ochratoxin A in these foodstuffs. For these products every effort should be made with regard to research and prevention measures to reduce ochratoxin A content as much as possible pending the establishment of maximum limits on the basis of the 'as low as reasonably achievable' (ALARA) principle. If no effort is undertaken to reduce the ochratoxin A content for certain products, it will be necessary to establish a maximum limit for these products in order to protect public health, without being able to assess the technological feasibility.

(14) Regulation (EC) No 466/2001 should therefore be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 466/2001 is amended as follows:

1. Article 4(2) is amended as follows:
   (a) the introductory phrase is replaced by the following: 'With regard to aflatoxins and ochratoxin A in products mentioned in points 2.1 and 2.2 of Annex I, it is prohibited:';
   (b) in point (b), 'and 2.1.3' is replaced by ', 2.1.3, 2.1.4, 2.2.1 and 2.2.2'.
2. In Article 5, the following paragraph 2a is inserted:

   '2a. The Commission shall review the maximum limits for aflatoxins laid down in point 2.1.4 of section 2 of Annex I by 31 December 2003 at the latest and, if appropriate, reduce them to take account of the progress of scientific and technological knowledge.

   The Commission shall review the provisions in points 2.2.2 and 2.2.3 of section 2 of Annex I by 31 December 2003 at the latest as regards the maximum limits for ochratoxin A in dried vine fruit and with a view to including a maximum limit for ochratoxin A in green and roasted coffee and coffee products, wine, beer, grape juice, cocoa and cocoa products and spices taking into account the investigations undertaken and the prevention measures applied to reduce the presence of ochratoxin A in these products.

   For this purpose, Member States and interested parties shall communicate each year to the Commission the results of investigations undertaken and the progress with regard to the application of prevention measures to avoid contamination by ochratoxin A.'
3. Annex I is amended as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the 10th day following its publication in the *Official Journal of the European Communities*.

It shall apply from 5 April 2002.

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

Done at Brussels, 12 March 2002.

For the Commission

David BYRNE

Member of the Commission

ANNEX

In Section 2 (Mycotoxins) of Annex I to Regulation (EC) No 466/2001 the following is added:

Product	Maximum level (μg/kg)			Sampling method	Performance criteria for methods of analysis
	B_1	$B_1 + B_2 + G_1 + G_2$	M_1		
'2.1.4. Following species of spices: — *Capsicum* spp. (dried fruits thereof, whole or ground, including chillies, chilli powder, cayenne and paprika) — *Piper* spp. (fruits thereof, including white and black pepper) — *Myristica fragrans* (nutmeg) — *Zingiber officinale* (ginger) — *Curcuma longa* (turmeric)	5	10	—	Directive 98/53/EC	Directive 98/53/EC'

'Product	Maximum levels (μg/kg or ppb)	Sampling method	Reference analysis method
2.2. OCHRATOXIN A			
2.2.1. Cereals (including rice and buckwheat) and derived cereal products			
2.2.1.1. Raw cereal grains (including raw rice and buckwheat)	5	Commission Directive 2002/27/EC (*)	Directive 2002/27/EC
2.2.1.2. All products derived from cereals (including processed cereal products and cereal grains intended for direct human consumption)	3	Directive 2002/27/EC	Directive 2002/27/EC
2.2.2. Dried vine fruit (currants, raisins and sultanas)	10	Directive 2002/27/EC	Directive 2002/27/EC
2.2.3. Green and roasted coffee and coffee products, wine, beer, grape juice, cocoa and cocoa products and spices	—		

(*) OJ L 75, 16.3.2002, p. 44.'

COMMISSION REGULATION (EC) No 473/2002

of 15 March 2002

amending Annexes I, II and VI to Council Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs, and laying down detailed rules as regards the transmission of information on the use of copper compounds

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs [1], as last amended by Commission Regulation (EC) No 2491/2001 [2], and in particular the first and second indents of Article 13 thereof,

Whereas:

(1) It is necessary to define more precisely the time at which the conversion period is started in principle and to define the conditions which need to be satisfied in order to recognise retroactively a period before the start, as being part of the conversion period.

(2) In exceptional circumstances, such as the outbreak of infectious diseases, accidental contaminations or natural phenomenons, the stockbreeders can afford difficulties in obtaining supply of feedingstuffs of organic origin and an authorisation has to be granted, on temporary basis and in a limited way, by the competent authority of the Member State, in view of the use of feedingstuffs not originating from organic farming.

(3) Part A of Annex II, on fertilisers and soil conditioners, provides for the possibility of using composted household waste during a provisional period expiring on 31 March 2002 only. The use of composted household waste meets a real need in certain Member States, and this product is strictly regulated as regards the origin of the waste, the operation of the collection system, which must have been accepted by the Member State, and the maximum content of heavy metals, without prejudice to any other requirements for use of such product in general agriculture. These requirements may need to be reconsidered in the framework of new common legislation of household wastes. The current authorisation can therefore be prolonged for a limited period of four years.

(4) Pyrethroids (deltamethrin and lambdacyhalothrin) are used in organic farming only in traps and their use thus meets the criteria of Article 7(1) of Regulation (EEC) No 2092/91. The use of these substances has been shown to meet a real need in certain crops and should therefore be authorised for an indefinite period.

(5) Germany has asked that ferric phosphate be included in Annex II to Regulation (EEC) No 2092/91 so that it can be used as a molluscicide in organic agriculture. Having examined this request, the conditions laid down in Article 7(1) of that Regulation have been found being satisfied. Moreover, ferric phosphate was recently evaluated for compliance with the criteria on human health and the environment under Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market [3], as last amended by Commission Directive 2002/18/EC [4]. This product should accordingly be added to Annex II, Part B.

(6) Metaldehyde is authorised for use as a molluscicide in organic farming for a period expiring on 31 March 2002. This period should be extended for a limited transitional period of 4 years which would permit to replace, in the Member States, metaldehyde as molluscicide by iron (III) orthophosphate.

(7) The use of copper in the form of copper hydroxide, copper oxychloride, (tribasic) copper sulphate and cuprous oxide and the use of mineral oils as fungicides are considered to be traditional organic farming practices in accordance with the provisions of Article 7(1a) of Regulation (EEC) No 2092/91. It has appeared that these substances are, at this point of time, indispensable to the cultivation of various crops and that only by increased research efforts it will be possible to find on medium or long term appropriate alternative solutions. Therefore, these substances should be authorised for the time being. This authorisation will be reviewed in the light of new developments and evidence with regard to available alternatives.

(8) The use of copper in the forms referred to above may have long-term consequences due to its accumulation in the soil, which appears incompatible with organic farming's objective of environmentally friendly farming. The conditions for using copper should therefore be restricted by fixing a ceiling on use expressed in terms of kilograms of copper per hectare per year. This ceiling should start at the level of 8 kg copper per ha, and should after a limited transitional period of four years be reduced to 6 kg copper per ha, unless it would be demonstrated that for certain crops such lower ceiling is not efficacious. Member States should have the possibility to apply this ceiling on an average basis over a

[1] OJ L 198, 22.7.1991, p. 1.
[2] OJ L 337, 20.12.2001, p. 9.
[3] OJ L 230, 19.8.1991, p. 1.
[4] OJ L 55, 26.2.2002, p. 29.

period of five years. Member States making use of this possibility should report on the implementation of this measure and on the quantities effectively used, in view of a possible review of this regime where necessary.

(9) Extension of the period of use of plant protection products by this Regulation is without prejudice to the decisions taken on the use of these products in agriculture in general as part of the review programme provided for in Article 8(2) of Directive 91/414/EEC. The Commission has presented to Council and Parliament the report provided in Article 8(2) for examination. The deadlines set in this regulation will be reviewed without delay if this is necessary in the light of the conclusions of the examination of the report.

(10) Under Article 5 of Regulation (EEC) No 2092/91 the labelling and advertising of a product may refer to organic production methods only where the product or its ingredients of agricultural origin have not been subjected to treatments involving the use of substances not listed in Section B of Annex VI. However, sodium hydroxide is listed in that Annex for use in the production of oil from rapeseed (*Brassica* spp.) during a period expiring on 31 March 2002 only. The use of this substance has been shown to meet a real need in the production of certain types of organic rapeseed oil used in foodstuffs. Therefore, the use of this product shall be authorised for an indefinite period.

(11) Commission Regulation (EEC) No 207/93 [1], as last amended by Regulation (EC) No 2020/2000 [2] has defined the content of Annex VI to Regulation (EEC) No 2092/91 and established the implementation conditions of Article 5(4) of this Regulation. The Member States have asked for the inclusion in Annex VI, part C, of animal casings; after examination it has been established that the request for inclusion satisfies the requirements of Article 5(4) of Regulation (EEC) No 2092/91 and of Article 3(4) of Regulation (EEC) No 207/93.

(12) The measures provided for in this Regulation are in accordance with the opinion of the Committee referred to in Article 14 of Regulation (EEC) No 2092/91,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I, II and VI to Regulation (EEC) No 2092/91 are amended in accordance with the Annex to this Regulation.

Article 2

Where a Member State decides to implement the derogation provided for the maximum levels of copper compounds in Annex II, part B, of Regulation (EEC) No 2092/91, the following shall be communicated to the Commission and the other Member States:

— before 30 June 2002, information on the measures taken to implement this provision and to ensure its compliance, in particular at the level of individual holdings,

— before 31 December 2004, a report on the implementation and on the results of these measures, in particular the quantities actually required in each cultivation period since the entering into force of this provision.

If necessary, the Commission shall take appropriate measures according to the procedure foreseen in Article 14 of Regulation (EEC) No 2092/91.

Article 3

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

However, the Member States may continue to apply the provisions of paragraph 1 of part A of Annex I to Regulation (EEC) No 2092/91, which were applicable before the entry into force of the present Regulation:

— for parcels for which the conversion period commenced before 31 December 2002,

— for all parcels which are part of a conversion plan, of a maximum duration of five years, agreed with the competent authorities and which commenced before 1 September 2002; this derogation does not apply for parcels added to the plan after its initial agreement.

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

Done at Brussels, 15 March 2002.

For the Commission

David BYRNE

Member of the Commission

[1] OJ L 25, 2.2.1993, p. 5.
[2] OJ L 241, 26.9.2000, p. 39.

ANNEX

1. Annex I to Regulation (EEC) No 2092/91 is amended as follows:

1.1. Paragraph 1 of part A of Annex I 'Plants and plant products' is replaced by the following:

'1.1. The principles laid down in Article 6(1)(a), (b) and (d) and set out in particular in this Annex must normally have been applied on the parcels during a conversion period of at least two years before sowing, or, in the case of grassland, at least two years before its exploitation as feedingstuff from organic farming, or, in the case of perennial crops other than grassland, at least three years before the first harvest of products as referred to in Article 1(1)(a). The conversion period shall commence at the earliest on the date on which the producer notified his activity in accordance with Article 8 and submitted his holding to the inspection system provided for in Article 9.

1.2. However, the inspection authority or body may decide, in agreement with the competent authority, to recognise retroactively as being part of the conversion period any previous period in which:

(a) the land parcels were part of a programme implemented pursuant to Council Regulation (EEC) No 2078/92 of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside (*) or Chapter VI of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (**), or as part of another official programme, provided that the programmes concerned guarantee that products not listed in parts A and B of Annex II have not been used on those parcels; or

(b) the parcels were natural or agricultural areas which were not treated with products not listed in parts A and B of Annex II. This period can be taken into consideration retroactively only under the condition that satisfactory proof has been furnished to the inspection authority or body allowing it to satisfy itself that the conditions were met for a period of at least three years.

1.3. The inspection authority or body may, with the approval of the competent authority, decide, in certain cases, to extend the conversion period beyond the period laid down in paragraph 1.1 having regard to previous parcel use.

1.4. In the case of parcels which have already been converted to or were in the process of conversion to organic farming, and which are treated with a product not listed in Annex II, the Member State may reduce the length of the conversion period to less than the period laid down in paragraph 1.1 in the following two cases:

(a) parcels treated with a product not listed in part B of Annex II as part of a compulsory disease or pest control measure imposed by the competent authority of the Member State within its own territory or in certain parts thereof for a specific crop production;

(b) parcels treated with a product not listed in parts A or B of Annex II as part of scientific tests approved by the competent authority of the Member State.

In these cases the length of the conversion period shall be fixed taking into account all of the following points:

— the process of degradation of the plant protection product concerned must guarantee, at the end of the conversion period, an insignificant level of residues in the soil and, in the case of a perennial crop, in the plant,

— the harvest following the treatment may not be sold with reference to organic production methods,

— the Member State concerned must inform the other Member States and the Commission of its decision to require compulsory treatment.

(*) OJ L 215, 30.7.1992, p. 85.
(**) OJ L 160, 26.6.1999, p. 80.'

1.2. Part B 'Livestock and livestock products from the following species: bovine (including bubalus and bison species), porcine, ovine, caprine, equidae, poultry' is amended as follows:

1.2.1. The text of paragraph 4.9 is replaced by the following: 'By derogation from paragraph 4.8. when forage production is lost or when restrictions are imposed, in particular as a result of exceptional meteorological conditions, the outbreak of infectious diseases, the contamination with toxic substances, or as a consequence of fires, the competent authorities of the Member States can authorise for a limited period and in relation to a specific area, a higher percentage of conventional feedingstuffs where such authorisation is warranted. Upon approval by the competent authority, the inspection authority or body shall apply this derogation to individual operators. Member States will inform each other and the Commission on the derogations they have granted'.

1.2.2. In paragraph 7.4 the word 'exclusively' is included after the word 'cooperation'.

2. Annex II to Regulation (EEC) No 2092/91 is amended as follows:

2.1. Part A 'Fertilisers and soil conditioners' is amended as follows:

In the table, the expiry date of '31 March 2002' for the use of composted or fermented household waste is replaced by '31 March 2006'.

2.2. Part B 'Pesticides' is amended as follows:

2.2.1. In table III 'Substances to be used only in traps and/or dispensers', the restriction on the use of pyrethroids for a period expiring on 31 March 2002 is deleted.

2.2.2. In table III 'Substances to be used only in traps and/or dispensers', the expiry date of '31 March 2002' for metaldehyde is replaced by '31 March 2006'.

2.2.3. In table IV 'Other substances from traditional use in organic farming', the provisions relating to copper are replaced by the following:

Name	Description; compositional requirements; conditions for use
'Copper in the form of copper hydroxide, copper oxychloride, (tribasic) copper sulphate, cuprous oxide	Fungicide Until 31 December 2005 up to a maximum of 8 kg copper per hectare per year, and from 1 January 2006 up to 6 kg copper per ha per year, without prejudice to a more limited quantity if laid down under the specific terms of the general legislation on plant protection products in the Member State where the product is to be used For perennial crops, Member States may, by derogation to the previous paragraph, provide that the maximum levels apply as follows: — the total maximum quantity used from 23 March 2002 until 31 December 2006 shall not exceed 38 kg copper per ha — from 1 January 2007, the maximum quantity which may be used each year per ha shall be calculated by subtracting the quantities actually used in the 4 preceding years from, respectively, 36, 34, 32 and 30 kg copper for the years 2007, 2008, 2009 and 2010 and following years Need recognised by the inspection body or inspection authority'

2.2.4. In table IV 'Other substances from traditional use in organic farming', the restriction on the use of mineral oils for a period expiring on 31 March 2002 is deleted.

2.3. A new table IIIa entitled 'Preparations to be surface-spread between cultivated plants' is added, with the following content:

'Name	Description; compositional requirements; conditions for use
Iron (III) orthophosphate	Molluscicide'

3. Annex VI to Regulation (EEC) No 2092/91 is amended as follows:

3.1. Section B 'Processing aids and other products which may be used for processing of ingredients of agricultural origin from organic production, referred to in Article 5(3)(d) and Article 5(5a)(e) of Regulation (EEC) No 2092/91' is amended as follows: the restriction on the use of sodium hydroxide to a period expiring on 31 March 2002 is deleted.

3.2. In section C 'Ingredients of agricultural origin which have not been produced organically, referred to in Article 5(4) of Regulation (EEC) No 2092/91', the following is added to paragraph C.3: 'Casings, until 1 April 2004 only'.

COMMISSION REGULATION (EC) No 474/2002

of 15 March 2002

amending Regulation (EC) No 20/2002 laying down detailed rules for implementing the specific supply arrangements for the outermost regions introduced by Council Regulations (EC) No 1452/2001, (EC) No 1453/2001 and (EC) No 1454/2001

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1452/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the French overseas departments, amending Directive 72/462/EEC and repealing Regulations (EEC) No 525/77 and (EEC) No 3763/91 (Poseidom) [1], and in particular Article 22,

Having regard to Council Regulation (EC) No 1453/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the Azores and Madeira and repealing Regulation (EEC) No 1600/92 (Poseima) [2], and in particular Article 34,

Whereas:

(1) For technical reasons and in order to conduct suitable checks of the specific supply arrangements for the Azores and Madeira during the transitional period expiring on 30 June 2002, the Portuguese authorities have requested that special provisions should apply to the presentation of licence applications and to their term of validity. That request should be acceded to and the presentation of licence applications should be limited to the first five working days of each month and the term of validity of licences should expire at the end of the second month following that of issue. These new provisions should apply from 1 April 2002.

(2) A material error appears in the second indent of the second paragraph of Article 30 of Commission Regulation (EC) No 20/2002 [3]. As a result of that error, difficulties could arise in implementing the specific supply arrangements during the transitional period allowed from 1 January to 30 June 2002 in the French overseas departments, the Azores and Madeira. That error should be corrected so that the issuing of licences can proceed properly during the transitional period.

(3) The measures provided for in this Regulation are in accordance with the opinions of all the Management Committees concerned,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 20/2002 is hereby amended as follows:

1. The following paragraph is added to Article 29:

   '3. Until 30 June 2002 the following provisions shall apply in the Azores and Madeira:

   (a) licence applications shall be submitted in the first five working days of each month and the licences shall be issued in the following five working days;

   (b) licences shall be valid during the two months following that of issue.'

2. The second indent of the second paragraph of Article 30 is replaced by the following:

   '— Articles 4, 5, 7 and 9, Article 10(1) and Articles 11, 13, 14, 15, 26 and 27 shall not apply to the French overseas departments, the Azores and Madeira until 1 July 2002.'

Article 2

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

Article 1(1) shall apply from 1 April 2002.

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

Done at Brussels, 15 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 198, 21.7.2001, p. 11.
[2] OJ L 198, 21.7.2001, p. 26.
[3] OJ L 8, 11.1.2002, p. 1.

COMMISSION REGULATION (EC) No 475/2002
of 15 March 2002
on the suspension of the application of the double-checking regime to certain textile products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 2001/33/EC of 19 December 2001 on the signing of an Agreement in the form of an Exchange of Letters between the European Community and Ukraine concerning the extension and amendment of the Agreement between the European Economic Community and Ukraine on trade in textile products initialled on 5 May 1993, as last amended by the Agreement in the form of an Exchange of Letters initialled on 15 October 1999 and authorising its provisional application [1], and in particular Article 4 thereof,

Whereas:

(1) Article 2(1) of the Agreement between the European Community and Ukraine on trade on textile products [2], as amended, stipulates that at the latest six weeks before the end of every Agreement year the Commission and Ukraine shall hold consultations on the necessity of maintaining the categories listed in Annex III to the Agreement under double-checking, with a view to the possible suspension of categories from double-checking.

(2) Consultations were held in November 2001 with a view to reviewing the need to maintain the application of the double-checking system for certain textile products. As a result of these consultations, the parties agreed to suspend the double checking regime for certain textile products.

(3) It is desirable for this Regulation to enter into force immediately in order to inform operators of its benefits as soon as possible.

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

HAS ADOPTED THIS REGULATION:

Article 1

Annex III to the Agreement between the European Community and Ukraine on trade in textile products, which sets out the products without quantitative limits subject to the double-checking system referred to in the second subparagraph of Article 2(1) of that Agreement, is replaced by the Annex to this Regulation.

Article 2

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

It shall apply from 1 April 2002.

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

Done at Brussels, 15 March 2002.

For the Commission
Pascal LAMY
Member of the Commission

[1] OJ L 16, 18.1.2001, p. 1.
[2] OJ L 123, 17.5.1994, p. 718.

ANNEX

'ANNEX III

Products without quantitative limits subject to the double-checkings system referred to in the second subparagraph of Article 2(1) of the Agreement

Group	Category	2000	2001	2002	2003	2004
IA	1	Quota	Free	Free	Free	Free
	2	Quota	Surveillance	Surveillance	Surveillance	Surveillance
	3	Quota	Free	Free	Free	Free
IB	4	Quota	Surveillance	Surveillance	Surveillance	Surveillance
	5	Quota	Surveillance	Surveillance	Surveillance	Surveillance
	6	Quota	Surveillance	Surveillance	Surveillance	Surveillance
	7	Quota	Surveillance	Surveillance	Surveillance	Surveillance
	8	Quota	Surveillance	Surveillance	Surveillance	Surveillance
IIA	9	Quota	Free	Free	Free	Free
	20	Quota	Free	Free	Free	Free
	22	Surveillance	Free	Free	Free	Free
	23	Quota	Free	Free	Free	Free
	39	Quota	Free	Free	Free	Free
IIB	12	Quota	Surveillance	Surveillance	Surveillance	Surveillance
	13	Quota	Surveillance	Surveillance	Surveillance	Surveillance
	15	Quota	Surveillance	Surveillance	Surveillance	Surveillance
	16	Quota	Surveillance	Surveillance	Surveillance	Surveillance
	21	Quota	Surveillance	Free	Free	Free
	24	Quota	Surveillance	Free	Free	Free
	26/27	Quota	Surveillance	Surveillance	Surveillance	Surveillance
	29	Quota	Surveillance	Surveillance	Surveillance	Surveillance
	73	Surveillance	Free	Free	Free	Free
	83	Surveillance	Surveillance	Surveillance	Surveillance	Surveillance
IIIA	33	Surveillance	Free	Free	Free	Free
	36	Quota	Free	Free	Free	Free
	37	Quota	Free	Free	Free	Free
	50	Quota	Surveillance	Free	Free	Free
IIIB	67	Quota	Free	Free	Free	Free
	74	Surveillance	Free	Free	Free	Free
	90	Quota	Free	Free	Free	Free
IV	115	Quota	Free	Free	Free	Free
	117	Quota	Surveillance	Surveillance	Surveillance	Surveillance
	118	Quota	Free	Free	Free	Free'

COMMISSION REGULATION (EC) No 476/2002

of 15 March 2002

fixing the maximum export refund on wholly milled round grain rice in connection with the invitation to tender issued in Regulation (EC) No 2007/2001

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [1], as last amended by Regulation (EC) No 1987/2001 [2], and in particular Article 13(3) thereof,

Whereas:

(1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2007/2001 [3].

(2) Article 5 of Commission Regulation (EEC) No 584/75 [4], as last amended by Regulation (EC) No 299/95 [5], allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

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

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled round grain rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2007/2001 is hereby fixed on the basis of the tenders submitted from 8 to 14 March 2002 at 192,00 EUR/t.

Article 2

This Regulation shall enter into force on 16 March 2002.

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

Done at Brussels, 15 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 329, 30.12.1995, p. 18.
[2] OJ L 271, 12.10.2001, p. 5.
[3] OJ L 272, 13.10.2001, p. 13.
[4] OJ L 61, 7.3.1975, p. 25.
[5] OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 477/2002

of 15 March 2002

fixing the maximum export refund on wholly milled medium grain and long grain A rice to be exported to certain European third countries, in connection with the invitation to tender issued in Regulation (EC) No 2008/2001

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice [1], as last amended by Regulation (EC) No 1987/2001 [2], and in particular Article 13(3) thereof,

Whereas:

(1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2008/2001 [3].

(2) Article 5 of Commission Regulation (EEC) No 584/75 [4], as last amended by Regulation (EC) No 299/95 [5], allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

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

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled medium grain and long grain A rice to be exported to certain European third countries pursuant to the invitation to tender issued in Regulation (EC) No 2008/2001 is hereby fixed on the basis of the tenders submitted from 8 to 14 March 2002 at 210,00 EUR/t.

Article 2

This Regulation shall enter into force on 16 March 2002.

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

Done at Brussels, 15 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 329, 30.12.1995, p. 18.
[2] OJ L 271, 12.10.2001, p. 5.
[3] OJ L 272, 13.10.2001, p. 15.
[4] OJ L 61, 7.3.1975, p. 25.
[5] OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 478/2002

of 15 March 2002

fixing the maximum export refund on wholly milled round grain, medium grain and long grain A rice to be exported to certain third countries in connection with the invitation to tender issued in Regulation (EC) No 2009/2001

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [1], as last amended by Regulation (EC) No 1987/2001 [2], and in particular Article 13(3) thereof,

Whereas:

(1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2009/2001 [3].

(2) Article 5 of Commission Regulation (EEC) No 584/75 [4], as last amended by Regulation (EC) No 299/95 [5], allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

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

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled grain, medium grain and long grain A rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2009/2001 is hereby fixed on the basis of the tenders submitted from 8 to 14 March 2002 at 203,00 EUR/t.

Article 2

This Regulation shall enter into force on 16 March 2002.

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

Done at Brussels, 15 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 329, 30.12.1995, p. 18.
[2] OJ L 271, 12.10.2001, p. 5.
[3] OJ L 272, 13.10.2001, p. 17.
[4] OJ L 61, 7.3.1975, p. 25.
[5] OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 479/2002

of 15 March 2002

fixing the maximum export refund on wholly milled long grain rice in connection with the invitation to tender issued in Regulation (EC) No 2010/2001

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [1], as last amended by Regulation (EC) No 1987/2001 [2], and in particular Article 13(3) thereof,

Whereas:

(1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2010/2001 [3].

(2) Article 5 of Commission Regulation (EEC) No 584/75 [4], as last amended by Regulation (EC) No 299/95 [5], allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

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

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled long grain rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2010/2001 is hereby fixed on the basis of the tenders submitted from 8 to 14 March 2002 at 303,00 EUR/t.

Article 2

This Regulation shall enter into force on 16 March 2002.

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

Done at Brussels, 15 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 329, 30.12.1995, p. 18.
[2] OJ L 271, 12.10.2001, p. 5.
[3] OJ L 272, 13.10.2001, p. 19.
[4] OJ L 61, 7.3.1975, p. 25.
[5] OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 480/2002

of 15 March 2002

fixing the maximum subsidy on exports of husked long grain rice to Réunion pursuant to the invitation to tender referred to in Regulation (EC) No 2011/2001

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [1], as last amended by Regulation (EC) No 1987/2001 [2], and in particular Article 10(1) thereof,

Having regard to Commission Regulation (EEC) No 2692/89 of 6 September 1989 laying down detailed rules for exports of rice to Réunion [3] as amended by Regulation (EC) No 1453/1999 [4], and in particular Article 9(1) thereof,

Whereas:

(1) Commission Regulation (EC) No 2011/2001 [5] opens an invitation to tender for the subsidy on rice exported to Réunion.

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

A maximum subsidy on exports to Réunion of husked long grain rice falling within CN code 1006 20 98 is hereby set on the basis of the tenders lodged from 11 to 14 March 2002 at 310,00 EUR/t pursuant to the invitation to tender referred to in Regulation (EC) No 2011/2001.

Article 2

This Regulation shall enter into force on 16 March 2002.

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

Done at Brussels, 15 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 329, 30.12.1995, p. 18.
[2] OJ L 271, 12.10.2001, p. 5.
[3] OJ L 261, 7.9.1989, p. 8.
[4] OJ L 167, 2.7.1999, p. 19.
[5] OJ L 272, 13.10.2001, p. 21.

COMMISSION REGULATION (EC) No 481/2002

of 15 March 2002

deciding not to accept tenders submitted in response to the 285th partial invitation to tender as a general intervention measure pursuant to Regulation (EEC) No 1627/89

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal [1], as last amended by Commission Regulation (EC) No 2345/2001 [2], and in particular Article 47(8) thereof,

Whereas:

(1) Commission Regulation (EC) No 562/2000 of 15 March 2000 laying down detailed rules for the application of Council Regulation (EC) No 1254/1999 as regards the buying-in of beef [3], as last amended by Regulation (EC) No 1564/2001 [4], lays down buying standards. Pursuant to the abovementioned Regulation, an invitation to tender was opened pursuant to Article 1(1) of Commission Regulation (EEC) No 1627/89 of 9 June 1989 on the buying-in of beef by invitation to tender [5], as last amended by Regulation (EC) No 238/2002 [6].

(2) Article 13(1) of Regulation (EC) No 562/2000 lays down that a maximum buying-in price is to be fixed for quality R3, where appropriate, under each partial invitation to tender in the light of tenders received. In accordance with Article 13(2) of that Regulation, a decision may be taken not to proceed with the tendering procedure.

(3) Once tenders submitted in respect of the 285th partial invitation to tender have been considered and taking account, pursuant to Article 47(8) of Regulation (EC) No 1254/1999, of the requirements for reasonable support of the market and the seasonal trend in slaughterings and prices, it has been decided not to proceed with the tendering procedure.

(4) Article 1(7) of Regulation (EC) No 1209/2001 of 20 June 2001 derogating from Regulation (EC) No 562/2000 laying down detailed rules for the application of Council Regulation (EC) No 1254/1999 as regards as buying-in of beef [7], as last amended by Regulation (EC) No 2579/2001 [8], also opens buying-in of carcasses and half-carcasses of store cattle and lays down special rules in addition to those laid down for the buying-in of other products. For the 285th partial invitation to tender, no tender has been submitted.

(5) In the light of developments, this Regulation should enter into force immediately.

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

HAS ADOPTED THIS REGULATION:

Article 1

No award shall be made against the 285th partial invitation to tender opened pursuant to Regulation (EEC) No 1627/89.

Article 2

This Regulation shall enter into force on 16 March 2002.

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

Done at Brussels, 15 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 160, 26.6.1999, p. 21.
[2] OJ L 315, 1.12.2001, p. 29.
[3] OJ L 68, 16.3.2000, p. 22.
[4] OJ L 208, 1.8.2001, p. 14.
[5] OJ L 159, 10.6.1989, p. 36.
[6] OJ L 39, 9.2.2002, p. 4.
[7] OJ L 165, 21.6.2001, p. 15.
[8] OJ L 344, 28.12.2001, p. 68.

COMMISSION REGULATION (EC) No 482/2002

of 15 March 2002

deciding not to accept tenders submitted under the 21st partial invitation to tender pursuant to Regulation (EC) No 690/2001

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal [1], as last amended by Commission Regulation (EC) No 2345/2001 [2],

Having regard to Commission Regulation (EC) No 690/2001 of 3 April 2001 on special market support measures in the beef sector [3], as last amended by Regulation (EC) No 2595/2001 [4], and in particular Article 3(1) thereof,

Whereas:

(1) In application of Article 2(2) of Regulation (EC) No 690/2001, Commission Regulation (EC) No 713/2001 of 10 April 2001 on the purchase of beef under Regulation (EC) No 690/2001 [5], as last amended by Regulation (EC) No 433/2002 [6], establishes the list of Member States in which the tendering is open for the 21st partial invitation to tender on 11 March 2002.

(2) In accordance with Article 3(1) of Regulation (EC) No 690/2001, where appropriate, a maximum purchase price for the reference class shall be fixed in the light of the tenders received, taking into account the provisions of Article 3(2) of that Regulation. However, in accordance with Article 3(3) of Regulation (EC) No 690/2001 a decision may be taken to make no award.

(3) Following the examination of tenders submitted under the 21st partial invitation to tender and taking into account the current state of the market for cow meat, as well as the limited residual quantity available under the Regulation concerned, no award should be made.

(4) Due to the urgency of the support measures, this Regulation should enter into force immediately.

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

HAS ADOPTED THIS REGULATION:

Article 1

No award shall be made against the 21st partial invitation to tender opened pursuant to Regulation (EC) No 690/2001.

Article 2

This Regulation shall enter into force on 16 March 2002.

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

Done at Brussels, 15 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 160, 26.6.1999, p. 21.
[2] OJ L 315, 1.12.2001, p. 29.
[3] OJ L 95, 5.4.2001, p. 8.
[4] OJ L 345, 29.12.2001, p. 33.
[5] OJ L 100, 11.4.2001, p. 3.
[6] OJ L 67, 9.3.2002, p. 4.

COMMISSION REGULATION (EC) No 483/2002
of 15 March 2002
fixing the import duties in the cereals sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector [3], as last amended by Regulation (EC) No 2104/2001 [4], and in particular Article 2(1) thereof,

Whereas:

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

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

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

(4) The import duties are applicable until new duties are fixed and enter into force. They also remain in force in cases where no quotation is available for the reference exchange referred to in Annex II to Regulation (EC) No 1249/96 during the two weeks preceding the next periodical fixing.

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 16 March 2002.

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

Done at Brussels, 15 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 181, 1.7.1992, p. 21.
[2] OJ L 193, 29.7.2000, p. 1.
[3] OJ L 161, 29.6.1996, p. 125.
[4] OJ L 283, 27.10.2001, p. 8.

ANNEX I

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

CN code	Description	Import duty [2] (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00
	medium quality [1]	0,00
1001 90 91	Common wheat seed	0,00
1001 90 99	Common high quality wheat other than for sowing [3]	0,00
	medium quality	0,00
	low quality	10,09
1002 00 00	Rye	0,00
1003 00 10	Barley, seed	0,00
1003 00 90	Barley, other [4]	0,00
1005 10 90	Maize seed other than hybrid	37,51
1005 90 00	Maize other than seed [5]	37,51
1007 00 90	Grain sorghum other than hybrids for sowing	0,00

[1] In the case of durum wheat not meeting the minimum quality requirements for durum wheat of medium quality, referred to in Annex I to Regulation (EC) No 1249/96, the duty applicable is that fixed for low-quality common wheat.

[2] For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2(4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:

— EUR 3 per tonne, where the port of unloading is on the Mediterranean Sea, or

— EUR 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic coasts of the Iberian peninsula.

[3] The importer may benefit from a flat-rate reduction of EUR 14 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

[4] The importer may benefit from a flat-rate reduction of EUR 8 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

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

ANNEX II

Factors for calculating duties

(period from 1 March 2002 to 14 March 2002)

1. Averages over the two-week period preceding the day of fixing:

Exchange quotations	Minneapolis	Kansas City	Chicago	Chicago	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2. 14 %	HRW2. 11,5 %	SRW2	YC3	HAD2	Medium quality (*)	US barley 2
Quotation (EUR/t)	126,11	120,45	117,20	94,04	223,39 (**)	213,39 (**)	152,85 (***)
Gulf premium (EUR/t)	42,08	24,92	17,25	12,99	—	—	—
Great Lakes premium (EUR/t)	—	—	—	—	—	—	—

(*) A discount of 10 EUR/t (Article 4(1) of Regulation (EC) No 1249/96).
(**) Fob Gulf.
(***) Fob USA.

2. Freight/cost: Gulf of Mexico–Rotterdam: 19,70 EUR/t; Great Lakes–Rotterdam: 31,22 EUR/t.

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

COMMISSION DIRECTIVE 2002/26/EC

of 13 March 2002

laying down the sampling methods and the methods of analysis for the official control of the levels of ochratoxin A in foodstuffs

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food [1], and in particular Article 2 thereof,

Having regard to Council Directive 85/591/EEC of 20 December 1985 concerning the introduction of Community methods of sampling and analysis for the monitoring of foodstuffs intended for human consumption [2], and in particular Article 1 thereof,

Whereas:

(1) Commission Regulation (EC) No 466/2001 of 8 March 2001 setting maximum levels for certain contaminants in foodstuffs [3], as last amended by Regulation (EC) No 472/2002 [4], fixes maximum limits for ochratoxin A in certain foodstuffs.

(2) Council Directive 93/99/EEC of 29 October 1993 on the subject of additional measures concerning the official control of foodstuffs [5] introduces a system of quality standards for laboratories entrusted by the Member States with the official control of foodstuffs.

(3) Sampling plays a crucial part in the precision of the determination of the levels of ochratoxin A, which are very heterogeneously distributed in a lot.

(4) It seems necessary to fix general criteria, which the method of analysis has to comply with in order to ensure that laboratories, in charge of the control, use methods of analysis with comparable levels of performance.

(5) The provisions for the sampling and methods of analysis have been drawn up on the basis of present knowledge and they may be adapted to take account of advances in scientific and technological knowledge.

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

HAS ADOPTED THIS DIRECTIVE:

Article 1

The Member States shall take all measures necessary to ensure that the sampling for the official control of the levels of ochratoxin A in foodstuffs is carried out in accordance with the methods described in Annex I to this Directive.

Article 2

The Member States shall take all measures necessary to ensure that sample preparation and methods of analyses used for the official control of the levels of ochratoxin A in foodstuffs comply with the criteria described in Annex II to this Directive.

Article 3

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 28 February 2003 at the latest. They shall forthwith inform the Commission thereof.

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

Article 4

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

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 13 March 2002.

For the Commission

David BYRNE

Member of the Commission

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[1] OJ L 37, 13.2.1993, p. 1.
[2] OJ L 372, 31.12.1985, p. 50.
[3] OJ L 77, 16.3.2001, p. 1.
[4] See page 18 of this Official Journal.
[5] OJ L 290, 24.11.1993, p. 14.

ANNEX I

METHODS OF SAMPLING FOR OFFICIAL CONTROL OF THE LEVELS OF OCHRATOXIN A IN CERTAIN FOODSTUFFS

1. Purpose and scope

Samples intended for official checking of the levels of ochratoxin A content in foodstuffs shall be taken according to the methods described below. Aggregate samples thus obtained shall be considered as representative of the lots. Compliance with maximum limits laid down in Regulation (EC) No 466/2001 shall be established on the basis of the levels determined in the laboratory samples.

2. Definitions

Lot:	an identifiable quantity of a food commodity delivered at one time and determined by the official to have common characteristics, such as origin, variety, type of packing, packer, consignor or markings
Sublot:	designated part of a lot in order to apply the sampling method on that designated part. Each sublot must be physically separate and identifiable
Incremental sample:	a quantity of material taken from a single place in the lot or sublot
Aggregate sample:	the combined total of all the incremental samples taken from the lot or sublot.

3. General provisions

3.1. *Personnel*

Sampling shall be performed by an authorised person as specified by the Member States.

3.2. *Material to be sampled*

Each lot which is to be examined must be sampled separately. In accordance with the specific provisions of this Annex, large lots should be subdivided into sublots to be sampled separately.

3.3. *Precautions to be taken*

In the course of sampling and preparation of the samples precautions must be taken to avoid any changes which would affect the ochratoxin A content, adversely affect the analytical determination or make the aggregate samples unrepresentative.

3.4. *Incremental samples*

As far as possible incremental samples should be taken at various places distributed throughout the lot or sublot. Departure from this procedure must be recorded in the record.

3.5. *Preparation of the aggregate sample*

The aggregate sample is made up by uniting the incremental samples.

3.6. *Replicate samples*

The replicate samples for enforcement, trade (defence) and referee purposes are to be taken from the homogenised sample, unless this conflicts with Member States' rules on sampling.

3.7. *Packaging and transmission of samples*

Each sample shall be placed in a clean, inert container offering adequate protection from contamination and against damage in transit. All necessary precautions shall be taken to avoid any change in composition of the sample, which might arise during transportation or storage.

3.8. *Sealing and labelling of samples*

Each sample taken for official use shall be sealed at the place of sampling and identified following the Member State's regulations.

A record must be kept of each sampling, permitting each lot to be identified unambiguously and giving the date and place of sampling together with any additional information likely to be of assistance to the analyst.

4. **Specific provisions**

4.1. *Different types of lots*

Food commodities may be traded in bulk, containers, or individual packings (sacks, bags, retail packings, etc.). The sampling procedure can be applied to all the different forms in which the commodities are put on the market.

Without prejudice to the specific provisions as laid down in points 4.3, 4.4 and 4.5 of this Annex, the following formula can be used as a guide for the sampling of lots traded in individual packings (sacks, bags, retail packings, etc.):

$$\text{Sampling frequency (SF)} \qquad n = \frac{\text{Weight of the lot} \times \text{Weight of the incremental sample}}{\text{Weight of the aggregate sample} \times \text{Weight of individual packing}}$$

— Weight: in kg

— Sampling Frequency (SF): every nth sack or bag from which an incremental sample must be taken (decimal figures should be rounded to the nearest whole number).

4.2. *Weight of the aggregate sample*

The weight of the incremental sample should be about 100 grams, unless otherwise defined in this Annex. In the case of lots in retail packings, the weight of the incremental sample depends on the weight of the retail packing.

4.3. *General survey of the sampling procedure for cereals and dried vine fruit*

Table 1: Subdivision of lots into sublots depending on product and lot weight

Commodity	Lot weight (tonnes)	Weight or number of sublots	Number of incremental samples	Aggregate sample Weight (kg)
Cereals and cereal products	≥ 1 500	500 tonnes	100	10
	> 300 and < 1 500	3 sublots	100	10
	≥ 50 and ≤ 300	100 tonnes	100	10
	< 50	—	10-100 (1)	1-10
Dried vine fruit (currants, raisins and sultanas)	≥ 15	15-30 tonnes	100	10
	< 15	—	10-100 (2)	1-10

(1) Depending on the lot weight — see Table 2 of this Annex.
(2) Depending on the lot weight — see Table 3 of this Annex.

4.4. *Sampling procedure for cereals and cereal products (lots ≥ 50 tonnes) and dried vine fruit (lots ≥ 15 tonnes)*

— On condition that the sublot can be separated physically, each lot must be subdivided into sublots following Table 1. Taking into account that the weight of the lot is not always an exact multiple of the weight of the sublots, the weight of the sublot may exceed the mentioned weight by a maximum of 20 %.

— Each sublot must be sampled separately.

— Number of incremental samples: 100. In the case of lots of cereals under 50 tonnes and lots of dried vine fruit under 15 tonnes, see point 4.5. Weight of the aggregate sample = 10 kg.

— If it is not possible to carry out the method of sampling described above because of the commercial consequences resulting from damage to the lot (because of packaging forms, means of transport, etc.) an alternative method of sampling may be applied provided that it is as representative as possible and is fully described and documented.

4.5. *Sampling provisions for cereals and cereal products (lots < 50 tonnes) and for dried vine fruit (lots < 15 tonnes)*

For cereal lots under 50 tonnes and for dried vine fruit lots under 15 tonnes, the sampling plan has to be used with 10 to 100 incremental samples, depending on the lot weight, resulting in an aggregate sample of 1 to 10 kg.

The figures in the following table can be used to determine the number of incremental samples to be taken.

Table 2: Number of incremental samples to be taken depending on the weight of the lot of cereals

Lot weight (tonnes)	Number of incremental samples
≤ 1	10
> 1 - ≤ 3	20
> 3 - ≤ 10	40
> 10 - ≤ 20	60
> 20 - ≤ 50	100

Table 3: Number of incremental samples to be taken depending on the weight of the lot of dried vine fruit

Lot weight (tonnes)	Number of incremental samples
≤ 0,1	10
> 0,1 - ≤ 0,2	15
> 0,2 - ≤ 0,5	20
> 0,5 - ≤ 1,0	30
> 1,0 - ≤ 2,0	40
> 2,0 - ≤ 5,0	60
> 5,0 - ≤ 10,0	80
> 10,0 - ≤ 15,0	100

4.6. *Sampling at retail stage*

Sampling of foodstuffs at the retail stage should be done where possible in accordance with the above sampling provisions. Where this is not possible, other effective sampling procedures at retail stage can be used provided that they ensure sufficient representativeness for the sampled lot.

5. **Acceptance of a lot or sublot**

— Acceptance if the aggregate sample conforms to the maximum limit.
— Rejection if the aggregate sample exceeds the maximum limit.

ANNEX II

SAMPLE PREPARATION AND CRITERIA FOR METHODS OF ANALYSIS USED IN OFFICIAL CHECKING OF THE LEVELS OF OCHRATOXIN A IN CERTAIN FOODSTUFFS

1. **Precautions**

As the distribution of ochratoxin A is non-homogeneous, samples should be prepared — and especially homogenised — with extreme care.

All the material received by the laboratory is to be used for the preparation of test material.

2. **Treatment of the sample as received in the laboratory**

Finely grind and mix thoroughly the complete aggregate sample using a process that has been demonstrated to achieve complete homogenisation.

3. **Subdivision of samples for enforcement and defence purposes**

The replicate samples for enforcement, trade (defence) and referee purposes shall be taken from the homogenised material unless this conflicts with Member States' rules on sampling.

4. **Method of analysis to be used by the laboratory and laboratory control requirements**

4.1. *Definitions*

A number of the most commonly used definitions that the laboratory will be required to use are given below:

The most commonly quoted precision parameters are repeatability and reproducibility.

r= Repeatability, the value below which the absolute difference between two single test results obtained under repeatability conditions (i.e. same sample, same operator, same apparatus, same laboratory, and short interval of time) may be expected to lie within a specific probability (typically 95 %) and hence $r = 2{,}8 \times s_r$

$s_r = 1$ Standard deviation, calculated from results generated under repeatability conditions

RSD_r = Relative standard deviation, calculated from results generated under repeatability conditions $[(s_r/\bar{x}) \times 100]$ where $\bar{x}$ is the average of results over all laboratories and samples

R = Reproducibility, the value below which the absolute difference between single test results obtained under reproducibility conditions (i.e. on identical material obtained by operators in different laboratories, using the standardised test method) may be expected to lie within a certain probability (typically 95 %); $R = 2{,}8 \times s_R$

s_R = Standard deviation, calculated from results under reproducibility conditions

RSD_R = Relative standard deviation calculated from results generated under reproducibility conditions $[(s_R/\bar{x}) \times 100]$.

4.2. *General requirements*

Methods of analysis used for food control purposes must comply with the provisions of items 1 and 2 of the Annex to Directive 85/591/EEC concerning the introduction of Community methods of sampling and analysis for the monitoring of foodstuffs intended for human consumption.

4.3. *Specific requirements*

Where no specific methods for the determination of ochratoxin A levels in foodstuffs are prescribed at Community level, laboratories may select any method provided the selected method meets the following criteria:

Performance characteristics for ochratoxin A

Level µg/kg	Ochratoxin A		
	RSD_r (%)	RSD_R (%)	Recovery (%)
< 1	≤ 40	≤ 60	50 to 120
1-10	≤ 20	≤ 30	70 to 110

— The detection limits of the methods used are not stated as the precision values are given at the concentrations of interest.

— The precision values are calculated from the Horwitz equation:

$RSD_R = 2^{(1-0,5\log C)}$

where:

— RSD_R is the relative standard deviation calculated from results generated under reproducibility conditions $[(s_R/\overline{x}) \times 100]$,

— C is the concentration ratio (i.e. 1 = 100 g/100 g, 0,001 = 1,000 mg/kg).

This is a generalised precision equation, which has been found to be independent of analyte and matrix but solely dependent on concentration for most routine methods of analysis.

4.4. *Recovery calculation*

The analytical result is to be reported corrected or uncorrected for recovery. The manner of reporting and the level of recovery must be reported.

4.5. *Laboratory quality standards*

Laboratories must comply with Directive 93/99/EEC on the subject of additional measures concerning the official control of foodstuffs.

COMMISSION DIRECTIVE 2002/27/EC

of 13 March 2002

amending Directive 98/53/EC laying down the sampling methods and the methods of analysis for the official control of the levels for certain contaminants in foodstuffs

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 85/591/EEC of 20 December 1985 concerning the introduction of Community methods of sampling and analysis for the monitoring of foodstuffs intended for human consumption [1], and in particular Article 1 thereof,

Whereas:

(1) Commission Regulation (EC) No 466/2001 of 8 March 2001 setting maximum levels for certain contaminants in foodstuffs [2], as last amended by Regulation (EC) No 472/2002 [3], fixes maximum limits for aflatoxins in spices.

(2) Sampling plays a crucial part in the precision of the determination of the levels of aflatoxins, which are very heterogeneously distributed in a lot. Commission Directive 98/53/EC of 16 July 1998 laying down the sampling methods of analysis and the methods of analysis for the official control of the levels for certain contaminants in foodstuffs [4] should be amended to include spices.

(3) It is appropriate to rectify minor errors in Directive 98/53/EC.

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

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 98/53/EC is amended as set out in the Annex of this Directive.

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 28 February 2003 at the latest. They shall forthwith inform the Commission thereof.

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 13 March 2002.

For the Commission

David BYRNE

Member of the Commission

[1] OJ L 372, 31.12.1985, p. 50.
[2] OJ L 77, 16.3.2001, p. 1.
[3] See page 18 of this Official Journal.
[4] OJ L 201, 17.7.1998, p. 93.

ANNEX

A. Annex I is amended as follows:

1. point 4.2 is replaced by the following:

'4.2. *Weight of the incremental sample*

The weight of the incremental sample should be about 300 grams unless otherwise defined in point 5 of this Annex and with the exception of spices in which case the weight of the incremental sample is about 100 grams. In the case of retail packings, the weight of the incremental sample depends on the weight of the retail packing.';

2. point 5.1 is amended as follows:

the word 'spices' is inserted in the title after the words 'dried fruit';

3. Table 2 under point 5.1 is amended as follows:

the product 'spices' is added to Table 2 as follows:

Commodity	Lot weight (tonnes)	Weight or number of sublots	Number of incremental samples	Aggregate sample weight (kg)
'Spices	≥ 15 < 15	25 tonnes —	100 10-100 (*)	10 1-10'

4. point 5.2 is amended as follows:

the word 'spices' is added on a new line after 'cereals (lots ≥ 50 tonnes)';

5. the following sentence is added to point 5.2.1, fourth dash:

'In the case of spices the aggregate sample weighs not more than 10 kg and therefore no division in subsamples is necessary.';

6. point 5.2.2 is amended as follows:

the words 'and spices' are added after 'or other physical treatment' in the sentence 'For groundnuts, nuts and dried fruit subjected to a sorting or other physical treatment';

7. point 5.5.2.2 is rectified as follows:

'under point 5.2' is replaced by 'in Table 2 under point 5.1';

8. the following point 6 is added:

'6. *Sampling at retail stage*

Sampling of foodstuffs at the retail stage should be done where possible in accordance with the above sampling provisions. Where this is not possible, other effective sampling procedures at retail stage can be used provided that they ensure sufficient representativeness for the sampled lot.'

B. Annex II is amended as follows:

1. point 4.3 is rectified as follows:

in the table, in the column 'concentration range' all 'µg/L' has to be replaced by 'µg/kg' and the concentration range '0,01-0,5 µg/L' for 'Recovery — Aflatoxin M1' has to be replaced by '0,01-0,05 µg/kg'.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 19 December 2001

on the conclusion of an Agreement in the form of an Exchange of Letters between the European Community and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) concerning additional funding in 2001 under the current EC-UNRWA Convention for the years 1999 to 2001

(2002/223/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 181 in conjunction with the first subparagraph of Article 300(3) thereof,

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

Having regard to the assent of the European Parliament [2],

Whereas:

(1) The current crisis in the Middle East has put additional burden on UNRWA.

(2) The Community assistance to UNRWA is an important element in stabilising the situation in the Middle East and furthermore forms part of the campaign against poverty in developing countries and therefore contributes to the sustainable economic and social development of the population concerned and the host countries in which the population lives.

(3) Support of UNRWA operations would be likely to contribute to the attainment of the Community objectives described above.

(4) The current Convention between the European Community and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) for the years 1999 to 2001 (EC-UNRWA Convention [3]), and in particular Article 6 thereof, envisages adjustments to the financial contributions,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement in the form of an Exchange of Letters between the European Community and the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) concerning an additional contribution of EUR 15 million to the existing funding in 2001 under the current Convention is hereby approved.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the persons empowered to sign the Agreement in order to bind the Community.

Done at Brussels, 19 December 2001.

For the Council

The President

A. NEYTS-UYTTEBROECK

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[1] Proposal of 7 December 2001 (not yet published in the Official Journal).

[2] Opinion delivered on 12 December 2001 (not yet published in the Official Journal).

[3] OJ L 261, 7.10.1999, p. 37.

AGREEMENT

in the form of an Exchange of Letters between the European Community and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) concerning additional funding in 2001 under the current EC-UNRWA Convention for the years 1999 to 2001

A. *Letter from the European Community*

Brussels, 20 December 2001

Sir,

I have the honour to refer to the negotiations between the representative of the European Community and UNRWA concerning additional funding under the Convention, signed on 19 September 1999, between the European Community and UNRWA covering aid to refugees in the countries of the Near East, for the years 1999 to 2001.

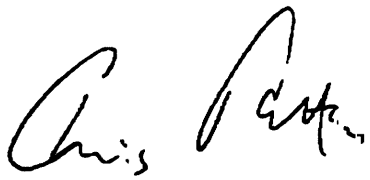
Pursuant to Article 6 of the abovementioned Convention, we are pleased to inform you that the Community agrees to provide a contribution to UNRWA in addition to the contribution for the year 2001 referred to in Article 2. The size of this additional contribution shall be EUR 12,7 million for the education programme and EUR 2,3 million for the general health programme.

All other conditions of the Convention shall remain unchanged.

I shall be grateful if you could confirm the agreement of UNRWA to the foregoing.

Please accept, Sir, the assurance of my highest consideration.

For the European Community



B. *Letter from UNRWA*

Gaza City, 20 December 2001

Sir,

I have the honour to acknowledge receipt of your letter of today's date, which reads as follows:

'I have the honour to refer to the negotiations between the representative of the European Community and UNRWA concerning additional funding under the Convention, signed on 19 September 1999, between the European Community and UNRWA covering aid to refugees in the countries of the Near East, for the years 1999 to 2001.

Pursuant to Article 6 of the abovementioned Convention, we are pleased to inform you that the Community agrees to provide a contribution to UNRWA in addition to the contribution for the year 2001 referred to in Article 2. The size of this additional contribution shall be EUR 12,7 million for the education programme and EUR 2,3 million for the general health programme.

All other conditions of the Convention shall remain unchanged.

I shall be grateful if you could confirm the agreement of UNRWA to the foregoing.'

I confirm the agreement of UNRWA to the foregoing.

Please accept, Sir, the assurance of my highest consideration.

For UNRWA

COMMISSION

COMMISSION DECISION
of 19 September 2001
on the State aid granted by Italy to Enichem SpA

(notified under document number C(2001) 2902)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2002/224/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas:

I. PROCEDURE

(1) On 16 March 1994, the Commission decided to open the Article 93(2) (now Article 88(2)) procedure [2] in respect of two capital contributions made by ENI SpA (hereinafter 'ENI') to its subsidiary Enichem SpA (hereinafter 'Enichem') in October 1992 and December 1993 of ITL 1 000 billion and ITL 794 billion respectively (hereinafter 'the first two injections'). By letter of 16 March 1994, the Commission informed the Italian Government of this and requested it to submit its observations and to furnish all such information as might help to assess the capital contributions in question.

(2) By letter of 18 May 1994, the Italian Government submitted its observations and at the same time notified a restructuring plan to be implemented by Enichem over the period 1994 to 1997. In the context of this plan, the Italian authorities informed the Commission of a new capital contribution to be made by ENI to Enichem of ITL 3 000 billion. The capital contribution was approved by Enichem's shareholders on 29 June 1994 and was to be paid within three months of the Commission decision (hereinafter 'the third injection')

(3) In further submissions and meetings, representatives of the Italian authorities and Enichem provided the Commission with further details of the 1994 to 1997 restructuring plan, as well as a description of the restructuring actions undertaken by Enichem during the period 1991 to 1993.

(4) On 27 July 1994 the Commission adopted a final decision (hereinafter 'decision of 27 July 1994') closing the procedure initiated on 16 March 1994. The decision declared the first two injections to be State aid compatible with the common market and, at the same time, concluded the examination of the third injection by finding that it did not constitute State aid.

(5) The Commission decision to close the procedure was published in the *Official Journal of the European Communities* [3].

(6) By application lodged in January 1995, BP Chemicals Ltd (hereinafter 'BP') brought proceedings before the Court of First Instance of the European Communities (hereinafter 'CFI') for annulment of the Commission decision of 27 July 1994.

[1] OJ C 245, 28.8.1999, p. 15.
[2] OJ C 151, 2.6.1994, p. 3.
[3] OJ C 330, 26.11.1994, p. 7.

(7) By judgment of 15 September 1998 in Case T-11/95 [4], the CFI annulled the decision of 27 July 1994 insofar as it closed the preliminary examination of the third capital contribution of ITL 3 000 billion. In particular, the CFI concluded that 'the Commission, in closing its initial examination of the third capital injection pursuant to Article 93(3) of the Treaty, despite its inability to surmount the difficulties regarding the question whether that injection constituted State aid, and without examining whether the injection was compatible with the common market, infringed the rights of the applicant as a party concerned within the meaning of Article 93(2) of the Treaty' [5].

(8) The Court, on the other hand, rejected BP's application against the decision of 27 July 1994 insofar as it found that the first two capital injections were State aid compatible with the common market pursuant to Article 87(3)(c).

(9) As a result of the judgment, the Commission decided, on 23 June 1999, to initiate proceedings under Article 88(2) in respect of the third capital contribution. This decision was communicated to Italy by letter of 19 July 1999. The Commission invited interested parties to submit their comments on the aid in question.

(10) The Commission received comments from third parties. It forwarded them to Italy, which was given the opportunity to react.

(11) The Italian authorities submitted their observations by letter of 18 August 1999 and provided information during a meeting on 18 February 2000.

II. DESCRIPTION OF THE MEASURES

(12) Enichem is ENI's operational subholding company for the chemical sector. Enichem, at the time of the measures, produced and marketed a wide range of chemical products. ENI, in 1994, was a holding company created in July 1992 when Ente Nazionale Idrocarburi, an Italian public entity, was transformed into a joint stock company. At the time when the third capital contribution was decided, the Italian Government controlled the entire share capital of ENI through the Treasury Ministry and appointed the company's Board of Directors [6].

(13) Enichem's economic and financial situation deteriorated rapidly at the end of the 1980s during the downturn of the chemicals' market in that period. As shown in Table 1, the drastic reduction in the company's turnover, mainly due to the reduction in prices of the products, resulted in a negative net operating margin in 1992 and, as a consequence, increased Enichem's net losses.

Table 1: Enichem's economic and financial results 1990 to 1992

(ITL billion)

	1990	1991	1992
Turnover	15 060	13 424	11 155
Net operating margin	743	77	(308)
Net profit (loss)	(68)	(722)	(1 542)
Net equity	5 179	4 496	3 935
Net financial debts	8 375	7 908	8 083

(14) Enichem responded to these market difficulties by putting in place a large restructuring plan, aimed at redefining its industrial position in the chemicals market after the adverse trend experienced during the preceding years, in order to restore a sound financial and industrial situation.

(15) As part of the restructuring measures, ENI decided on 1 October 1992 to provide Enichem with fresh capital. A first capital contribution of ITL 1 000 billion was granted to Enichem immediately, while a second of ITL 794 billion was granted in December 1993 (the first two injections). These two injections, which were not notified to the Commission, were the reason for the Commission decision of 16 March 1994 to open the formal investigation procedure.

(16) As the Commission stated in its decision of 27 July 1994, the restructuring measures included a significant number of plant closures and capacity reductions. The closures are listed in Table 2 below.

[4] [1998] ECR II-3235.
[5] Paragraph 200 of the judgment.
[6] The Italian State currently holds less than 50 % of ENI's capital.

Table 2: Enichem's plant closures 1991 to 1993

Location	Plant	Capacity (kt/year)
Porto Marghera	— PVC compound — Soda concentration — Trichloroethylene — Sodium tripolyphosphate	33 100 80 82
Ravenna	— Acetylene/VCM — Styrene	30/60 43
Mantova	— Chlorine caustic soda/EDC — Maleic anhydride — Styrene — SAN — PST compound	130/200 11 55 24 60
Assemini	— Polyethylene — PVC suspension — VCM/DCE Oxy	27 80 88
Cesano Maderno	Acrylic fibres	35
Crotone	Phosphorus and derivatives	14
Villacidro	Acrylic fibres	48
Priolo	Ethylene	100
Gela	— Chlorine caustic soda — EDC	110 143
Cengio	Dyestuffs intermediates	n.a.
Porto Torres	Butadiene	50
Ivrea	Downstream acrylic fibres	17
Hythe (UK)	Latex vinylpyridine	5

(17) These closures, together with other internal restructuring measures, reduced Enichem's workforce by some 7 000 during the 1991 to 1993 period.

(18) Enichem planned to divest its non-core activities through sale or liquidation with a view to withdrawing from loss-making production and obtaining divestiture revenues (basically from the disposal of some big profit-making subsidiaries, mainly in the fibres and detergent sectors) to part-finance the restructuring plan.

(19) Despite the restructuring, the company faced increasing market difficulties due to the downturn in the petrochemical business in the period 1992 to 1993. In 1992, the large majority of petrochemical companies experienced a significant deterioration in their industrial results. As a consequence of the falling prices, most of the major players posted operating losses in 1992 and 1993.

(20) As the market situation in the petrochemical business worsened compared to the forecasts in its plans, Enichem developed, in line with the restructuring measures already undertaken, an additional industrial plan for the period 1994 to 1997, including more radical cost-cutting actions to restore sound viability and a healthy financial situation.

(21) The Italian authorities, as part of the proceedings, presented Enichem's additional industrial plan to the Commission and informed it by letter of 6 June 1994 of the financial details of the plan. These included an ITL 3 000 billion capital contribution (the third injection).

(22) The new plan focused on three main objectives: to re-balance the financial structure, to concentrate on pure 'core' activities and to improve the cost structure of its operations.

(23) Enichem decided to concentrate its business on base chemicals, polymers and elastomers, all of them strategically linked to the energy business of ENI, and drastically improve its cost structure by optimising production and logistics, reducing surplus capacity and rationalising organisational and commercial structures.

(24) In the context of the additional plan, Enichem planned additional divestments amounting to some ITL 2 500 over the period 1994 to 1995, a reduction in working capital of ITL 1 142 billion, a reduction in investments of some ITL 170 billion a year (or about 30 % less than 1993) and in R&D expenditure of some ITL 76 billion a year. Additional rationalisations and shutdowns were intended to reduce the company's fixed costs by ITL 1 384 billion by the end of 1997. At the same time, Enichem's workforce was eventually to be cut by around 16 000 units to further reduce its costs.

(25) As regards its core activities, Enichem would concentrate predominantly on base chemicals, polymers and elastomers. Divestments were to include polyethylene and other plastic downstream activities, PET, fine chemicals, some minor elastomer activities (mainly nitrile and polychloroprene), fibres (acrylic, polyester and thermo-bonded) and detergents.

(26) These new measures were intended to reduce Enichem's fixed costs and working capital levels, their respective ratio going from 32,6 % and 25,2 % in 1994 to 22,9 % and 16,8 % in 1997. As a result, Enichem was expected to show a profit as of 1997 and then reach levels of indebtedness, financial charges and profitability similar to those of its main competitors.

(27) These further divestments and plant shutdowns were intended to provide for an additional and significant reduction in Enichem's production capacity, in that all the plants listed in Table 3 were to be sold or closed down.

Table 3: Enichem restructuring divestments 1997 to 1997

Location	Plant	Capacity (kt/year)
Porto Marghera	— Hydrocyanic acid — Acetonecyanhydrine	30 70
Ravenna	— Additives — Elastomers	n.a. 80
Carling	LDPE	200
Pedrengo	Intermediate products	n.a.
Villadossola	Fine chemicals	n.a.

Location	Plant	Capacity (kt/year)
Pisticci	Terbond	n.a.
Pisticci	PET	102
Ottana, Acerra, P. Marghera	Fibres (all business)	447
Pieve Vergonte, Trissino, Madone, Assemini, etc.	Fine chemicals (all business)	n.a.
Augusta, Sarroch, etc.	Detergents (all business)	962
Various	PVC (all business)	50 % joint venture
Various	Downstream polymers (all business)	192

(28) Overall, the planned restructuring measures linked to the additional plan were to provide an estimated additional reduction in capacity of at least 2 083 kt/year [7], compared to the 1 152 kt obtained over the period 1991 to 1993 (Table 2). As regards the identified 'core business' the plan referred to the need to establish forms of collaboration with other producers in order to fill the technological gap that Enichem was experiencing in some sectors. Eventually Enichem sold 50 % of its polymers' business to Union Carbide, developing a joint venture with the latter, in order to reposition this business on the market.

(29) These measures enabled Enichem to restructure in order to restore sound profitability, starting from 1997, and to achieve a positive operational cash flow already in 1995, according to the estimates reported in Table 4.

Table 4: Enichem's forecast economic results 1994 to 1997

(ITL billion)

	1994	1995	1996	1997
Turnover	9 917	8 504	7 550	8 043
Operating result	723	818	912	1 095
Net profit (loss)	(1 700)	(912)	(219)	7
Operational cash flow	(47)	355	586	780

III. **COMMENTS FROM THIRD PARTIES**

(30) BP, in its observations, argued that the Commission did not have valid reasons for separating the third capital injection from the first two and that therefore the three measures must be considered as a whole. In particular, it argued that the third operation was necessary to make the company attractive to private operators and that it was too close to the first two injections to be possibly considered as a separate operation. Once the three injections are taken together, the return on the total investment would not be sufficient for a private investor and the three injections as a whole would therefore have to be regarded as State aid.

[7] This figure does not include reduced capacity in additives (Ravenna), intermediate products (Pedrengo), fine chemicals (Villadossola), Terbond (Pisticci) and the 50 % of the PVC joint venture.

(31) Moreover, BP argues that, even if the third operation were to be considered a stand-alone transaction, the return on the investment was not sufficient to make it profitable. BP challenged some of the assumptions and calculations used by the Commission, both in its decision of 27 July 1994 and in its submissions to the Court. First, BP questioned the claim that the method of discounting profits (hereinafter 'DNP') is a generally accepted one. Second, it challenged some of the assumptions used by the Commission in its calculation of the return, as regards both the DNP and the discounted cash flow (hereinafter 'DCF') methodologies.

(32) In particular, BP argues that: (i) the Commission wrongly calculated the effects of debt repayment, in that it considered the cash flow for repaying Enichem's debts also as a return; (ii) the Commission included in the calculation of the return the initial book value of Enichem, which would be inconsistent with the DCF method used and, finally (iii) the residual value attributed to Enichem is excessive.

(33) BP then argued that, if the third capital injection is regarded as State aid, it should be assessed under the guidelines for restructuring aid with particular regard to the reduction of capacity, which should be in proportion to the amount of aid.

(34) The United Kingdom Government, in its comments, argued that: (i) the third capital injection could not be separated from the first two injections, as it was put in place soon after the first two, the three together forming part of a single ongoing restructuring since Enichem could not survive without the third injection. Moreover, the United Kingdom argued that (ii) even if the third injection were regarded as a stand-alone, this would not satisfy the market economy investor test.

(35) According to the United Kingdom authorities, Enichem's financial situation at the time of the third injection was not sound, as demonstrated by the fact that the only alternative to the injection was the company's bankruptcy. In addition, the injection was not linked solely to the firm's new investment needs but was needed to meet the restructuring costs incurred by Enichem.

(36) The United Kingdom Government therefore supported BP's view that the third injection should be regarded as State aid — like the first two injections — and should be assessed under the relevant guidelines.

IV. **COMMENT FROM ITALY**

(37) The Italian Government, in its reply, argued that, as regards the third injection: (i) the funds provided by ENI to Enichem should not be considered State resources as they were funds generated by the company's activities and not granted by the State, (ii) the funds were granted in circumstances that would have been acceptable to a private investor operating under normal market conditions, (iii) in any event, should the funds be regarded as State aid, such aid would be compatible with the common market under Article 87(3)(c).

(38) As far as point (i) is concerned, according to the Italian authorities the funds granted by ENI to Enichem are not State resources. The authorities stated that ENI received the last capital contribution from the State in 1985. No capital increase has been granted to ENI by the State since then.

(39) ENI granted the capital contribution to Enichem using the resources generated by its profitable activities, e.g. oil production and distribution. The contested funds do not therefore constitute State resources on that account under Article 87.

(40) As regards point (ii), the Italian authorities claimed that ENI, in granting the third injection, acted as a normal private investor would have acted in similar circumstances. In fact, according to the Italian authorities, the projected operation was designed to provide a sufficient return on the investment. The Italian authorities also noted that the projections proved conservative, on analysing the results actually obtained by Enichem in the period covered by the plan.

(41) Moreover, the Italian authorities argued that ENI provided the funds to Enichem in order to safeguard the value of its stake in its subsidiary and to maximise the value of the company prior to the first step of its privatisation (which took place in November 1995).

(42) As regards (iii), the Italian authorities argued that, should the Commission regard these measures as State aid, they should qualify for exemption under Article 87(3)(c) as they were aimed at restructuring a firm in difficulty.

(43) According to the Italian authorities, the restructuring plan presented to the Commission fulfilled the conditions required for the aid to be compatible with the common market. In particular, it was evident that the plan guaranteed Enichem's return to profitability on the basis of conservative market assumptions, that it was based on internal restructuring measures and that it was proportionate to the aims pursued. The Italian authorities also noted that the financial and economic projections in the plan were largely exceeded by the actual results, which proved much better than expected.

V. **ASSESSMENT OF THE MEASURES AS STATE AID**

(44) In order to ascertain whether a State measure constitutes aid within the meaning of Article 87(1), the Commission determines whether it:

— is granted by the State or through State resources,

— distorts or threatens to distort competition by favouring certain undertakings,

— affects trade between Member States.

Presence of public resources

(45) The Commission considers that the argument of the Italian authorities that the funds granted to Enichem were not State funds as they were provided by ENI from its own resources must be rejected.

(46) The Commission notes that the capital contribution under examination was granted by ENI, an undertaking which, at the time of the measure, was wholly owned by the Treasury. The Government had appointed ENI's Board of Directors, which in turn appointed the management of Enichem.

(47) According to the case-law of the Court of Justice, 'in order to determine whether aid may be regarded as State aid within the meaning of Article 92(1) (now Article 87(1)) of the Treaty, no distinction should be drawn between cases where aid is granted directly by the State and cases where it is granted by public or private bodies established or appointed by the State' ([8]).

(48) Furthermore, a lower return on ENI's investments in Enichem would have meant a lower return on the State's investment in ENI. As a result, even though the funds granted by ENI to Enichem did not derive directly from the State budget, the public nature of the funds can be assumed as the State would forego income or value if it accepted that one of its controlled undertakings, ENI, failed to secure a proper return on its investment in a subsidiary, Enichem.

(49) The Commission therefore considers that the funds referred to in this Decision constitute State aid within the meaning of Article 87(1) of the Treaty.

Favouring certain undertakings

(50) The Commission considers that any financial measure granted by the State to an undertaking which, in various forms, reduces the charges normally borne by the undertaking, must be considered State aid within the meaning of Article 87.

([8]) Case C-305/89, [1991] ECR I-1603.

(51) In the case of capital contributions, the Commission must ascertain whether the State is providing the funds in accordance with the behaviour of a private investor under market economy conditions. If they were granted under conditions other than those under which a private investor operating in a market economy would grant them, they would provide an economic advantage to the recipient. The recipient may, in fact, use these resources to finance its expenditure and investments without the need to get loans from financial institutions or to remunerate adequately the resources received.

(52) Capital increases are normal events during the life of a company, as they can be used to finance the growth and the investments of the company itself. Therefore, to assume that any capital increase in a public undertaking involves State aid would put public undertakings in a less favourable competitive position vis-à-vis private ones. This would be contrary to Article 295 of the Treaty.

(53) However, the principle of equal treatment for public and private undertakings might be infringed in cases where public undertakings receive capital provisions on more favourable terms compared to private ones. For this reason, the Commission has developed the principle of the private investor operating in a market economy which allows it to determine whether the State provides financial resources to undertakings under conditions which would not be acceptable to a private investor ([9]). That assessment has to be made on the basis of the information available to the Commission at the moment when the transaction takes place.

(54) Before carrying out this assessment it must be stressed that in its judgment of 15 September 1998 the CFI concluded that 'there were serious grounds for believing that the three injections in question … had to be considered as, in reality, a series of related capital contributions, granted as part of a continuing restructuring process begun in 1992' (paragraph 179). Moreover the Commission was unable to produce the calculations that it made with a view to concluding that the third capital injection complied with the market economy investor principle (paragraphs 191 to 193). As a consequence 'the Commission was not in a position at the end of the initial examination … to overcome all the difficulties raised by the question whether the third injection constituted' State aid (paragraph 197).

(55) In the present case there is no doubt as to the aid nature of the first two injections, whose compatibility with the common market was assessed in the decision of 27 July 1994. The return on the investment for these two outlays was not sufficient to satisfy the market economy investor test. However, in the decision, the Commission held those measures to be aid compatible with the common market in the light of the restructuring measures carried out in the period 1991 to 1993. The Court did not annul this part of the decision and thus the Commission need not and must not review that assessment.

(56) In the particular circumstances of the present case the Commission, in line with what the Court has said, may assume that the third injection was granted as part of a continuing restructuring process. According to this line of reasoning the Commission has to appraise the third capital contribution in the light of the same criteria applied to the assessment of the first two injections. This means that the Commission must verify whether the restructuring measures, which were not taken into account in the examination of the first two injections, are such that Article 87(3)(c) is applicable to the third injection.

Effect on Community trade

(57) There is considerable trade between Member States in chemical products. At the time of the third injection, in 1994, Enichem was the largest Italian chemical producer. It ranked among the 10 major European chemical producers and led the west European market in several chemical products. In 1992 its consolidated figures show that 43,1 % of total output, worth ITL 4 300 billion, was exported to other European countries.

([9]) Communication to the Member States on the application of Articles 92 and 93 of the EEC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector, OJ C 307, 13.11.1993.

(58) Given the size of the company and the extent of the trade in chemical products between Member States, it can be concluded that the measure affects trade between Member States ([10]).

VI. **COMPATIBILITY WITH THE COMMON MARKET**

(59) In order to assess the third capital contribution under Article 87(3)(c), as part of a general restructuring programme aimed at restoring Enichem's viability, the Commission has to make reference to the criteria on restructuring aid which were in force at the time of the notification of the third capital contribution, i.e. in 1994 ([11]). The criteria are those contained in the Community guidelines on State aid for rescuing and restructuring firms in difficulty ([12]). According to the guidelines, if the Commission is to approve measures to restructure a firm in difficulty, the following conditions must be satisfied:

(i) the measures must restore the long-term viability of the firm;

(ii) they must avoid undue distortion of competition;

(iii) they must be proportional to the costs and benefits of restructuring; they must be limited to the strict minimum needed;

(iv) the restructuring plan should be fully implemented;

(v) the implementation of the restructuring plan should be monitored by the Commission.

(60) Only if all of these conditions are fulfilled can the Commission take the view that the aid is not contrary to the Community interest and approve it under Article 87(3)(c). In particular, the United Kingdom Government and BP, in their comments, argued that the assessment of condition (ii) should be particularly stringent as regards the question of counterparts.

(61) As regards condition (i), the 1994 additional plan was clearly capable of restoring the long-term economic and financial viability of Enichem within a reasonable time. The 1994 restructuring plan was based on a thorough assessment of the position of Enichem on the market and in the ENI group as well as a careful consideration of Enichem's strengths and weaknesses in different productive sectors. As stated above, the improvement in viability was mainly to be the result of internal restructuring measures, namely: drastic scaling down of Enichem production capacity (through plant closures, disposal of controlled undertakings, concentration exclusively on profitable core activities), strong reduction in variable and fixed costs (following drastic workforce cuts, reduction in the number of production sites, simplification of the internal organisational structure, etc.) and re-balancing the financial structure of the company. Moreover, as already noted in the opening decision ([13]), the Commission has checked the estimates on which Enichem's 1994 restructuring plan was based against the market development forecasts at the time and has concluded that they were conservative, realistic, and reasonable. Assumptions concerning external factors influencing the restructuring were generally acknowledged and within the average market expectations.

([10]) See the Decision of 16 March 1994 initiating the procedure under former Article 93(2) (see footnote 2).
([11]) See paragraph 100 of Community guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C 288, 9.10.1999, p. 2. In paragraph 15 of the decision opening proceedings (see footnote 1), the Commission referred to restructuring guidelines in general, citing those published in 1997 (which do not change the policy set out in the 1994 guidelines save for the agricultural sector) and those of 1999. However, according to paragraph 100 of the guidelines published in 1999, there is no doubt that the only relevant text in the present case is that for 1994.
([12]) OJ C 368, 23.12.1994, p. 12.
([13]) See footnote 1.

(62) The restructuring, based on particularly prudent assumptions, was aimed at restoring sound profitability as from 1997, while maintaining a sound economic and financial situation from then onwards. By 1997 Enichem was to have shown profits for the first time. The operating result was to increase from ITL 500 billion at the end of 1993 to some 1 100 billion at the end of 1997. Fixed costs were to decrease from ITL 3 229 billion at the end of 1993 to some ITL 1 845 billion at the end of 1997. Operational cash flow and cash flow were to increase from minus ITL 836 billion and minus ITL 1 636 billion respectively at the end of 1993 to ITL 780 billion and ITL 404 billion in 1997. The net financial debt and the debt/equity ratio were to fall from ITL 8 578 billion and 2,9 at the end of 1993 to ITL 3 492 billion and 1,3 respectively in 1997. It is important to note that the planned results were to be achieved as part of a reduction in Enichem's turnover. This confirms that the restructuring was predominantly based on internal measures and did not provide Enichem with artificial means for conducting an aggressive expansionist policy. Lastly, reasonably favourable forecasting submitted to the Commission showed that Enichem would return to economic and financial viability in the years following 1997.

(63) As stated above, the economic forecasts underlying the estimates were generally accepted and even more conservative. This was confirmed by the fact that when the market conditions improved in 1995 the restructuring turned out to be more effective than expected, Enichem having achieved better results than forecast by the plan. Although these elements were not known at the time of the planned restructuring and should not be used to assess whether the plan would have been capable of restoring the viability of Enichem, they nevertheless confirm that the plan was based on reasonable market assumptions and that the restructuring was substantially and effectively carried out by Enichem. On the other hand, in the light of the restructuring actions undertaken by Enichem and its economic results following those actions, it could not be said that the restructuring of Enichem was not intended to restore its long term economic and financial viability.

(64) Neither the United Kingdom Government nor BP, which presented observations in the course of these proceedings, have substantially disputed that the restructuring process was designed to restore Enichem's long-term financial and economic viability but have stressed that the process should be linked to a reduction in capacity.

(65) It can thus be concluded that the restructuring measures and the capital injections could reasonably have been expected to restore Enichem's economic and financial viability and that this in fact occurred. Accordingly, condition (i) of the Commission guidelines is fulfilled.

(66) Condition (ii) requires the avoidance of undue distortion of competition. In principle, any aid granted by a State to a firm causes undue distortion of free competition since it puts that firm in a more favourable economic situation compared with its competitors. In this connection it is of particular relevance if the granting of the aid is counterbalanced by reduction in capacity.

(67) Both the United Kingdom Government and BP argue that, if the third capital injection constitutes State aid, the capacity reductions on which the Commission based the decision of 27 July 1994 would no longer satisfy the (ii) test. As suggested by BP, as the third injection was almost twice as large as the first two, the benefits of the restructuring should also be almost doubled. In fact, in the decision of 27 July 1994 the Commission based its assessment on the hypothesis that only the first two injections constituted aid and considered that the capacity reductions were proportionate to the amount of aid contained in the injections. If the third injection was also deemed to be aid, the closures indicated by Enichem in its restructuring plan would no longer be sufficient to satisfy the test.

(68) In the present case, as explained in the decision, the first two injections were to be used to remove capacity and close down the plant identified in the original restructuring plan, as stated in the decision and listed in Table 2 of this Decision.

(69) The Commission considered the capacity reduction resulting from the closures as in proportion to the aid granted to Enichem in the form of two capital injections. The Commission considered that an overall capacity reduction of some 1 152 kt/year, as indicated in Table 2, together with workforce cuts totalling some 7 000 units (of which 2 100 directly related to planned plant closures) was sufficient for the first two injections to fulfil test (ii) of the guidelines. It should also be noted that the proportionality of the capacity reduction with the amount of the aid granted through the first two injections was not contested by any of the parties concerned.

(70) The Commission noted that the third capital injection was linked to comparable restructuring action to be taken by Enichem in terms of capacity reduction and cost-cutting measures. This is evident if one compares the capacity reduction and closures linked to the restructuring measures to be carried out between 1991 and 1993 in connection with the first two capital injections (Table 2) with the reduction in capacity and plant closures in the period 1994 to 1997 in connection with the third capital injection (Table 3). Indeed in the first case, against an overall injection of ITL 1 794 billion, Enichem was to reduce its capacity by some 1 152 kt/year. In the second case, against an injection of ITL 3 000 billion (less than twice the amount of the first two injections), Enichem was to achieve a capacity reduction which was likely to be more than twice the reduction planned for the first two injections.

(71) As stated above, the 1994 to 1997 plan was aimed at divesting its PET and fine chemicals business, some minor elastomer activities (mainly nitrile and polychloroprene), fibres (acrylic, polyester and thermo-bonded) and detergents from the polyethylene downstream activities. Overall, the divestments were to provide a reduction in Enichem capacity of at least 2 083 kt/year, that is to say, slightly less than twice the reduction linked to the first two injections. However, this figure does not include the plants to be closed for which the production capacity was not known to the Commission (Table 3). If the closure of these plants is taken into account it is most likely that the total capacity reduction would be considerably more than twice the one in the first plan.

(72) The same applies to the measures to be taken to reduce fixed costs, especially labour costs. These measures can also be regarded as proportionate to the amount of the new recapitalisation. The first two injections were to be accompanied by a reduction in the Enichem workforce of about 7 000 units. The third injection was linked to a reduction of about 16 000 units, notwithstanding the fact that the third injection was less than twice the total amount of the first two taken together.

(73) Taking this into account the Commission concludes that the restructuring of Enichem did not produce undue distortions of competition and therefore satisfies condition (ii) of the guidelines for restructuring aid.

(74) Condition (iii) requires that aid be in proportion to costs and benefits: if State aid is to be declared compatible, it must be limited to the strict minimum needed to finance the return to viability and must not be used to expand production, except to the extent necessary to restore the firm's profitability.

(75) According to the restructuring plan submitted, the third capital increase was intended to improve the financial situation of Enichem and to reduce its debt/equity ratio. If the amount of capital provided was excessive, Enichem would have been in the position to finance aggressive commercial policies, thanks to excess resources received from its shareholder. It is pointed out, however, that, according to the plan, Enichem's financial debts would not be reduced to nil over the period covered by the plan, which would have been excessive. Instead, the plan provided for Enichem's indebtedness to be cut from ITL 8 600 billion in 1993 to ITL 3 500 billion at the end of 1997, with a debt/equity ratio of 0,57.

(76) The debt reduction was to be achieved through the capital increase and also through the divestiture revenues, already amounting to some ITL 2 500 billion at the end of 1995, and internally generated cash flow. All these resources together were intended to bring Enichem's debt/equity ratio to 0,57, which can be considered a normal and safe ratio for the sector in which the company operates. This level cannot be regarded as too low, as it has left Enichem with an important amount of financial charges to pay.

(77) The Commission takes the view, therefore, that the aid granted did not bring Enichem any excess liquidity which was unrelated to the process of restructuring and might have helped to finance aggressive commercial or investment operations not necessary to the restructuring. On the contrary, the plan provided for a reduction in turnover, production capacity, investment and R&D expenditure. This conclusion is also implicit in BP's observation that all cash flow generated by Enichem over the period 1994 to 1998 was to be used to reduce debt and not to finance other investments. From this observation it is clear that, according to the economic analysis it carried out, BP must have been aware that the capital injection could not have given Enichem the financial means to engage in expansionist commercial policies.

(78) As regards BP's claim that, soon after the aid was approved, Enichem set up a joint venture with Union Carbide, thus contravening the condition in paragraph (iii), the Commission notes that the joint venture concerned the polymers business, which was precisely one of Enichem's core activities identified in the restructuring plan. The joint venture should therefore be regarded as an intrinsic part of the restructuring plan itself and not as a means of increasing capacity. As Enichem regards polymers as core business, it selected an appropriate strategy to increase its efficiency by forming the joint venture with a partner able to provide significant technological benefits, without thereby increasing its overall capacity and yet consolidating its viability.

(79) The setting-up of the joint venture is not therefore contrary to condition (iii).

(80) Condition (iii) also requires the recipient to make a significant contribution to the financing of the restructuring operation. As stated in Part II, the restructuring plan tied to the third injection involved significant plant closures and divestments amounting to some ITL 2 500 billion in the period 1994 to 1995, i.e. over 80 % of the amount of the capital injection itself. Moreover, Enichem would also have financed its restructuring from its operational cash flow which, as shown above, was expected to be significant. In the light of the foregoing the Commission takes the view that Enichem's restructuring plan included a significant contribution from the company to the costs of its own restructuring, in line with the relevant Community guidelines.

(81) The Commission concludes that Enichem's restructuring plan included a contribution from the company to the costs of its own restructuring, in accordance with condition (iii) of the Community guidelines on restructuring aid.

(82) As far as conditions (iv) and (v) are concerned, they are not decisive in the present case since the Commission analysis takes place at a time when the restructuring operations are already completed. It is then sufficient for the Commission to check that the restructuring plan has been effectively implemented. From the information at its disposal the Commission concludes that the 1994 restructuring plan was substantially implemented within the times specified, as Enichem's actual results and its current economic situation show.

(83) The Commission therefore considers that, since all the conditions set out in the restructuring guidelines are fulfilled, the State aid elements of the Enichem restructuring are compatible with the common market pursuant to Article 87(3)(c).

VII. **CONCLUSION**

(84) The Commission, on the basis of the foregoing assessment, concludes that the capital of ITL 3 000 billion injected by ENI into Enichem is compatible with the common market under Article 87(3)(c),

HAS ADOPTED THIS DECISION:

Article 1

The State aid contained in the capital of ITL 3 000 billion injected in 1994 by ENI into Enichem SpA is compatible with the common market under Article 87(3)(c) of the Treaty.

Article 2

This Decision is addressed to the Republic of Italy.

Done at Brussels, 19 September 2001.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION

of 15 March 2002

laying down detailed rules for the implementation of Council Directive 91/492/EEC as regards the maximum levels and the methods of analysis of certain marine biotoxins in bivalve molluscs, echinoderms, tunicates and marine gastropods

(notified under document number C(2002) 1001)

(Text with EEA relevance)

(2002/225/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/492/EEC of 15 July 1991 laying down the health conditions for the production and the placing on the market of live bivalve molluscs [1], as last amended by Directive 97/79/EC [2], and in particular Chapter V, paragraphs 3 and 5, of the Annex thereto,

Whereas:

(1) Chapter V, point 7, of the Annex to Directive 91/492/EEC provides that the customary biological testing methods must not give a positive result to the presence of diarrhetic shellfish poisoning (DSP) in the edible parts of molluscs (the whole body or any part edible separately).

(2) It has been scientifically proven that certain marine biotoxins such as those of the diarrhetic shellfish poisoning (DSP) complex (okadaic acid (OA) and dinophysistoxins (DTXs)) and also yessotoxins (YTXs), pectenotoxins (PTXs) and azaspiracids (AZAs), pose a serious hazard to human health when present above certain limits in bivalve molluscs, echinoderms, tunicates or marine gastropods.

(3) In the light of recent scientific studies it is now possible to establish maximum levels and methods of analysis for those biotoxins.

(4) Maximum levels and methods of analysis should be harmonised and be implemented by the Member States in order to protect human health.

(5) In addition to biological testing methods, alternative detection methods such as chemical methods and *in vitro* assays should be accepted if it is demonstrated that the performance of the chosen methods is not less effective than the performance of the biological method and that their implementation provides an equivalent level of public health protection.

(6) The proposed maximum levels are based on provisional data and should be re-evaluated when new scientific evidence becomes available.

(7) The measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

HAS ADOPTED THIS DECISION:

Article 1

This Decision lays down the maximum levels for the marine biotoxins of the diarrhetic shellfish poisoning (DSP) complex (okadaic acid and dinophysistoxins), yessotoxins, pectenotoxins and azaspiracids and the methods of analysis to be used for their detection. It applies to bivalve molluscs, echinoderms, tunicates and marine gastropods that are intended for immediate human consumption or for further processing before consumption.

Article 2

The maximum level of okadaic acid, dinophysistoxins and pectenotoxins together in the animals referred to in Article 1 (the whole body or any part edible separately) shall be 160 µg of okadaic acid equivalents/kg. The methods of analysis are set out in the Annex.

Article 3

The maximum level of yessotoxins in the animals referred to in Article 1 (the whole body or any part edible separately) shall be 1 mg of yessotoxin equivalent/kg. The methods of analysis are set out in the Annex.

Article 4

The maximum level of Azaspiracids in the animals referred to in Article 1 (the whole body or any part edible separately) shall be 160 µg of azaspiracid equivalents/kg. The methods of analysis are set out in the Annex.

[1] OJ L 268, 24.9.1991, p. 1.
[2] OJ L 24, 30.1.1998, p. 31.

Article 5

When the results of the analyses performed demonstrate discrepancies between the different methods, the mouse bioassay should be considered as the reference method.

Article 6

This Decision is addressed to the Member States.

Done at Brussels, 15 March 2002.

For the Commission

David BYRNE

Member of the Commission

ANNEX

Detection methods

Biological methods

A series of mouse bioassay procedures, differing in the test portion (hepatopancreas or whole body) and in the solvents used for the extraction and purification steps, can be used for detection of the toxins mentioned in Article 1. Sensitivity and selectivity depend on the choice of the solvents used for the extraction and purification steps and this should be taken into account when making a decision on the method to be used, in order to cover the full range of toxins.

A single mouse bioassay involving acetone extraction can be used to detect okadaic acid, dinophysistoxins, pectenotoxins and yessotoxins. This assay may be complemented if necessary with liquid/liquid partition steps with ethyl acetate/water or dichloromethane/water to remove potential interferences. Azaspiracids detection at the regulatory levels by means of this procedure requires the use of the whole body as the test portion.

Three mice should be used for each test. The death of two out of three mice within 24 hours after inoculation into each of them of an extract equivalent to 5 g of hepatopancreas or 25 g whole body should be considered as a positive result for the presence of one or more of the toxins mentioned in Article 1 at levels above those established in Article 2, 3 and 4.

A mouse bioassay with acetone extraction followed by liquid/liquid partition with diethylether can be used to detect okadaic acid, dinophysistoxins, pectenotoxins and azaspiracids but it cannot be used to detect yessotoxins as losses of these toxins may take place during the partition step. Three mice should be used for each test. The death of two out of three mice within 24 hours after inoculation into each of them of an extract equivalent to 5 g of hepatopancreas or 25 g whole body should be considered as a positive result for the presence of okadaic acid, dinophysistoxins, pectenotoxins and azaspiracids at levels above those established in Article 2 and 4.

The rat bioassay can detect okadaic acid, dinophysistoxins and azaspiracids. Three rats should be used for each test. A diarrhetic response in any of the three rats is considered a positive result for the presence of okadaic acid, dinophysistoxins and azaspiracids at levels above those mentioned in Article 2 and 4.

Alternative detection methods

A series of methods such as high performance liquid chromatography (HPLC) with fluorimetric detection, liquid chromatography (LC)-mass spectrometry (MS), inmunoassays and functional assays such as the phosphatase inhibition assay can be used as alternative or complementary methods to the biological testing methods, provided that either alone or combined they can detect at least the following analogues, that they are not less effective than the biological methods and that their implementation provides an equivalent level of public health protection:

— okadaic acid and dinophysistoxins: an hydrolysis step may be required in order to detect the presence of DTX3,

— pectenotoxins: PTX1 and PTX2,

— yessotoxins: YTX, 45 OH YTX, homo YTX, and 45 OH homo YTX,

— azaspiracids: AZA1, AZA2 and AZA3.

If new analogues of public health significance are discovered they should be included in the analysis. Standards will have to be available before chemical analysis will be possible. Total toxicity will be calculated using conversion factors based on the toxicity data available for each toxin.

The performance characteristics of these methods should be defined after validation following an internationally agreed protocol.

COMMISSION DECISION

of 15 March 2002

establishing special health checks for the harvesting and processing of certain bivalve molluscs with a level of amnesic shellfish poison (ASP) exceeding the limit laid down by Council Directive 91/492/EEC

(notified under document number C(2002) 1009)

(Text with EEA relevance)

(2002/226/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/492/EEC of 15 July 1991 fixing the health conditions for the production and the placing on the market of live bivalve molluscs [1], as last amended by Directive 97/79/EC [2], and in particular Chapter V, last paragraph, of the Annex thereto,

Whereas:

(1) Chapter V, point 7a, of the Annex to Directive 91/492/EEC provides that the total amnesic shellfish poison (ASP) content in the edible parts of molluscs (the entire body or any part edible separately) must not exceed 20 mg/kg of domoic acid (DA) using the high performance liquid chromatography (HPLC) method.

(2) For bivalve molluscs belonging to the species *Pecten maximus* and *Pecten jacobaeus*, scientific studies have shown that with a DA concentration in the whole body between 20 and 250 mg/kg, under certain restrictive conditions, the concentration of DA in the adductor muscle and/or gonads intended for human consumption is normally below the limit of 20 mg/kg.

(3) In the light of recent scientific studies it is appropriate to lay down, only for the harvesting stage and only for the bivalve molluscs belonging to the species referred to in recital 2, an ASP level with respect to the whole body, higher than the limit laid down in Directive 91/492/EEC.

(4) It is for the Competent Authority of Member States to authorise the establishments carrying out the specific preparation of these bivalve molluscs and to check the satisfactory application of the 'own health checks' procedures set out in Article 6 of 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 [3], as last amended by Directive 97/79/EC.

(5) The provisions of this Decision should be re-evaluated when scientific evidence indicates the need to introduce other health checks, or to amend the parameters established for the purpose of protecting public health.

(6) The measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

HAS ADOPTED THIS DECISION:

Article 1

1. By way of derogation from point 7a of Chapter V of the Annex to Directive 91/492/EEC, Member States may authorise the harvesting of bivalve molluscs belonging to the species Pecten maximus and Pecten jacobaeus with a concentration of domoic acid (DA) in the whole body exceeding 20 mg/kg but lower than 250 mg/kg which satisfy the requirements in paragraph 2.

2. The requirements referred to in paragraph 1 are the following:

(a) the molluscs must be subjected to the harvesting conditions laid down in the Annex to this Decision;

(b) they must be transported in containers or vehicles, sealed under the direction of the competent authority, and directly dispatched from the production areas to an approved establishment authorised to carry out the specific preparation of these molluscs, that involves the removal of the hepatopancreas, soft tissues, or any other contaminated part not in compliance with point 2 of the Annex. A list of the establishment specifically authorised must be transmitted by the competent authority to the European Commission and to Member States;

(c) they must be accompanied by a registration document, issued by the competent authority, for each batch, specifying the requirements as provided for in Chapter II, point 6, of the Annex to Directive 91/492/EEC, as well as the anatomical part or parts that can be processed for human consumption. A permanent transport authorisation granted by the competent authority is not acceptable;

[1] OJ L 268, 24.9.1991, p. 1.
[2] OJ L 24, 30.1.1998, p. 31.
[3] OJ L 268, 24.9.1991, p. 15.

(d) after total removal of hepatopancreas, soft tissues and any other contaminated part the adductor muscle and/or gonads intended for human consumption must not contain an ASP level detectable by the HPLC techniques exceeding 20 mg/kg of DA.

Article 2

1. Each batch of end product shall be tested by the specifically authorised establishment. If a sample, as defined in the Annex, contains more than 20 mg/kg of DA the entire batch shall be destroyed under the control of the competent authority.

2. The hepatopancreas, soft tissues and any other toxic part exceeding the limits laid down in point 2 of the Annex (including the end product exceeding the limit of 20 mg/kg of DA), shall be destroyed under the control of the competent authority.

3. The competent authority shall ensure that the 'own health checks' provided for in Article 6 of Directive 91/493/EEC apply to the preparation referred to in Article 1(2)(b) of this Decision. The producer shall inform the competent authority of any results relating to the end product which are not in compliance with Chapter V point 7a of the Annex to Directive 91/492/EEC.

Article 3

The provisions of this Decision shall be reviewed in the light of scientific progress.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 15 March 2002.

For the Commission

David BYRNE

Member of the Commission

ANNEX

1. No harvesting of bivalve molluscs of the species *Pecten maximus* and *Pecten jacobaeus* must be allowed during the occurrence of an ASP active toxic episode in the waters of the production areas as established in Chapter VI, point 2, of the Annex to Directive 91/492/EEC.

2. A restricted harvesting regime of molluscs with DA concentration in the whole body higher than 20 mg/kg can be initiated if two consecutive analyses of samples, taken between one and no more than seven days, show that DA concentration in whole mollusc is lower than 250 mg/kg and that the DA concentration in the parts intended for human consumption, which have to be analysed separately, is lower than 4,6 mg/kg. The analyses of the entire body will be performed on an homogenate of 10 molluscs. The analysis on the edible parts will be performed on an homogenate of 10 individual parts.

3. Sampling points shall be decided by the Competent Authority to ensure that the product meets the parameters mentioned under point 2. Once harvesting is allowed, sampling frequency for DA analysis in molluscs (whole body and adductor muscle and gonads separately) shall be weekly as a minimum. Harvesting can continue if results are in compliance with the conditions listed in point 2.

COMMISSION DECISION

of 13 March 2002

on the acknowledgement of the establishment and satisfactory entry into operation of the Israeli good laboratory practice (GLP) monitoring system

(2002/227/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 1999/662/EC of 19 July 1999 concerning the conclusion of the Agreement on mutual recognition of OECD principles of good laboratory practice (GLP) and compliance monitoring programmes between the European Community and the State of Israel [1], and in particular Article 3(1) thereof,

After consulting the Special Committee appointed by the Council,

Whereas:

(1) The first two meetings of the EU-Israel Joint Committee set up by the Agreement were respectively held on 27 November 2000 and 16 November 2001, and allowed for a detailed examination of the setting up of the Israeli national GLP monitoring system.

(2) The additional information requested by the Services of the Commission was provided timely by the Israel Laboratory Accreditation Authority (ISRAC) acting as the national GLP monitoring authority.

(3) In accordance with Article 11(2) and Article 11(3) of the Agreement, the Community has to agree that the Israeli GLP monitoring system has been established and has entered into force satisfactorily before the initial period may be terminated,

HAS DECIDED AS FOLLOWS:

Sole Article

The Community hereby agrees that the Israeli GLP monitoring system has been established and has entered into satisfactory operation during the initial period of the agreement, and that the initial period may thus be terminated with a view to move to the operational phase of the agreement at the latest on 1 May 2002.

Done at Brussels, 13 March 2002.

For the Commission

Pascal LAMY

Member of the Commission

[1] OJ L 263, 9.10.1999, p. 6.

COMMISSION DECISION

of 14 March 2002

on the recognition of five Israeli test facilities found to be in conformity with good laboratory practice (GLP) requirements in their respective areas of expertise

(2002/228/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 1999/662/EC of 19 July 1999 concerning the conclusion of the Agreement on mutual recognition of OECD principles of good laboratory practice (GLP) and compliance monitoring programmes between the European Community and the State of Israel [1], and in particular Article 3(1) thereof,

After consulting the Special Committee appointed by the Council,

Whereas:

(1) Following inspections carried out by designated EC inspectors between 28 March 1996 and 1 January 2000, in accordance with Article 12 of the Agreement on mutual recognition of OECD principles of good laboratory practice (GLP) and compliance monitoring programmes between the European Community and the State of Israel, five Israeli test facilities were found to be in compliance with GLP requirements in their respective areas of expertise.

(2) In accordance with Article 12 of the Agreement, the abovementioned five test facilities should be recognised by the Community,

HAS DECIDED AS FOLLOWS:

Sole Article

The Community hereby recognises the five Israeli test facilities referred to in the Annex to be GLP compliant in their respective areas of expertise.

Done at Brussels, 14 March 2002.

For the Commission

Pascal LAMY

Member of the Commission

[1] OJ L 263, 9.10.1999, p. 6.

ANNEX

Israeli test facilities found to be in compliance with the GLP and their area of expertise

Agan Chemical Manufacturers Ltd
Analytical Laboratory
77102 Ashdod, Israel
Area of expertise: Physical-Chemical testing

Aminolab Ltd
Analytical Laboratory Services
Weizmann Science Park
76326 Rehovot, Israel
Area of expertise: Analytical and clinical chemistry

Analyst Research Laboratories
Hamanov Street 3
76111 Rehovot, Israel
Area of expertise: Physical-Chemical testing and Analytical and clinical chemistry

Harlan Biotech Israel Ltd
Kiryat Weizmann, Building #13B
76326 Rehovot, Israel
Area of expertise: Toxicity studies

Makteshim Chemical Works Ltd
Physicochemical Research
84100 Beer Sheva, Israel
Area of expertise: Physical-Chemical