ISSN 1725-2555

Official Journal

of the European Union

L 157

Volume 46

26 June 2003

English edition

Legislation

Contents

Price: EUR 18

(Continued overleaf)

EN

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

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

Contents (continued)

EN

[1] Text with EEA relevance

(Continued on inside back cover)

Contents (continued)

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1091/2003

of 18 June 2003

amending for the second time Regulation (EC) No 2341/2002 fixing for 2003 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy [1], and in particular Article 20(1) and (4) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Regulation (EC) No 2341/2002 [2], fixes for 2003 the fishing opportunities and associated conditions for certain fish stocks and groups of stocks applicable in Community waters and for the Community vessels, in waters where catch limitations are required.

(2) Opportunities of fishing for capelin for the Community in Greenlandic waters are provided for in the Fourth Protocol laying down the conditions relating to fishing provided for in the Agreement on fisheries between the European Economic Community, on the one hand, and the Government of Denmark and Home Rule Government of Greenland, on the other [3]. The Community receives 70 % of Greenland's share of the capelin TAC (total allowable catches) which is decided in June and available to all Member States. To enable the summer season fishing to start earlier than has been the case in recent years the Commission should be empowered to decide on the issue.

(3) In accordance with the procedure provided for in the Agreement on fisheries between the European Economic Community and the Kingdom of Norway [4], the Community has held consultations with the Kingdom of Norway. The delegations agreed to recommend to their respective authorities to allocate a quota of 40 000 tonnes of sand eel to Norway in Community waters, while quotas of 2 500 tonnes of haddock and 1 500 tonnes of plaice in the North Sea are to be transferred from Norway to the Community. Furthermore it has been agreed to recommend that the Community have access to fish 48 493 tonnes of Atlanto-Scandian herring in Norwegian waters north of 62° N and that Norway have access to fish 48 493 tonnes of Atlanto-Scandian herring in Community waters north of 62° N, and that the share of the Community out of the jointly shared NEAFC quota for mackerel in international waters be 7 520 tonnes. The necessary measures should be taken to implement the results of the consultations in Community legislation.

(4) In the Agreed Record of Conclusions of Fisheries Consultations between the European Community and Norway of 20 December 2002, it was agreed to recommend to the respective authorities to allow that 40 000 tonnes of Norway pout in zone IV (Norwegian waters) be fished by the European Community as sand eel.

(5) In accordance with the procedure provided for in the Agreement on fisheries between the European Economic Community, of the one part, and the Government of Denmark and the Home Government of the Faeroe Islands of the other part [5], the Community has held consultations with the Home Government of the Faeroe Islands. The delegations agreed to recommend to their respective authorities that the parties have access to fish 6 022 tonnes of Atlanto-Scandian herring in the waters of the other party north of 62° N. The necessary measures should be taken to implement the results of the consultations in Community legislation.

(6) While awaiting a long term management agreement on the blue whiting stock with the coastal States concerned, it is appropriate for the Community to set a quota available to all Member States at 250 000 tonnes in ICES divisions I, II, V, VI, VII, XII and XIV (International waters).

---

[1] OJ L 358, 31.12.2002, p. 59.
[2] OJ L 356, 31.12.2002, p. 12. Regulation as last amended by Commission Regulation (EC) No 728/2003 (OJ L 105, 26.4.2003, p. 3).
[3] OJ L 209, 2.8.2001, p. 2.
[4] OJ L 226, 29.8.1980, p. 48.
[5] OJ L 226, 29.8.1980, p. 12.

(7) In January 2003 the Northwest Atlantic Fisheries Organisation (NAFO) adopted a TAC for northern prawn of 13 000 tonnes in NAFO Division 3L for the Community. This measure should therefore be implemented by the Community.

(8) Following the Community emergency measures on closure of cod fishing with trawls for all vessels in the EC waters of the Baltic Sea from 15 April until 31 May 2003, Estonia has requested that Estonian trawl fishing be allowed in Community waters from 1 September to 15 October of this year. The Council considers it appropriate to amend Annex VI part II to Regulation (EC) No 2341/2002 as necessary.

(9) Due to exceptional circumstances, Lithuania has requested the EC to give it back 800 tonnes of the herring quota which Lithuania granted to the EC to be fished in its waters for 2003, thus reducing the corresponding Community quota. In exchange, Lithuania's authorities have agreed to offer the Community 800 tonnes of herring in its waters from its national quota to be fixed by the IBSFC for the year 2004. The Council considers it appropriate to amend Annex IA to Regulation (EC) No 2341/2002 as necessary.

(10) Regulation (EC) No 2341/2002 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2341/2002 is hereby amended as follows:

1. in Article 3 the following paragraph shall be added:

   '4. The Commission shall fix the fishing opportunities for capelin in zones V, XIV (Greenland waters) available to the Community equal to 70 % of Greenland's share of the capelin TAC as soon as the TAC has been established. Following the transfer of 30 000 tonnes to Iceland, 10 000 tonnes to the Faroe Islands and 6 700 tonnes to Norway, the remaining amount will be available to all Member States.'

2. Annex IA is amended in accordance with Annex I to this Regulation;
3. Annex IB is amended in accordance with Annex II to this Regulation;
4. Annex IC is amended in accordance with Annex III to this Regulation;
5. Annex ID is amended in accordance with Annex IV to this Regulation;
6. Annex IE is amended in accordance with Annex V to this Regulation;
7. Annex VI is amended in accordance with Annex VI to this Regulation.

Article 2

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

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

Done at Luxembourg, 18 June 2003.

For the Council

The President

G. DRYS

ANNEX I

In Annex IA to Regulation (EC) No 2341/2002, the entries concerning the species herring in zone IIId (Lithuanian waters) shall be replaced by the following:

'**Species:** Herring *Clupea harengus*		**Zone:** IIId (Lithuanian waters)
Denmark	477	(1) Available to Denmark, Germany, Finland and Sweden within the respective quotas for IIIbcd (EC waters).
Germany	358	(2) Of which 500 tonnes are to be counted against the Community share of the TAC for IIIbcd (EC waters).'
Sweden	165	
	500 (1)	
EC	1 500 (2)	
TAC	143 349	

ANNEX II

In Annex IB to Regulation (EC) No 2341/2002, the entries concerning the species sand eel in zone 'IIa, Skagerrak, Kattegat, North Sea', the species haddock in zone 'IIa (EC waters), North Sea', the species plaice in zones 'IIa (EC waters), North Sea', the species Norway pout in zone 'IV (Norwegian waters)' shall be replaced by the following:

'**Species:** Sand eel *Ammodytidae*		**Zone:** IIa (1), Skagerrak, Kattegat, North Sea (1)
Denmark	776 336	(1) Community waters excluding waters within 6 miles of United Kingdom baselines at Shetland, Fair Isle and Foula.
United Kingdom	16 969	(2) Except Denmark and the United Kingdom
All Member States	29 695 (2)	(3) This quota consists of sand eel, Norway pout, a maximum of 2 000 tonnes of sprat and unavoidable by-catches of blue whiting. Sprat and a maximum of 6 000 tonnes of Norway pout may be taken in IVa north of 56° 30' N. Such Norway pout catches shall be subject to the provision, on request by the Commission, of details on the quantity and composition of any by-catch taken.
EC	823 000	(4) To be taken in the North Sea.'
Norway	75 000 (4)	
Faroe Islands	20 000 (3) (4)	
TAC	918 000	

'**Species:** Haddock *Melanogrammus aeglefinus*		**Zone:** IIa (EC waters), North Sea
Belgium	446	(1) Excluding an estimate of 2 634 tonnes of industrial by-catch.
Denmark	3 064	(2) TAC agreed in the framework of fisheries consultations between the European Community and Norway for 2003. The parties' shares of the TAC, after swaps, are: EC: 44 655 tonnes, Norway: 7 080 tonnes.
Germany	1 950	
France	3 398	
The Netherlands	334	
Sweden	216	
United Kingdom	32 613	
EC	42 021 (1)	
Norway	7 080	
TAC	51 735 (2)	

Special conditions:

Within the limits of the abovementioned quotas, no more than the quantities given below may be taken in the zones specified:

	Norwegian waters
EC	31 357'

'**Species:** Plaice *Pleuronectes platessa*		**Zone:** IIa (EC waters), North Sea
Belgium	4 356	(1) TAC agreed in the framework of fisheries consultations between the European Community and Norway for 2003. The parties' shares of the TAC, after swaps, are: EC: 70 781 tonnes, Norway: 2 469 tonnes.
Denmark	14 156	
Germany	4 083	
France	817	
The Netherlands	27 224	
United Kingdom	20 145	
EC	70 781	
Norway	2 469	
TAC	73 250 (1)	

Special conditions:

Within the limits of the abovementioned quotas, no more than the quantities given below may be taken in the zones specified:

	Norwegian waters
EC	30 000'

'**Species:** Norway pout *Trisopterus esmarki*		**Zone:** IV (Norwegian waters)
Denmark	47 500 (1) (2)	(1) Including inextricably mixed horse mackerel. (2) 80 % of this quota may be taken as sand eel.'
United Kingdom	2 500 (1) (2)	
EC	50 000 (1) (2)	
TAC	Not relevant	

ANNEX III

In Annex IC to Regulation (EC) No 2341/2002, the entries concerning the species herring in zone 'I, II (EC waters, international waters)' and blue whiting in zone 'I, II (NEAFC Regulatory Area)' shall be replaced by the following:

'**Species:** Herring *Clupea harengus*		**Zone:** I, II (EC waters, International waters and Norwegian waters)
Belgium	17	(1) May be taken in IIa (Community waters)
Denmark	16 908	
Germany	2 961	
Spain	56	
France	730	
Ireland	4 377	
The Netherlands	6 051	
Portugal	56	
Finland	262	
Sweden	6 265	
United Kingdom	10 810	
EC	48 493	
Norway	48 493 (1)	
Faroe Islands	6 022 (1)	
TAC	Not relevant	

Special conditions:

Within the limits of the abovementioned quotas, no more than the quantities given below may be taken in the zones specified:

	Faroese waters
Belgium	2
Denmark	2 100
Germany	368
Spain	7
France	91
Ireland	544
The Netherlands	751
Portugal	7
Finland	33
Sweden	778
United Kingdom	1 342
EC	6 022'

'**Species:** Blue whiting *Micromesistius poutassou*		**Zone:** I, II, V, VI, VII, XII, and XIV (international waters)
EC	250 000	
TAC	Not relevant'	

ANNEX IV

In Annex ID to Regulation (EC) No 2341/2002, the entries concerning the species blue whiting in zone 'V, VI, VII, XII, and XIV (1)' and the species mackerel in zone 'IIa (EC waters), Skagerrak and Kattegat, IIIbcd (EC waters), North Sea' and in zone 'IIa (non-EC waters), Vb (EC waters), VI, VII, VIIIa, b, d, e, XII, XIV' shall be replaced by the following:

'**Species:** Blue whiting *Micromesistius poutassou*		**Zone:** V, VI, VII, XII, XIV (EC waters)
Denmark	2 218	(1) Of which up to 75 % may be taken in areas VIIIc, IX, X, CECAF 34.1.1 (EC waters).
Germany	8 582	(2) May be fished in EC waters in areas II, IVa, VIa north of 56° 30' N, VIb, VII west of 12° W.
Spain	14 304 (1)	(3) Of which up to 500 tonnes may consist of argentine (*Argentina* spp.).
France	11 944	(4) Catches of blue whiting may include unavoidable catches of argentine (*Argentina* spp.).
Ireland	17 165	(5) May be fished in EC waters in areas VIa north of 56° 30' N, VIb, VII west of 12° W.
The Netherlands	26 963	
Portugal	1 073 (1)	
United Kingdom	25 032	
EC	107 281	
Norway	120 000 (2) (3)	
Faeroe Islands	45 000 (4) (5)	
TAC	Not relevant	

Special conditions:

Within the limits of the abovementioned quotas, no more than the quantities given below may be taken in the zones specified:

	IVa
Norway	40 000'

'**Species:** Mackerel *Scomber scombrus*		**Zone:** IIa (EC waters), Skagerrak and Kattegat, IIIb,c,d (EC waters), North Sea
Belgium	483	(1) Including a fishery by this Member State of 1 865 tonnes of mackerel in ICES Division IIIa and in Community waters of ICES Division IVab.
Denmark	12 745	
Germany	504	
France	1 522	
The Netherlands	1 533	
Sweden	4 576 (1) (2) (3)	(2) Including 260 tonnes to be taken in Norwegian waters of ICES subarea IV, accruing from the Agreed Records of Consultations between the European Community, on behalf of Sweden, and Norway, for 2003.
United Kingdom	1 419	(3) When fishing in Norwegian waters, by-catches of cod, haddock, saithe, pollack and whiting shall be counted against the quotas for these species.
EC	22 782 (2) (4) (5)	(4) Including 1 865 tonnes accruing from conditions defined in footnote 2 of the Annex of the Agreed Records of Conclusions of Fisheries Consultations between the European Community and Norway. Brussels, 9 December 1995.
Norway	40 395 (6)	(5) Including 459 tonnes accruing from the arrangement between the European Community and Norway on the Management of the joint EU — Norway share of the NEAFC allowable catch.
TAC	556 607 (7)	(6) To be deducted from Norway's share of the TAC (access quota). This quota may be fished in Division IVa only, except for 3 000 tonnes that may be fished in Division IIIa.
		(7) TAC agreed by the European Community, Norway and Faeroe Islands for the northern area.

Special conditions:

Within the limits of the abovementioned quotas, no more than the quantities given below may be taken in the zones specified:

	IIIa	IIIa, IVb,c	IVb	IVc	IIa (non-EC waters), VI, from 1 January to 31 March 2003
Denmark		4 130			4 020
France		490			
The Netherlands		490			
Sweden			390	10	
United Kingdom		490			
Norway	3 000'				

'**Species:** Mackerel *Scomber scombrus*		**Zone:** IIa (non-EC waters), Vb (EC waters), VI, VII, VIIIa,b,d,e, XII, XIV
Germany	20 342	(1) May be fished only in IIa, IVa, VIa (north of 56° 30′ N), VIId,e,f,h.
Spain	20	(2) Of which 1 411 tonnes may be fished in ICES Division IVa north of 59° N (EC waters) from 1 January to 15 February and from 1 October to 31 December. A quantity of 3 893 tonnes of the Faeroe Islands' own quota may be fished in ICES Division VIa (north of 56° 30' N) throughout the year and/or in ICES Divisions VIIe,f,h, and/or ICES Division IVa.
France	13 563	
Ireland	67 807	
The Netherlands	29 665	
United Kingdom	186 472	
EC	317 869 (4)	
Norway	12 020 (1)	(3) TAC agreed by the EC, Norway and Faeroe Islands for the northern area.
Faeroe Islands	4 679 (2)	(4) Including 7 061 tonnes accruing from the Arrangement between the Norway and the European Community on the Management of the joint EU — Norway share of the NEAFC allowable catch 2003.
TAC	556 607 (3)	

Special conditions:

Within the limits of the abovementioned quotas, no more than the quantities given below may be taken in the zones specified, and only during the periods 1 January to 15 February and 1 October to 31 December.

	IVa (EC waters)
Germany	5 967
France	3 978
Ireland	19 890
The Netherlands	8 702
United Kingdom	54 699
Norway	12 020
Faeroe Islands	1 411 (1)

(1) North of 59° N (EC zone) from 1 January to 15 February and from 1 October to 31 December.'

ANNEX V

In Annex I E to Regulation (EC) No 2341/2002, the entry concerning the species Northern prawn in zone 'NAFO 3L' shall be replaced by the following:

'Species: Northern prawn *Pandalus borealis*	**Zone**: NAFO 3L (1)
EC 145 (2) TAC 13 000	(1) Not including the box bounded by the following coordinates: Point No — Latitude N — Longitude W 1 — 47° 20′ 0 — 46° 40′ 0 2 — 47° 20′ 0 — 46° 30′ 0 3 — 46° 00′ 0 — 46° 30′ 0 4 — 46° 00′ 0 — 46° 40′ 0 (2) To be fished from 1 January to 31 March, 1 July to 14 September and 1 December to 31 December.'

ANNEX VI

In Annex VI to Regulation (EC) No 2341/2002, Part I and Part II shall be replaced by the following:

'PART I

QUANTITATIVE LIMITATIONS OF LICENCES AND FISHING PERMITS FOR COMMUNITY VESSELS FISHING IN THIRD COUNTRY WATERS

Area of fishing	Fishery	Number of licences	Maximum number of vessels present at any time
Norwegian waters and fishery zone around Jan Mayen	Herring, North of 62° 00' N	75	55
Estonian waters	Cod, herring, salmon and sprat	250	70
Waters of the Faroe Islands	All trawl fisheries with vessels of not more than 180 feet in the zone between 12 and 21 miles from the Faroese baselines	26	13
	Directed fishing for cod and haddock with a minimum mesh of 135 mm, restricted to the area south of 62° 28' N and east of 6° 30' W	8	4
	Trawling outside 21 miles from the Faroese baselines. In the periods 1 March to 31 May and 1 October to 31 December, these vessels may operate in the area between 61° 20' N and 62° 00' N and between 12 and 21 miles from the baselines.	70	26
	Trawl fisheries for blue ling with a minimum mesh of 100 mm in the area south of 61° 30' N and west of 9°00 'W and in the area between 7° 00' W and 9° 00' W south of 60° 30' N and in the area south-west of a line between 60° 30' N, 7° 00' W and 60° 00' N, 6° 00' W	70	20
	Directed trawl fishery for saithe with a minimum mesh size of 120 mm and with the possibility to use round-straps around the codend	70	22
	Fisheries for blue whiting. The total number of licences may be increased by ford vessels to form pairs, should the Faroese authorities introduce special rules of access to an area called "main fishing area of blue whiting"	34	20
	Line fishing	10	6
	Fishing for mackerel	12	12
	Herring fisheries north of 62° N	21	21
Iceland	All fisheries	18	5
Latvian waters	Fishing for cod, herring and sprat	130	38
	Fishing for salmon	40	15

Area of fishing	Fishery	Number of licences	Maximum number of vessels present at any time
Lithuanian waters	All fisheries	300	60
Polish waters	All fisheries. Only vessels with an engine power equal to or less than 750 kw are allowed.		
Waters of the Russian Federation	All fisheries	pm	pm
	Fisheries for cod	pm	pm
	Fisheries for sprat	pm	pm

PART II

QUANTITATIVE LIMITATIONS OF LICENCES AND FISHING PERMITS FOR THIRD COUNTRIES VESSELS IN COMMUNITY WATERS

Flag State	Fishery	Number of licences	Maximum number of vessels present at any time
Norway	Herring, North of 62° 00' N	18	18
Estonia	Herring, salmon, sprat	106	63
	Cod	30	15 (1)
Faroe Islands	Mackerel, VIa (north of 56° 30' N), VIIefh, horse mackerel, IV, VIa (north of 56° 30' N), VIIefh; herring, VIa (north of 56° 30' N)	14	14
	Herring north of 62° 00' N	21	21
	Herring, IIIa	4	4
	Industrial fishing for Norway pout and sprat, IV, VIa (north of 56° 30' N): sandeel, IV (including unavoidable by-catches of blue whiting)	15	15
	Ling and tusk (2)	20	10
	Blue whiting, VIa (north of 56° 30' N), VIb, VII (west of 12° 00' W)	20	20
	Blue ling	16	16
	Porbeagle (all zones except NAFO 3PS)	3	3
Latvia	Cod, herring, sprat, IIId	90	45 (3)
	Salmon, IIId	4	2

Flag State	Fishery	Number of licences	Maximum number of vessels present at any time
Lithuania	Cod, herring, sprat, salmon, IIId	70	40 (4)
	Herring, sprat, IIId (transport and refrigerator vessels)	5	4
Poland	Herring fisheries. Only vessels with an engine power equal to or less than 750 kw are allowed.	60	25
Russian Federation	Herring, IIId (Swedish waters)	pm	pm
	Herring, IIId (Swedish waters, non-fishing mother ships)	pm	pm
Barbados	*Penaeus* shrimps (5) (French Guyana waters)	5	pm (6)
	Snappers (7) (French Guyana waters)	5	pm
Guyana	*Penaeus* shrimps (5) (French Guyana waters)	pm	pm (6)
Surinam	*Penaeus* shrimps (5) (French Guyana waters)	5	pm (8)
Trinidad and Tobago	*Penaeus* shrimps (5) (French Guyana waters)	8	pm (9)
Japan	Tuna (10) (French Guyana waters)	pm	
Korea	Tuna (10) (French Guyana waters)	pm	pm (9)
Venezuela	Snappers (7) (French Guyana waters)	41	pm
	Sharks (7) (French Guyana waters)	4	pm

(1) Of which 6 vessels may fish with gillnets and during the period 1 September to 15 October an additional nine vessels may fish with trawl.
(2) The Faroese authorities will send the relevant list before the 25th day of each month.
(3) Of which 32 vessels fishing with gillnets at any given time.
(4) Of which at any given time a maximum of 10 for vessels fishing cod with gillnets.
(5) The licences concerning fishing for shrimp in the waters of the French Department of Guyana shall be issued on the basis of a fishing plan submitted by the authorities of the third country concerned, approved by the Commission. The period of validity of each of these licences shall be limited to the fishing period provided for in the fishing plan on the basis of which the licence was issued.
(6) The annual number of days at sea is limited to 200.
(7) To be fished exclusively with long lines or traps (snappers) or long lines or mesh nets having a minimum mesh of 100 mm, at depths greater than 30 m (sharks). To issue these licences, proof must be produced that a valid contract exists between the ship-owner applying for the licence and a processing undertaking situated in the French Department of Guyana, and that it includes an obligation to land at least 75 % of all snapper catches, or 50 % of all shark catches from the vessel concerned in that department so that they may be processed in that undertaking's plant.
The contract referred to above must be endorsed by the French authorities, which shall ensure that it is consistent both with the actual capacity of the contracting processing undertaking and with the objectives for the development of the Guyanese economy. A copy of the duly endorsed contract shall be appended to the licence application.
Where the endorsement referred to above is refused, the French authorities shall give notification of this refusal and state their reasons for it to the party concerned and to the Commission.
(8) The annual number of days at sea is limited to pm.
(9) The annual number of days at sea is limited to 350.
(10) To be fished exclusively with longlines.'

COMMISSION REGULATION (EC) No 1092/2003

of 25 June 2003

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables [1], as last amended by Regulation (EC) No 1947/2002 [2], and in particular Article 4(1) thereof,

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 26 June 2003.

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

Done at Brussels, 25 June 2003.

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

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

ANNEX

to the Commission Regulation of 25 June 2003 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	052	58,0
	064	80,7
	999	69,3
0707 00 05	052	85,2
	999	85,2
0709 90 70	052	77,1
	999	77,1
0805 50 10	382	60,3
	388	61,1
	400	50,6
	528	62,6
	999	58,6
0808 10 20, 0808 10 50, 0808 10 90	388	76,4
	400	90,4
	508	84,2
	512	75,5
	524	52,4
	528	59,0
	720	70,3
	800	148,7
	804	105,3
	999	84,7
0809 10 00	052	211,8
	999	211,8
0809 20 95	052	285,2
	060	156,6
	068	156,6
	094	197,7
	400	319,8
	999	223,2
0809 40 05	052	197,1
	624	184,6
	999	190,8

(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 1093/2003

of 24 June 2003

amending Regulation (EC) No 668/2001 increasing the quantity of barley held by the German intervention agency for which a standing invitation to tender for export has been opened

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals [1], as last amended by Regulation (EC) No 1666/2000 [2], and in particular Article 5 thereof,

Whereas:

(1) Commission Regulation (EEC) No 2131/93 [3], as last amended by Regulation (EC) No 1630/2000 [4], lays down the procedures and conditions for the disposal of cereals held by the intervention agencies.

(2) Commission Regulation (EC) No 668/2001 [5], as last amended by Regulation (EC) No 989/2003 [6], opened a standing invitation to tender for the export of 4 299 449 tonnes of barley held by the German intervention agency.

(3) Germany informed the Commission of the intention of its intervention agency to increase by 225 505 tonnes the quantity for which a standing invitation to tender for export has been opened. In view of the market situation, the German request should be granted.

(4) This increase in the quantity put out to tender makes it necessary to alter the list of regions and quantities in store without delay.

(5) Regulation (EC) No 668/2001 should be amended accordingly.

(6) 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

Regulation (EC) No 668/2001 is hereby amended as follows:

1. Article 2 is replaced by the following:

   '*Article 2*

   1. The invitation to tender shall cover a maximum of 4 524 954 tonnes of barley to be exported to all third countries with the exception of Bulgaria, Canada, the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Mexico, Poland, Romania, the Slovak Republic, Slovenia and the United States of America.

   2. The regions in which the 4 524 954 tonnes of barley are stored are stated in Annex I to this Regulation.'

2. Annex I is replaced by the Annex hereto.

Article 2

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

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

Done at Brussels, 24 June 2003.

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 191, 31.7.1993, p. 76.
[4] OJ L 187, 26.7.2000, p. 24.
[5] OJ L 93, 3.4.2001, p. 20.
[6] OJ L 143, 11.6.2003, p. 14.

ANNEX

'ANNEX I

(tonnes)

Place of storage	Quantity
Schleswig-Holstein/Hamburg/Lower Saxony/Bremen/Mecklenburg-Western Pomerania	1 716 314
North Rhine-Westphalia/Hessen/Rhineland-Palatinate/Saarland/Baden-Württemberg/Bavaria	418 033
Berlin/Brandenburg/Saxony-Anhalt/Saxony/Thuringia	2 390 607'

COMMISSION REGULATION (EC) No 1094/2003

of 24 June 2003

amending Commission Regulation (EC) No 1081/2002 as regards increasing the quantity of barley held by the French intervention agency for which a standing invitation to tender for export has been opened

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ([1]), as last amended by Regulation (EC) No 1666/2000 ([2]), and in particular Article 5 thereof,

Whereas:

(1) Commission Regulation (EEC) No 2131/93 ([3]), as last amended by Regulation (EC) No 1630/2000 ([4]), lays down the procedure and conditions for the disposal of cereals held by intervention agencies.

(2) Commission Regulation (EC) No 1081/2002 ([5]), as last amended by Regulation (EC) No 937/2003 ([6]), opened a standing invitation to tender for the export of 578 820 tonnes of barley held by the French intervention agency.

(3) France informed the Commission of the intention of its intervention agency to increase by 89 000 tonnes the quantity put out to tender for export. In view of the market situation, the request made by France should be granted.

(4) This increase in quantity put out to tender makes it necessary to alter the list of regions and quantities in store without delay.

(5) Regulation (EC) No 1081/2002 should be amended accordingly.

(6) 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

Regulation (EC) No 1081/2002 is amended as follows:

1. Article 2 is replaced by the following:

'*Article 2*

1. The invitation to tender shall cover a maximum of 667 820 tonnes of barley to be exported to all third countries with the exception of Bulgaria, Canada, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Mexico, Poland, Romania, the Slovak Republic, Slovenia and the United States of America.

2. The regions in which the 667 820 tonnes of barley are stored are set out in Annex I to this Regulation.'

2. Annex I is replaced by the Annex hereto.

Article 2

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

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

Done at Brussels, 24 June 2003.

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 191, 31.7.1993, p. 76.
([4]) OJ L 187, 26.7.2000, p. 24.
([5]) OJ L 164, 22.6.2002, p. 16.
([6]) OJ L 133, 29.5.2003, p. 51.

ANNEX

'ANNEX I

(tonnes)

Place of storage	Quantity
Amiens	122 681
Chalons	33 000
Clermont	4 900
Dijon	1 100
Lille	51 332
Nancy	88 341
Nantes	10 400
Orléans	160 844
Paris	60 807
Poitiers	8 000
Rouen	126 415'

COMMISSION REGULATION (EC) No 1095/2003

of 25 June 2003

amending Commission Regulation (EC) No 1500/2001 as regards increasing the quantity of barley held by the Finnish intervention agency for which a standing invitation to tender for export has been opened

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ([1]), as last amended by Regulation (EC) No 1666/2000 ([2]), and in particular Article 5 thereof,

Whereas:

(1) Commission Regulation (EEC) No 2131/93 ([3]), as last amended by Regulation (EC) No 1630/2000 ([4]), lays down the procedure and conditions for the disposal of cereals held by intervention agencies.

(2) Commission Regulation (EC) No 1500/2001 ([5]), as last amended by Regulation (EC) No 937/2003 ([6]), opened a standing invitation to tender for the export of 171 590 tonnes of barley held by the Finnish intervention agency.

(3) Finland informed the Commission of the intention of its intervention agency to increase by 17 488 tonnes the quantity put out to tender for export. In view of the market situation, the request made by Finland should be granted.

(4) This increase in quantity put out to tender makes it necessary to alter the list of regions and quantities in store without delay.

(5) Regulation (EC) No 1500/2001 should be amended accordingly.

(6) 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

Regulation (EC) No 1500/2001 is amended as follows:

1. Article 2 is replaced by the following:

'*Article 2*

1. The invitation to tender shall cover a maximum of 189 078 tonnes of barley to be exported to all third countries with the exception of Bulgaria, Canada, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Mexico, Poland, Romania, the Slovak Republic, Slovenia and the United States of America.

2. The regions in which the 189 078 tonnes of barley are stored are set out in Annex I to this Regulation.'

2. Annex I is replaced by the Annex hereto.

Article 2

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

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

Done at Brussels, 25 June 2003.

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 191, 31.7.1993, p. 76.
([4]) OJ L 187, 26.7.2000, p. 24.
([5]) OJ L 199, 24.7.2001, p. 3.
([6]) OJ L 133, 29.5.2003, p. 51.

ANNEX

'ANNEX I

(tonnes)

Place of storage	Quantity
Hämeenlinna	20 996
Joensuu	2 267
Kaipiainen	2 157
Kirkniemi	6 863
Kokemäki	28 966
Koria	7 767
Kotka	1 321
Kuopio	2 034
Loimaa	26 406
Mustio	7 620
Perniö	10 516
Seinäjoki	423
Turenki	69 204
Vainikkala	2 538'

COMMISSION REGULATION (EC) No 1096/2003

of 25 June 2003

amending Commission Regulation (EC) No 953/2002 as regards increasing the quantity of barley held by the Belgian intervention agency for which a standing invitation to tender for export has been opened

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ([1]), as last amended by Regulation (EC) No 1666/2000 ([2]), and in particular Article 5 thereof,

Whereas:

(1) Commission Regulation (EEC) No 2131/93 ([3]), as last amended by Regulation (EC) No 1630/2000 ([4]), lays down the procedure and conditions for the disposal of cereals held by intervention agencies.

(2) Commission Regulation (EC) No 953/2002 ([5]), as last amended by Regulation (EC) No 937/2003 ([6]), opened a standing invitation to tender for the export of 58 081 tonnes of barley held by the Belgian intervention agency.

(3) Belgium informed the Commission of the intention of its intervention agency to increase by 35 123 tonnes the quantity put out to tender for export. In view of the market situation, the request made by Belgium should be granted.

(4) This increase in quantity put out to tender makes it necessary to alter the list of regions and quantities in store without delay.

(5) Regulation (EC) No 953/2002 should be amended accordingly.

(6) 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

Regulation (EC) No 953/2002 is amended as follows:

1. Article 2 is replaced by the following:

'*Article 2*

1. The invitation to tender shall cover a maximum of 93 204 tonnes of barley to be exported to all third countries with the exception of Bulgaria, Canada, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Mexico, Poland, Romania, the Slovak Republic, Slovenia and the United States of America.

2. The regions in which the 93 204 tonnes of barley are stored are set out in Annex I to this Regulation.'

2. Annex I is replaced by the Annex hereto.

Article 2

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

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

Done at Brussels, 25 June 2003.

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 191, 31.7.1993, p. 76.
([4]) OJ L 187, 26.7.2000, p. 24.
([5]) OJ L 147, 5.6.2002, p. 3.
([6]) OJ L 133, 29.5.2003, p. 51.

ANNEX

'ANNEX I

(tonnes)

Place of storage	Quantity
Hainaut	37 606
Liège	31 055
Namur	22 313
West Flanders	2 230'

COMMISSION REGULATION (EC) No 1097/2003

of 25 June 2003

determining the extent to which applications lodged in June 2003 for import licences for certain pigmeat products under the regime provided for by the Agreements concluded by the Community with the Republic of Poland, the Republic of Hungary, the Czech Republic, Slovakia, Bulgaria and Romania can be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1898/97 of 29 September 1997 laying down detailed rules for the application in the pigmeat sector of the arrangements provided for by the Agreements concluded by the Community with Bulgaria, the Czech Republic, Slovakia, Romania, the Republic of Poland and the Republic of Hungary [1], as last amended by Regulation (EC) No 1877/2002 [2], and in particular Article 4(5) thereof,

Whereas:

(1) The applications for import licences lodged for the third quarter of 2003 are, in the case of some products, for quantities less than or equal to the quantities available and can therefore be met in full, but in the case of other products the said applications are for quantities greater than the quantities available and must therefore be reduced by a fixed percentage to ensure a fair distribution.

(2) The surplus to be added to the quantity available for the following period should be determined.

(3) It is appropriate to draw the attention of operators to the fact that licences may only be used for products which comply with all veterinary rules currently in force in the Community,

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for import licences for the period 1 July to 30 September 2003 submitted pursuant to Regulation (EC) No 1898/97 shall be met as referred to in Annex I.

2. For the period 1 October to 31 December 2003, applications may be lodged pursuant to Regulation (EC) No 1898/97 for import licences for a total quantity as referred to in Annex II.

3. Licences may only be used for products which comply with all veterinary rules currently in force in the Community.

Article 2

This Regulation shall enter into force on 1 July 2003.

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

Done at Brussels, 25 June 2003.

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

[1] OJ L 267, 30.9.1997, p. 58.
[2] OJ L 248, 22.10.2002, p. 9.

ANNEX I

Group No	Percentage of acceptance of import licences submitted for the period 1 July to 30 September 2003
1	100,0
2	65,0
3	100,0
4	100,0
H1	100,0
7	100,0
8	100,0
9	100,0
T1	100,0
T2	100,0
T3	100,0
S1	100,0
S2	100,0
B1	100,0
15	100,0
16	100,0
17	100,0

ANNEX II

(t)

Group No	Total quantity available for the period 1 October to 31 December 2003
1	4 301,3
2	292,5
3	610,0
4	15 731,5
H1	1 585,0
7	8 628,6
8	875,0
9	14 807,5
T1	750,0
T2	7 247,0
T3	2 185,0
S1	1 450,0
S2	175,0
B1	1 500,0
15	562,0
16	1 062,5
17	7 812,5

COMMISSION REGULATION (EC) No 1098/2003

of 25 June 2003

establishing the quantity of certain pigmeat products available for the fourth quarter of 2003 under the arrangements provided for by the Free Trade Agreements between the Community, of the one part, and Latvia, Lithuania and Estonia, of the other part

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 2305/95 of 29 September 1995 laying down detailed rules for the application in the pigmeat sector of the arrangements provided for in the free trade agreements between the Community, of the one part and Latvia, Lithuania and Estonia, of the other part [1], as last amended by Regulation (EC) No 1853/2002 [2], and in particular Article 4(4) thereof,

Whereas:

In order to ensure distribution of the quantities available, the quantities carried forward from the period 1 July to 30 September 2003 should be added to the quantities available for the period 1 October to 31 December 2003,

HAS ADOPTED THIS REGULATION:

Article 1

The quantity available for the period 1 October to 31 December 2003 pursuant to Regulation (EC) No 2305/95 is set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 July 2003.

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

Done at Brussels, 25 June 2003.

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

[1] OJ L 233, 30.9.1995, p. 45.
[2] OJ L 280, 18.10.2002, p. 5.

ANNEX

(t)

Group	Total quantity available for the period 1 October to 31 December 2003
18	975,0
L1	195,0
19	812,5
20	97,5
21	1 187,5
22	570,0
E1	65,0

COMMISSION REGULATION (EC) No 1099/2003

of 25 June 2003

determining the extent to which applications lodged in June 2003 for import licences for certain pigmeat sector products under the regime provided for by Council Regulation (EC) No 774/94 opening and providing for the administration of certain Community tariff quotas for pigmeat and certain other agricultural products can be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1432/94 of 22 June 1994 laying down detailed rules for the application in the pigmeat sector of the import arrangements provided for in Council Regulation (EC) No 774/94 opening and providing for the administration of certain Community tariff quotas for pigmeat and certain other agricultural products [1], as last amended by Regulation (EC) No 1006/2001 [2], and in particular Article 4(4) thereof,

Whereas:

(1) The applications for import licences lodged for the third quarter of 2003 are for quantities less than the quantities available and can therefore be met in full.

(2) The quantity available for the following period should be determined.

(3) It is appropriate to draw the attention of operators to the fact that licences may only be used for products which comply with all veterinary rules currently in force in the Community,

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for import licences for the period 1 July to 30 September 2003 submitted pursuant to Regulation (EC) No 1432/94 shall be met as referred to in Annex I.

2. For the period 1 October to 31 December 2003, applications may be lodged pursuant to Regulation (EC) No 1432/94 for import licences for a total quantity as referred to in Annex II.

3. Licences may only be used for products which comply with all veterinary rules currently in force in the Community.

Article 2

This Regulation shall enter into force on 1 July 2003.

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

Done at Brussels, 25 June 2003.

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

[1] OJ L 156, 23.6.1994, p. 14.
[2] OJ L 140, 24.5.2001, p. 13.

ANNEX I

Group No	Percentage of acceptance of import licences submitted for the period 1 July to 30 September 2003
1	100,00

ANNEX II

(t)

Group	Total quantity available for the period 1 October to 31 December 2003
1	6 754,0

COMMISSION REGULATION (EC) No 1100/2003

of 25 June 2003

determining the extent to which applications lodged in June 2003 for import licences under the regime provided for by tariff quotas for certain products in the pigmeat sector for the period 1 July to 30 September 2003 can be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1486/95 of 28 June 1995 opening and providing for the administration of tariff quotas for certain products in the pigmeat sector [1], as last amended by Regulation (EC) No 1006/2001 [2], and in particular Article 5(5) thereof,

Whereas:

(1) The applications for import licences lodged for the third quarter of 2003 are for quantities less than the quantities available and can therefore be met in full.

(2) The surplus to be added to the quantity available for the following period should be determined,

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for import licences for the period 1 July to 30 September 2003 submitted pursuant to Regulation (EC) No 1486/95 shall be met as referred to in Annex I.

2. For the period 1 October to 31 December 2003, applications may be lodged pursuant to Regulation (EC) No 1486/95 for import licences for a total quantity as referred to in Annex II.

Article 2

This Regulation shall enter into force on 1 July 2003.

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

Done at Brussels, 25 June 2003.

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

[1] OJ L 145, 29.6.1995, p. 58.
[2] OJ L 140, 24.5.2001, p. 13.

ANNEX I

Group No	Percentage of acceptance of import licences submitted for the period 1 July to 30 September 2003
G2	100
G3	100
G4	100
G5	100
G6	100
G7	100

ANNEX II

(t)

Group No	Total quantity available for the period 1 October to 31 December 2003
G2	15 562,7
G3	2 075,0
G4	1 455,0
G5	3 050,0
G6	7 500,0
G7	2 750,0

COMMISSION REGULATION (EC) No 1101/2003

of 25 June 2003

determining the extent to which applications lodged in June 2003 for import licences for certain pigmeat products under the regime provided for by the Agreement concluded by the Community with Slovenia can be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 571/97 of 26 March 1997 laying down detailed rules for the application in the pigmeat sector of the arrangements provided for in the Interim Agreement between the Community and Slovenia [1], as last amended by Regulation (EC) No 1006/2001 [2], and in particular Article 4(4) thereof,

Whereas:

(1) The applications for import licences lodged for the third quarter of 2003 are for quantities less than the quantities available and can therefore be met in full.

(2) The surplus to be added to the quantity available for the following period should be determined.

(3) It is appropriate to draw the attention of operators to the fact that licences may only be used for products which comply with all veterinary rules currently in force in the Community,

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for import licences for the period 1 July to 30 September 2003 submitted pursuant to Regulation (EC) No 571/97 shall be met as referred to in Annex I.

2. For the period 1 October to 31 December 2003, applications may be lodged pursuant to Regulation (EC) No 571/97 for import licences for a total quantity as referred to in Annex II.

3. Licences may only be used for products which comply with all veterinary rules currently in force in the Community.

Article 2

This Regulation shall enter into force on 1 July 2003.

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

Done at Brussels, 25 June 2003.

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

[1] OJ L 85, 27.3.1997, p. 56.
[2] OJ L 140, 24.5.2001, p. 13.

ANNEX I

Group No	Percentage of acceptance of import licences submitted for the period 1 July to 30 September 2003
23	100,00
24	100,00
25	100,00
26	100,00

ANNEX II

(t)

Group No	Total quantity available for the period 1 October to 31 December 2003
23	383,9
24	142,3
25	126,8
26	776,3

COMMISSION REGULATION (EC) No 1102/2003
of 25 June 2003
fixing the production refund for olive oil used in the manufacture of certain preserved foods

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats [1], as last amended by Regulation (EC) No 1513/2001 [2], and in particular Article 20a thereof,

Whereas:

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

For the months of July and August 2003, the amount of the production refund referred to in Article 20a(2) of Regulation No 136/66/EEC shall be EUR 44,00/100 kg.

Article 2

This Regulation shall enter into force on 1 July 2003.

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

Done at Brussels, 25 June 2003.

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

[1] OJ 172, 30.9.1966, p. 3025/66.
[2] OJ L 201, 26.7.2001, p. 4.

COMMISSION REGULATION (EC) No 1103/2003
of 25 June 2003
fixing the import duties in the rice sector

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 Commission Regulation (EC) No 411/2002 [2],

Having regard to Commission Regulation (EC) No 1503/96 of 29 July 1996 laying down detailed rules for the application of Council Regulation (EC) No 3072/95 as regards import duties in the rice sector [3], as last amended by Regulation (EC) No 1298/2002 [4], and in particular Article 4(1) thereof,

Whereas:

(1) Article 11 of Regulation (EC) No 3072/95 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 a certain percentage according to whether it is husked or milled rice, minus the cif import price provided that duty does not exceed the rate of the Common Customs Tariff duties.

(2) Pursuant to Article 12(3) of Regulation (EC) No 3072/95, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market or on the Community import market for the product.

(3) Regulation (EC) No 1503/96 lays down detailed rules for the application of Regulation (EC) No 3072/95 as regards import duties in the rice 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 from the source referred to in Article 5 of Regulation (EC) No 1503/96 during the two weeks preceding the next periodical fixing.

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

(6) Application of the second subparagraph of Article 4(1) of Regulation (EC) No 1503/96 results in an adjustment of the import duties that have been fixed as from 15 May 2003 by Commission Regulation (EC) No 832/2003 [5] as set out in the Annexes to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the rice sector referred to in Article 11(1) and (2) of Regulation (EC) No 3072/95 shall be adjusted in compliance with Article 4 of Regulation (EC) No 1503/96 and 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 26 June 2003.

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

Done at Brussels, 25 June 2003.

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

[1] OJ L 329, 30.12.1995, p. 18.
[2] OJ L 62, 5.3.2002, p. 27.
[3] OJ L 189, 30.7.1996, p. 71.
[4] OJ L 189, 18.7.2002, p. 8.
[5] OJ L 120, 15.5.2003, p. 15.

ANNEX I

Import duties on rice and broken rice

(EUR/t)

CN code	Duties [5]				
	Third countries (except ACP and Bangladesh) [3]	ACP [1] [2] [3]	Bangladesh [4]	Basmati India and Pakistan [6]	Egypt [8]
1006 10 21	[7]	69,51	101,16		158,25
1006 10 23	[7]	69,51	101,16		158,25
1006 10 25	[7]	69,51	101,16		158,25
1006 10 27	[7]	69,51	101,16		158,25
1006 10 92	[7]	69,51	101,16		158,25
1006 10 94	[7]	69,51	101,16		158,25
1006 10 96	[7]	69,51	101,16		158,25
1006 10 98	[7]	69,51	101,16		158,25
1006 20 11	264,00	88,06	127,66		198,00
1006 20 13	264,00	88,06	127,66		198,00
1006 20 15	264,00	88,06	127,66		198,00
1006 20 17	264,00	88,06	127,66	14,00	198,00
1006 20 92	264,00	88,06	127,66		198,00
1006 20 94	264,00	88,06	127,66		198,00
1006 20 96	264,00	88,06	127,66		198,00
1006 20 98	264,00	88,06	127,66	14,00	198,00
1006 30 21	[7]	133,21	193,09		312,00
1006 30 23	[7]	133,21	193,09		312,00
1006 30 25	[7]	133,21	193,09		312,00
1006 30 27	[7]	133,21	193,09		312,00
1006 30 42	[7]	133,21	193,09		312,00
1006 30 44	[7]	133,21	193,09		312,00
1006 30 46	[7]	133,21	193,09		312,00
1006 30 48	[7]	133,21	193,09		312,00
1006 30 61	[7]	133,21	193,09		312,00
1006 30 63	[7]	133,21	193,09		312,00
1006 30 65	[7]	133,21	193,09		312,00
1006 30 67	[7]	133,21	193,09		312,00
1006 30 92	[7]	133,21	193,09		312,00
1006 30 94	[7]	133,21	193,09		312,00
1006 30 96	[7]	133,21	193,09		312,00
1006 30 98	[7]	133,21	193,09		312,00
1006 40 00	[7]	41,18	[7]		96,00

[1] The duty on imports of rice originating in the ACP States is applicable, under the arrangements laid down in Council Regulation (EC) No 2286/2002 (OJ L 345, 10.12.2002, p. 5) and amended Commission Regulation (EC) No 2603/97 (OJ L 351, 23.12.1997, p. 22).

[2] In accordance with Regulation (EC) No 1706/98, the duties are not applied to products originating in the African, Caribbean and Pacific States and imported directly into the overseas department of Réunion.

[3] The import levy on rice entering the overseas department of Réunion is specified in Article 11(3) of Regulation (EC) No 3072/95.

[4] The duty on imports of rice not including broken rice (CN code 1006 40 00), originating in Bangladesh is applicable under the arrangements laid down in Council Regulation (EEC) No 3491/90 (OJ L 337, 4.12.1990, p. 1) and amended Commission Regulation (EEC) No 862/91 (OJ L 88, 9.4.1991, p. 7).

[5] No import duty applies to products originating in the OCT pursuant to Article 101(1) of amended Council Decision 91/482/EEC (OJ L 263, 19.9.1991, p. 1).

[6] For husked rice of the Basmati variety originating in India and Pakistan, a reduction of EUR/t 250 applies (Article 4a of amended Regulation (EC) No 1503/96).

[7] Duties fixed in the Common Customs Tariff.

[8] The duty on imports of rice originating in and coming from Egypt is applicable under the arrangements laid down in Council Regulation (EC) No 2184/96 (OJ L 292, 15.11.1996, p. 1) and Commission Regulation (EC) No 196/97 (OJ L 31, 1.2.1997, p. 53).

ANNEX II

Calculation of import duties for rice

	Paddy	Indica rice		Japonica rice		Broken rice
		Husked	Milled	Husked	Milled	
1. Import duty (EUR/tonne)	(1)	264,00	416,00	264,00	416,00	(1)
2. Elements of calculation:						
(a) Arag cif price (EUR/tonne)	—	233,35	210,83	286,43	323,23	—
(b) fob price (EUR/tonne)	—	—	—	260,49	297,29	—
(c) Sea freight (EUR/tonne)	—	—	—	25,94	25,94	—
(d) Source	—	USDA and operators	USDA and operators	Operators	Operators	—

(1) Duties fixed in the Common Customs Tariff.

COUNCIL DIRECTIVE 2003/48/EC

of 3 June 2003

on taxation of savings income in the form of interest payments

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 94 thereof,

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

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

Having regard to the opinion of the European Economic and Social Committee [3],

Whereas:

(1) Articles 56 to 60 of the Treaty guarantee the free movement of capital.

(2) Savings income in the form of interest payments from debt claims constitutes taxable income for residents of all Member States.

(3) By virtue of Article 58(1) of the Treaty Member States have the right to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested, and to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation.

(4) In accordance with Article 58(3) of the Treaty, the provisions of Member States' tax law designed to counter abuse or fraud should not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as established by Article 56 of the Treaty.

(5) In the absence of any coordination of national tax systems for taxation of savings income in the form of interest payments, particularly as far as the treatment of interest received by non-residents is concerned, residents of Member States are currently often able to avoid any form of taxation in their Member State of residence on interest they receive in another Member State.

(6) This situation is creating distortions in the capital movements between Member States, which are incompatible with the internal market.

(7) This Directive builds on the consensus reached at the Santa Maria da Feira European Council of 19 and 20 June 2000 and the subsequent Ecofin Council meetings of 26 and 27 November 2000, 13 December 2001 and 21 January 2003.

(8) The ultimate aim of this Directive is to enable savings income in the form of interest payments made in one Member State to beneficial owners who are individuals resident in another Member State to be made subject to effective taxation in accordance with the laws of the latter Member State.

(9) The aim of this Directive can best be achieved by targeting interest payments made or secured by economic operators established in the Member States to or for the benefit of beneficial owners who are individuals resident in another Member State.

(10) Since the objective of this Directive cannot be sufficiently achieved by the Member States, because of the lack of any coordination of national systems for the taxation of savings income, and can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

(11) The paying agent is the economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner.

(12) In defining the notion of interest payment and the paying agent mechanism, reference should be made, where appropriate, to Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) [4].

(13) The scope of this Directive should be limited to taxation of savings income in the form of interest payments on debt claims, to the exclusion, *inter alia*, of the issues relating to the taxation of pension and insurance benefits.

(14) The ultimate aim of bringing about effective taxation of interest payments in the beneficial owner's Member State of residence for tax purposes can be achieved through the exchange of information concerning interest payments between Member States.

[1] OJ C 270 E, 25.9.2001, p. 259.
[2] OJ C 47 E, 27.2.2003, p. 553.
[3] OJ C 48, 21.2.2002, p. 55.
[4] OJ L 375, 31.12.1985, p. 3. Directive as last amended by Directive 2001/108/EC of the European Parliament and of the Council (OJ L 41, 13.2.2002, p. 35).

(15) Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation [1] already provides a basis for Member States to exchange information for tax purposes on the income covered by this Directive. It should continue to apply to such exchanges of information in addition to this Directive insofar as this Directive does not derogate from it.

(16) The automatic exchange of information between Member States concerning interest payments covered by this Directive makes possible the effective taxation of those payments in the beneficial owner's Member State of residence for tax purposes in accordance with the national laws of that State. It is therefore necessary to stipulate that Member States which exchange information pursuant to this Directive should not be permitted to rely on the limits to the exchange of information as set out in Article 8 of Directive 77/799/EEC.

(17) In view of structural differences, Austria, Belgium and Luxembourg cannot apply the automatic exchange of information at the same time as the other Member States. During a transitional period, given that a withholding tax can ensure a minimum level of effective taxation, especially at a rate increasing progressively to 35 %, these three Member States should apply a withholding tax to the savings income covered by this Directive.

(18) In order to avoid differences in treatment, Austria, Belgium and Luxembourg should not be obliged to apply automatic exchange of information before the Swiss Confederation, the Principality of Andorra, the Principality of Liechtenstein, the Principality of Monaco and the Republic of San Marino ensure effective exchange of information on request concerning payments of interest.

(19) Those Member States should transfer the greater part of their revenue of this withholding tax to the Member State of residence of the beneficial owner of the interest.

(20) Those Member States should provide for a procedure allowing beneficial owners resident for tax purposes in other Member States to avoid the imposition of this withholding tax by authorising their paying agent to report the interest payments or by presenting a certificate issued by the competent authority of their Member State of residence for tax purposes.

(21) The Member State of residence for tax purposes of the beneficial owner should ensure the elimination of any double taxation of the interest payments which might result from the imposition of this withholding tax in accordance with the procedures laid down in this Directive. It should do so by crediting this withholding tax up to the amount of tax due in its territory and by reimbursing to the beneficial owner any excess amount of tax withheld. It may, however, instead of applying this tax credit mechanism, grant a refund of the withholding tax.

(22) In order to avoid market disruption, this Directive should, during the transitional period, not apply to interest payments on certain negotiable debt securities.

(23) This Directive should not preclude Member States from levying other types of withholding tax than that referred to in this Directive on interest arising in their territories.

(24) So long as the United States of America, Switzerland, Andorra, Liechtenstein, Monaco, San Marino and the relevant dependent or associated territories of the Member States do not all apply measures equivalent to, or the same as, those provided for by this Directive, capital flight towards these countries and territories could imperil the attainment of its objectives. Therefore, it is necessary for the Directive to apply from the same date as that on which all these countries and territories apply such measures.

(25) The Commission should report every three years on the operation of this Directive and propose to the Council any amendments that prove necessary in order better to ensure effective taxation of savings income and to remove undesirable distortions of competition.

(26) This Directive respects the fundamental rights and principles which are recognised, in particular, by the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

INTRODUCTORY PROVISIONS

Article 1

Aim

1. The ultimate aim of the Directive is to enable savings income in the form of interest payments made in one Member State to beneficial owners who are individuals resident for tax purposes in another Member State to be made subject to effective taxation in accordance with the laws of the latter Member State.

2. Member States shall take the necessary measures to ensure that the tasks necessary for the implementation of this Directive are carried out by paying agents established within their territory, irrespective of the place of establishment of the debtor of the debt claim producing the interest.

[1] OJ L 336, 27.12.1977, p. 15. Directive as last amended by the 1994 Act of Accession.

Article 2

Definition of beneficial owner

1. For the purposes of this Directive, 'beneficial owner' means any individual who receives an interest payment or any individual for whom an interest payment is secured, unless he provides evidence that it was not received or secured for his own benefit, that is to say that:

(a) he acts as a paying agent within the meaning of Article 4(1); or

(b) he acts on behalf of a legal person, an entity which is taxed on its profits under the general arrangements for business taxation, an UCITS authorised in accordance with Directive 85/611/EEC or an entity referred to in Article 4(2) of this Directive and, in the last mentioned case, discloses the name and address of that entity to the economic operator making the interest payment and the latter communicates such information to the competent authority of its Member State of establishment, or

(c) he acts on behalf of another individual who is the beneficial owner and discloses to the paying agent the identity of that beneficial owner in accordance with Article 3(2).

2. Where a paying agent has information suggesting that the individual who receives an interest payment or for whom an interest payment is secured may not be the beneficial owner, and where neither paragraph 1(a) nor 1(b) applies to that individual, it shall take reasonable steps to establish the identity of the beneficial owner in accordance with Article 3(2). If the paying agent is unable to identify the beneficial owner, it shall treat the individual in question as the beneficial owner.

Article 3

Identity and residence of beneficial owners

1. Each Member State shall, within its territory, adopt and ensure the application of the procedures necessary to allow the paying agent to identify the beneficial owners and their residence for the purposes of Articles 8 to 12.

Such procedures shall comply with the minimum standards established in paragraphs 2 and 3.

2. The paying agent shall establish the identity of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into, as follows:

(a) for contractual relations entered into before 1 January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of his name and address, by using the information at its disposal, in particular pursuant to the regulations in force in its State of establishment and to Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering [1];

(b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of the name, address and, if there is one, the tax identification number allocated by the Member State of residence for tax purposes. These details shall be established on the basis of the passport or of the official identity card presented by the beneficial owner. If it does not appear on that passport or on that official identity card, the address shall be established on the basis of any other documentary proof of identity presented by the beneficial owner. If the tax identification number is not mentioned on the passport, on the official identity card or any other documentary proof of identity, including, possibly, the certificate of residence for tax purposes, presented by the beneficial owner, the identity shall be supplemented by a reference to the latter's date and place of birth established on the basis of his passport or official identification card.

3. The paying agent shall establish the residence of the beneficial owner on the basis of minimum standards which vary according to when relations between the paying agent and the recipient of the interest are entered into. Subject to the conditions set out below, residence shall be considered to be situated in the country where the beneficial owner has his permanent address:

(a) for contractual relations entered into before 1 January 2004, the paying agent shall establish the residence of the beneficial owner by using the information at its disposal, in particular pursuant to the regulations in force in its State of establishment and to Directive 91/308/EEC;

(b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, the paying agent shall establish the residence of the beneficial owner on the basis of the address mentioned on the passport, on the official identity card or, if necessary, on the basis of any documentary proof of identity presented by the beneficial owner and according to the following procedure: for individuals presenting a passport or official identity card issued by a Member State who declare themselves to be resident in a third country, residence shall be established by means of a tax residence certificate issued by the competent authority of the third country in which the individual claims to be resident. Failing the presentation of such a certificate, the Member State which issued the passport or other official identity document shall be considered to be the country of residence.

Article 4

Definition of paying agent

1. For the purposes of this Directive, 'paying agent' means any economic operator who pays interest to or secures the payment of interest for the immediate benefit of the beneficial owner, whether the operator is the debtor of the debt claim which produces the interest or the operator charged by the debtor or the beneficial owner with paying interest or securing the payment of interest.

[1] OJ L 166, 28.6.1991, p. 77. Directive as last amended by Directive 2001/97/EC of the European Parliament and of the Council (OJ L 344, 28.12.2001, p. 76).

2. Any entity established in a Member State to which interest is paid or for which interest is secured for the benefit of the beneficial owner shall also be considered a paying agent upon such payment or securing of such payment. This provision shall not apply if the economic operator has reason to believe, on the basis of official evidence produced by that entity, that:

(a) it is a legal person, with the exception of those legal persons referred to in paragraph 5; or

(b) its profits are taxed under the general arrangements for business taxation; or

(c) it is an UCITS recognised in accordance with Directive 85/611/EEC.

An economic operator paying interest to, or securing interest for, such an entity established in another Member State which is considered a paying agent under this paragraph shall communicate the name and address of the entity and the total amount of interest paid to, or secured for, the entity to the competent authority of its Member State of establishment, which shall pass this information on to the competent authority of the Member State where the entity is established.

3. The entity referred to in paragraph 2 shall, however, have the option of being treated for the purposes of this Directive as an UCITS as referred to in 2(c). The exercise of this option shall require a certificate to be issued by the Member State in which the entity is established and presented to the economic operator by that entity.

Member States shall lay down the detailed rules for this option for entities established in their territory.

4. Where the economic operator and the entity referred to in paragraph 2 are established in the same Member State, that Member State shall take the necessary measures to ensure that the entity complies with the provisions of this Directive when it acts as a paying agent.

5. The legal persons exempted from paragraph 2(a) are:

(a) in Finland: avoin yhtiö (Ay) and kommandiittiyhtiö (Ky)/öppet bolag and kommanditbolag;

(b) in Sweden: handelsbolag (HB) and kommanditbolag (KB).

Article 5

Definition of competent authority

For the purposes of this Directive, 'competent authority' means:

(a) for Member States, any of the authorities notified by the Member States to the Commission;

(b) for third countries, the competent authority for the purposes of bilateral or multilateral tax conventions or, failing that, such other authority as is competent to issue certificates of residence for tax purposes.

Article 6

Definition of interest payment

1. For the purposes of this Directive, 'interest payment' means:

(a) interest paid or credited to an account, relating to debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payments shall not be regarded as interest payments;

(b) interest accrued or capitalised at the sale, refund or redemption of the debt claims referred to in (a);

(c) income deriving from interest payments either directly or through an entity referred to in Article 4(2), distributed by:

  (i) an UCITS authorised in accordance with Directive 85/611/EEC,

  (ii) entities which qualify for the option under Article 4(3),

  (iii) undertakings for collective investment established outside the territory referred to in Article 7;

(d) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities, if they invest directly or indirectly, via other undertakings for collective investment or entities referred to below, more than 40 % of their assets in debt claims as referred to in (a):

  (i) an UCITS authorised in accordance with Directive 85/611/EEC,

  (ii) entities which qualify for the option under Article 4(3),

  (iii) undertakings for collective investment established outside the territory referred to in Article 7.

However, Member States shall have the option of including income mentioned under (d) in the definition of interest only to the extent that such income corresponds to gains directly or indirectly deriving from interest payments within the meaning of (a) and (b).

2. As regards paragraph 1(c) and (d), when a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.

3. As regards paragraph 1(d), when a paying agent has no information concerning the percentage of the assets invested in debt claims or in shares or units as defined in that paragraph, that percentage shall be considered to be above 40 %. Where he cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.

4. When interest, as defined in paragraph 1, is paid to or credited to an account held by an entity referred to in Article 4(2), such entity not having qualified for the option under Article 4(3), it shall be considered an interest payment by such entity.

5. As regards paragraph 1(b) and (d), Member States shall have the option of requiring paying agents in their territory to annualise the interest over a period of time which may not exceed one year, and treating such annualised interest as an interest payment even if no sale, redemption or refund occurs during that period.

6. By way of derogation from paragraphs 1(c) and (d), Member States shall have the option of excluding from the definition of interest payment any income referred to in those provisions from undertakings or entities established within their territory where the investment in debt claims referred to in paragraph 1(a) of such entities has not exceeded 15 % of their assets. Likewise, by way of derogation from paragraph 4, Member States shall have the option of excluding from the definition of interest payment in paragraph 1 interest paid or credited to an account of an entity referred to in Article 4(2) which has not qualified for the option under Article 4(3) and is established within their territory, where the investment of such an entity in debt claims referred to in paragraph 1(a) has not exceeded 15 % of its assets.

The exercise of such option by a Member State shall be binding on other Member States.

7. The percentage referred to in paragraph 1(d) and paragraph 3 shall from 1 January 2011 be 25 %.

8. The percentages referred to in paragraph 1(d) and in paragraph 6 shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned and, failing which, by reference to the actual composition of the assets of the undertakings or entities concerned.

Article 7

Territorial scope

This Directive shall apply to interest paid by a paying agent established within the territory to which the Treaty applies by virtue of Article 299 thereof.

CHAPTER II

EXCHANGE OF INFORMATION

Article 8

Information reporting by the paying agent

1. Where the beneficial owner is resident in a Member State other than that in which the paying agent is established, the minimum amount of information to be reported by the paying agent to the competent authority of its Member State of establishment shall consist of:

(a) the identity and residence of the beneficial owner established in accordance with Article 3;

(b) the name and address of the paying agent;

(c) the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interest;

(d) information concerning the interest payment in accordance with paragraph 2.

2. The minimum amount of information concerning interest payment to be reported by the paying agent shall distinguish between the following categories of interest and indicate:

(a) in the case of an interest payment within the meaning of Article 6(1)(a): the amount of interest paid or credited;

(b) in the case of an interest payment within the meaning of Article 6(1)(b) or (d): either the amount of interest or income referred to in those paragraphs or the full amount of the proceeds from the sale, redemption or refund;

(c) in the case of an interest payment within the meaning of Article 6(1)(c): either the amount of income referred to in that paragraph or the full amount of the distribution;

(d) in the case of an interest payment within the meaning of Article 6(4): the amount of interest attributable to each of the members of the entity referred to in Article 4(2) who meet the conditions of Articles 1(1) and 2(1);

(e) where a Member State exercises the option under Article 6(5): the amount of annualised interest.

However, Member States may restrict the minimum amount of information concerning interest payment to be reported by the paying agent to the total amount of interest or income and to the total amount of the proceeds from sale, redemption or refund.

Article 9

Automatic exchange of information

1. The competent authority of the Member State of the paying agent shall communicate the information referred to in Article 8 to the competent authority of the Member State of residence of the beneficial owner.

2. The communication of information shall be automatic and shall take place at least once a year, within six months following the end of the tax year of the Member State of the paying agent, for all interest payments made during that year.

3. The provisions of Directive 77/799/EEC shall apply to the exchange of information under this Directive, provided that the provisions of this Directive do not derogate therefrom. However, Article 8 of Directive 77/799/EEC shall not apply to the information to be provided pursuant to this chapter.

CHAPTER III

TRANSITIONAL PROVISIONS

Article 10

Transitional period

1. During a transitional period starting on the date referred to in Article 17(2) and (3) and subject to Article 13(1), Belgium, Luxembourg and Austria shall not be required to apply the provisions of Chapter II.

They shall, however, receive information from the other Member States in accordance with Chapter II.

During the transitional period, the aim of this Directive shall be to ensure minimum effective taxation of savings in the form of interest payments made in one Member State to beneficial owners who are individuals resident for tax purposes in another Member State.

2. The transitional period shall end at the end of the first full fiscal year following the later of the following dates:

— the date of entry into force of an agreement between the European Community, following a unanimous decision of the Council, and the last of the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra, providing for the exchange of information upon request as defined in the OECD Model Agreement on Exchange of Information on Tax Matters released on 18 April 2002 (hereinafter the 'OECD Model Agreement') with respect to interest payments, as defined in this Directive, made by paying agents established within their respective territories to beneficial owners resident in the territory to which the Directive applies, in addition to the simultaneous application by those same countries of a withholding tax on such payments at the rate defined for the corresponding periods referred to in Article 11(1),

— the date on which the Council agrees by unanimity that the United States of America is committed to exchange of information upon request as defined in the OECD Model Agreement with respect to interest payments, as defined in this directive, made by paying agents established within its territory to beneficial owners resident in the territory to which the Directive applies.

3. At the end of the transitional period, Belgium, Luxembourg and Austria shall be required to apply the provisions of Chapter II and they shall cease to apply the withholding tax and the revenue sharing provided for in Articles 11 and 12. If, during the transitional period, Belgium, Luxembourg or Austria elects to apply the provisions of Chapter II, it shall no longer apply the withholding tax and the revenue sharing provided for in Articles 11 and 12.

Article 11

Withholding tax

1. During the transitional period referred to in Article 10, where the beneficial owner is resident in a Member State other than that in which the paying agent is established, Belgium, Luxembourg and Austria shall levy a withholding tax at a rate of 15 % during the first three years of the transitional period, 20 % for the subsequent three years and 35 % thereafter.

2. The paying agent shall levy withholding tax as follows:

(a) in the case of an interest payment within the meaning of Article 6(1)(a): on the amount of interest paid or credited;

(b) in the case of an interest payment within the meaning of Article 6(1)(b) or (d): on the amount of interest or income referred to in those paragraphs or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund;

(c) in the case of an interest payment within the meaning of Article 6(1)(c): on the amount of income referred to in that paragraph;

(d) in the case of an interest payment within the meaning of Article 6(4): on the amount of interest attributable to each of the members of the entity referred to in Article 4(2) who meet the conditions of Articles 1(1) and 2(1);

(e) where a Member State exercises the option under Article 6(5): on the amount of annualised interest.

3. For the purposes of points (a) and (b) of paragraph 2, withholding tax shall be levied pro rata to the period of holding of the debt claim by the beneficial owner. When the paying agent is unable to determine the period of holding on the basis of information in its possession, it shall treat the beneficial owner as having held the debt claim throughout its period of existence unless he provides evidence of the date of acquisition.

4. The imposition of withholding tax by the Member State of the paying agent shall not preclude the Member State of residence for tax purposes of the beneficial owner from taxing the income in accordance with its national law, subject to compliance with the Treaty.

5. During the transitional period, Member States levying withholding tax may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 4(2) established in another Member State shall be considered the paying agent in place of the entity and shall levy the withholding tax on that interest, unless the entity has formally agreed to its name, address and the total amount of interest paid to it or secured for it being communicated in accordance with the last subparagraph of Article 4(2).

Article 12

Revenue sharing

1. Member States levying withholding tax in accordance with Article 11(1) shall retain 25 % of their revenue and transfer 75 % of the revenue to the Member State of residence of the beneficial owner of the interest.

2. Member States levying withholding tax in accordance with Article 11(5) shall retain 25 % of the revenue and transfer 75 % to the other Member States proportionate to the transfers carried out pursuant to paragraph 1 of this Article.

3. Such transfers shall take place at the latest within a period of six months following the end of the tax year of the Member State of the paying agent in the case of paragraph 1, or that of the Member State of the economic operator in the case of paragraph 2.

4. Member States levying withholding tax shall take the necessary measures to ensure the proper functioning of the revenue-sharing system.

Article 13

Exceptions to the withholding tax procedure

1. Member States levying withholding tax in accordance with Article 11 shall provide for one or both of the following procedures in order to ensure that the beneficial owners may request that no tax be withheld:

(a) a procedure which allows the beneficial owner expressly to authorise the paying agent to report information in accordance with Chapter II, such authorisation covering all interest paid to the beneficial owner by that paying agent; in such cases, the provisions of Article 9 shall apply;

(b) a procedure which ensures that withholding tax shall not be levied where the beneficial owner presents to his paying agent a certificate drawn up in his name by the competent authority of his Member State of residence for tax purposes in accordance with paragraph 2.

2. At the request of the beneficial owner, the competent authority of his Member State of residence for tax purposes shall issue a certificate indicating:

(a) the name, address and tax or other identification number or, failing such, the date and place of birth of the beneficial owner;

(b) the name and address of the paying agent;

(c) the account number of the beneficial owner or, where there is none, the identification of the security.

Such certificate shall be valid for a period not exceeding three years. It shall be issued to any beneficial owner who requests it, within two months following such request.

Article 14

Elimination of double taxation

1. The Member State of residence for tax purposes of the beneficial owner shall ensure the elimination of any double taxation which might result from the imposition of the withholding tax referred to in Article 11, in accordance with the provisions of paragraphs 2 and 3.

2. If interest received by a beneficial owner has been subject to withholding tax in the Member State of the paying agent, the Member State of residence for tax purposes of the beneficial owner shall grant him a tax credit equal to the amount of the tax withheld in accordance with its national law. Where this amount exceeds the amount of tax due in accordance with its national law, the Member State of residence for tax purposes shall repay the excess amount of tax withheld to the beneficial owner.

3. If, in addition to the withholding tax referred to in Article 11, interest received by a beneficial owner has been subject to any other type of withholding tax and the Member State of residence for tax purposes grants a tax credit for such withholding tax in accordance with its national law or double taxation conventions, such other withholding tax shall be credited before the procedure in paragraph 2 is applied.

4. The Member State of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraphs 2 and 3 by a refund of the withholding tax referred to in Article 11.

Article 15

Negotiable debt securities

1. During the transitional period referred to in Article 10, but until 31 December 2010 at the latest, domestic and international bonds and other negotiable debt securities which have been first issued before 1 March 2001 or for which the original issuing prospectuses have been approved before that date by the competent authorities within the meaning of Council Directive 80/390/EEC [1] or by the responsible authorities in third countries shall not be considered as debt claims within the meaning of Article 6(1)(a), provided that no further issues of such negotiable debt securities are made on or after 1 March 2002. However, should the transitional period referred to in Article 10 continue beyond 31 December 2010, the provisions of this Article shall only continue to apply in respect of such negotiable debt securities:

— which contain gross-up and early redemption clauses and

— where the paying agent as defined in Article 4 is established in a Member State applying the withholding tax referred to in Article 11 and that paying agent pays interest to, or secures the payment of interest for the immediate benefit of, a beneficial owner resident in another Member State.

If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognised by an international treaty, as defined in the Annex, the entire issue of such security, consisting of the original issue and any further issue, shall be considered a debt claim within the meaning of Article 6(1)(a).

If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the second subparagraph, such further issue shall be considered a debt claim within the meaning of Article 6(1)(a).

2. Nothing in this Article shall prevent Member States from taxing the income from the negotiable debt securities referred to in paragraph 1 in accordance with their national laws.

CHAPTER IV

MISCELLANEOUS AND FINAL PROVISIONS

Article 16

Other withholding taxes

This Directive shall not preclude Member States from levying other types of withholding tax than that referred to in Article 11 in accordance with their national laws or double-taxation conventions.

[1] OJ L 100, 17.4.1980, p. 1. Directive repealed by Directive 2001/34/EC of the European Parliament and of the Council (OJ L 184, 6.7.2001, p. 1).

Article 17

Transposition

1. Before 1 January 2004 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

2. Member States shall apply these provisions from 1 January 2005 provided that:

(i) the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra apply from that same date measures equivalent to those contained in this Directive, in accordance with agreements entered into by them with the European Community, following unanimous decisions of the Council;

(ii) all agreements or other arrangements are in place, which provide that all the relevant dependent or associated territories (the Channel Islands, the Isle of Man and the dependent or associated territories in the Caribbean) apply from that same date automatic exchange of information in the same manner as is provided for in Chapter II of this Directive, (or, during the transitional period defined in Article 10, apply a withholding tax on the same terms as are contained in Articles 11 and 12).

3. The Council shall decide, by unanimity, at least six months before 1 January 2005, whether the condition set out in paragraph 2 will be met, having regard to the dates of entry into force of the relevant measures in the third countries and dependent or associated territories concerned. If the Council does not decide that the condition will be met, it shall, acting unanimously on a proposal by the Commission, adopt a new date for the purposes of paragraph 2.

4. When Member States adopt the provisions necessary to comply with this Directive, 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.

5. Member States shall forthwith inform the Commission thereof and communicate to the Commission the main provisions of national law which they adopt in the field covered by this Directive and a correlation table between this Directive and the national provisions adopted.

Article 18

Review

The Commission shall report to the Council every three years on the operation of this Directive. On the basis of these reports, the Commission shall, where appropriate, propose to the Council any amendments to the Directive that prove necessary in order better to ensure effective taxation of savings income and to remove undesirable distortions of competition.

Article 19

Entry into force

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

Article 20

Addressees

This Directive is addressed to the Member States.

Done at Luxembourg, 3 June 2003.

For the Council

The President

N. CHRISTODOULAKIS

ANNEX

LIST OF RELATED ENTITIES REFERRED TO IN ARTICLE 15

For the purposes of Article 15, the following entities will be considered to be a 'related entity acting as a public authority or whose role is recognised by an international treaty':

— entities within the European Union:

Belgium	Vlaams Gewest (Flemish Region) Région wallonne (Walloon Region) Région bruxelloise/Brussels Gewest (Brussels Region) Communauté française (French Community) Vlaamse Gemeenschap (Flemish Community) Deutschsprachige Gemeinschaft (German-speaking Community)
Spain	Xunta de Galicia (Regional Executive of Galicia) Junta de Andalucía (Regional Executive of Andalusia) Junta de Extremadura (Regional Executive of Extremadura) Junta de Castilla-La Mancha (Regional Executive of Castilla-La Mancha) Junta de Castilla-León (Regional Executive of Castilla-León) Gobierno Foral de Navarra (Regional Government of Navarre) Govern de les Illes Balears (Government of the Balearic Islands) Generalitat de Catalunya (Autonomous Government of Catalonia) Generalitat de Valencia (Autonomous Government of Valencia) Diputación General de Aragón (Regional Council of Aragon) Gobierno de las Islas Canarias (Government of the Canary Islands) Gobierno de Murcia (Government of Murcia) Gobierno de Madrid (Government of Madrid) Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque Country) Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa) Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya) Diputación Foral de Alava (Regional Council of Alava) Ayuntamiento de Madrid (City Council of Madrid) Ayuntamiento de Barcelona (City Council of Barcelona) Cabildo Insular de Gran Canaria (Island Council of Gran Canaria) Cabildo Insular de Tenerife (Island Council of Tenerife) Instituto de Crédito Oficial (Public Credit Institution) Instituto Catalán de Finanzas (Finance Institution of Catalonia) Instituto Valenciano de Finanzas (Finance Institution of Valencia)
Greece	Οργανισμός Τηλεπικοινωνιών Ελλάδος (National Telecommunications Organisation) Οργανισμός Σιδηροδρόμων Ελλάδος (National Railways Organisation) Δημόσια Επιχείρηση Ηλεκτρισμού (Public Electricity Company)
France	La Caisse d'amortissement de la dette sociale (CADES) (Social Debt Redemption Fund) L'Agence française de développement (AFD) (French Development Agency) Réseau Ferré de France (RFF) (French Rail Network) Caisse Nationale des Autoroutes (CNA) (National Motorways Fund) Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals Public Assistance) Charbonnages de France (CDF) (French Coal Board) Entreprise minière et chimique (EMC) (Mining and Chemicals Company)
Italy	Regions Provinces Municipalities Cassa Depositi e Prestiti (Deposits and Loans Fund)
Portugal	Região Autónoma da Madeira (Autonomous Region of Madeira) Região Autónoma dos Açores (Autonomous Region of Azores) Municipalities

— international entities:

European Bank for Reconstruction and Development
European Investment Bank
Asian Development Bank
African Development Bank
World Bank/IBRD/IMF
International Finance Corporation
Inter-American Development Bank
Council of Europe Soc. Dev. Fund
Euratom
European Community
Corporación Andina de Fomento (CAF) (Andean Development Corporation)
Eurofima
European Coal & Steel Community
Nordic Investment Bank
Caribbean Development Bank

The provisions of Article 15 are without prejudice to any international obligations that Member States may have entered into with respect to the abovementioned international entities.

— entities in third countries:

Those entities that meet the following criteria:

1. the entity is clearly considered to be a public entity according to the national criteria;
2. such public entity is a non-market producer which administers and finances a group of activities, principally providing non-market goods and services, intended for the benefit of the community and which are effectively controlled by general government;
3. such public entity is a large and regular issuer of debt;
4. the State concerned is able to guarantee that such public entity will not exercise early redemption in the event of gross-up clauses.

COUNCIL DIRECTIVE 2003/49/EC

of 3 June 2003

on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 94 thereof,

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

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

Having regard to the opinion of the European Economic and Social Committee [3],

Whereas:

(1) In a Single Market having the characteristics of a domestic market, transactions between companies of different Member States should not be subject to less favourable tax conditions than those applicable to the same transactions carried out between companies of the same Member State.

(2) This requirement is not currently met as regards interest and royalty payments; national tax laws coupled, where applicable, with bilateral or multilateral agreements may not always ensure that double taxation is eliminated, and their application often entails burdensome administrative formalities and cash-flow problems for the companies concerned.

(3) It is necessary to ensure that interest and royalty payments are subject to tax once in a Member State.

(4) The abolition of taxation on interest and royalty payments in the Member State where they arise, whether collected by deduction at source or by assessment, is the most appropriate means of eliminating the aforementioned formalities and problems and of ensuring the equality of tax treatment as between national and cross-border transactions; it is particularly necessary to abolish such taxes in respect of such payments made between associated companies of different Member States as well as between permanent establishments of such companies.

(5) The arrangements should only apply to the amount, if any, of interest or royalty payments which would have been agreed by the payer and the beneficial owner in the absence of a special relationship.

(6) It is moreover necessary not to preclude Member States from taking appropriate measures to combat fraud or abuse.

(7) Greece and Portugal should, for budgetary reasons, be allowed a transitional period in order that they can gradually decrease the taxes, whether collected by deduction at source or by assessment, on interest and royalty payments, until they are able to apply the provisions of Article 1.

(8) Spain, which has launched a plan for boosting the Spanish technological potential, for budgetary reasons should be allowed during a transitional period not to apply the provisions of Article 1 on royalty payments.

(9) It is necessary for the Commission to report to the Council on the operation of the Directive three years after the date by which it must be transposed, in particular with a view to extending its coverage to other companies or undertakings and reviewing the scope of the definition of interest and royalties in pursuance of the necessary convergence of the provisions dealing with interest and royalties in national legislation and in bilateral or multilateral double-taxation treaties.

(10) Since the objective of the proposed action, namely setting up a common system of taxation applicable to interest and royalty payments of associated companies of different Member States cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Scope and procedure

1. Interest or royalty payments arising in a Member State shall be exempt from any taxes imposed on those payments in that State, whether by deduction at source or by assessment, provided that the beneficial owner of the interest or royalties is a company of another Member State or a permanent establishment situated in another Member State of a company of a Member State.

2. A payment made by a company of a Member State or by a permanent establishment situated in another Member State shall be deemed to arise in that Member State, hereafter referred to as the 'source State'.

[1] OJ C 123, 22.4.1998, p. 9.
[2] OJ C 313, 12.10.1998, p. 151.
[3] OJ C 284, 14.9.1998, p. 50.

3. A permanent establishment shall be treated as the payer of interest or royalties only insofar as those payments represent a tax-deductible expense for the permanent establishment in the Member State in which it is situated.

4. A company of a Member State shall be treated as the beneficial owner of interest or royalties only if it receives those payments for its own benefit and not as an intermediary, such as an agent, trustee or authorised signatory, for some other person.

5. A permanent establishment shall be treated as the beneficial owner of interest or royalties:

(a) if the debt-claim, right or use of information in respect of which interest or royalty payments arise is effectively connected with that permanent establishment; and

(b) if the interest or royalty payments represent income in respect of which that permanent establishment is subject in the Member State in which it is situated to one of the taxes mentioned in Article 3(a)(iii) or in the case of Belgium to the 'impôt des non-résidents/belasting der niet-verblijfhouders' or in the case of Spain to the 'Impuesto sobre la Renta de no Residentes' or to a tax which is identical or substantially similar and which is imposed after the date of entry into force of this Directive in addition to, or in place of, those existing taxes.

6. Where a permanent establishment of a company of a Member State is treated as the payer, or as the beneficial owner, of interest or royalties, no other part of the company shall be treated as the payer, or as the beneficial owner, of that interest or those royalties for the purposes of this Article.

7. This Article shall apply only if the company which is the payer, or the company whose permanent establishment is treated as the payer, of interest or royalties is an associated company of the company which is the beneficial owner, or whose permanent establishment is treated as the beneficial owner, of that interest or those royalties.

8. This Article shall not apply where interest or royalties are paid by or to a permanent establishment situated in a third State of a company of a Member State and the business of the company is wholly or partly carried on through that permanent establishment.

9. Nothing in this Article shall prevent a Member State from taking interest or royalties received by its companies, by permanent establishments of its companies or by permanent establishments situated in that State into account when applying its tax law.

10. A Member State shall have the option of not applying this Directive to a company of another Member State or to a permanent establishment of a company of another Member State in circumstances where the conditions set out in Article 3(b) have not been maintained for an uninterrupted period of at least two years.

11. The source State may require that fulfilment of the requirements laid down in this Article and in Article 3 be substantiated at the time of payment of the interest or royalties by an attestation. If fulfilment of the requirements laid down in this Article has not been attested at the time of payment, the Member State shall be free to require deduction of tax at source.

12. The source State may make it a condition for exemption under this Directive that it has issued a decision currently granting the exemption following an attestation certifying the fulfilment of the requirements laid down in this Article and in Article 3. A decision on exemption shall be given within three months at most after the attestation and such supporting information as the source State may reasonably ask for have been provided, and shall be valid for a period of at least one year after it has been issued.

13. For the purposes of paragraphs 11 and 12, the attestation to be given shall, in respect of each contract for the payment, be valid for at least one year but for not more than three years from the date of issue and shall contain the following information:

(a) proof of the receiving company's residence for tax purposes and, where necessary, the existence of a permanent establishment certified by the tax authority of the Member State in which the receiving company is resident for tax purposes or in which the permanent establishment is situated;

(b) beneficial ownership by the receiving company in accordance with paragraph 4 or the existence of conditions in accordance with paragraph 5 where a permanent establishment is the recipient of the payment;

(c) fulfilment of the requirements in accordance with Article 3(a)(iii) in the case of the receiving company;

(d) a minimum holding or the criterion of a minimum holding of voting rights in accordance with Article 3(b);

(e) the period for which the holding referred to in (d) has existed.

Member States may request in addition the legal justification for the payments under the contract (e.g. loan agreement or licensing contract).

14. If the requirements for exemption cease to be fulfilled, the receiving company or permanent establishment shall immediately inform the paying company or permanent establishment and, if the source State so requires, the competent authority of that State.

15. If the paying company or permanent establishment has withheld tax at source to be exempted under this Article, a claim may be made for repayment of that tax at source. The Member State may require the information specified in paragraph 13. The application for repayment must be submitted within the period laid down. That period shall last for at least two years from the date when the interest or royalties are paid.

16. The source State shall repay the excess tax withheld at source within one year following due receipt of the application and such supporting information as it may reasonably ask for. If the tax withheld at source has not been refunded within that period, the receiving company or permanent establishment shall be entitled on expiry of the year in question to interest on the tax which is refunded at a rate corresponding to the national interest rate to be applied in comparable cases under the domestic law of the source State.

Article 2

Definition of interest and royalties

For the purposes of this Directive:

(a) the term 'interest' means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payment shall not be regarded as interest;

(b) the term 'royalties' means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films and software, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience; payments for the use of, or the right to use, industrial, commercial or scientific equipment shall be regarded as royalties.

Article 3

Definition of company, associated company and permanent establishment

For the purposes of this Directive:

(a) the term 'company of a Member State' means any company:

(i) taking one of the forms listed in the Annex hereto; and

(ii) which in accordance with the tax laws of a Member State is considered to be resident in that Member State and is not, within the meaning of a Double Taxation Convention on Income concluded with a third state, considered to be resident for tax purposes outside the Community; and

(iii) which is subject to one of the following taxes without being exempt, or to a tax which is identical or substantially similar and which is imposed after the date of entry into force of this Directive in addition to, or in place of, those existing taxes:

— impôt des sociétés/vennootschapsbelasting in Belgium,

— selskabsskat in Denmark,

— Körperschaftsteuer in Germany,

— Φόρος εισοδήματος νομικών προσώπων in Greece,

— impuesto sobre sociedades in Spain,

— impôt sur les sociétés in France,

— corporation tax in Ireland,

— imposta sul reddito delle persone giuridiche in Italy,

— impôt sur le revenu des collectivités in Luxembourg,

— vennootschapsbelasting in the Netherlands,

— Körperschaftsteuer in Austria,

— imposto sobre o rendimento da pessoas colectivas in Portugal,

— yhteisöjen tulovero/inkomstskatten för samfund in Finland,

— statlig inkomstskatt in Sweden,

— corporation tax in the United Kingdom;

(b) a company is an 'associated company' of a second company if, at least:

(i) the first company has a direct minimum holding of 25 % in the capital of the second company, or

(ii) the second company has a direct minimum holding of 25 % in the capital of the first company, or

(iii) a third company has a direct minimum holding of 25 % both in the capital of the first company and in the capital of the second company.

Holdings must involve only companies resident in Community territory.

However, Member States shall have the option of replacing the criterion of a minimum holding in the capital with that of a minimum holding of voting rights;

(c) the term 'permanent establishment' means a fixed place of business situated in a Member State through which the business of a company of another Member State is wholly or partly carried on.

Article 4

Exclusion of payments as interest or royalties

1. The source State shall not be obliged to ensure the benefits of this Directive in the following cases:

(a) payments which are treated as a distribution of profits or as a repayment of capital under the law of the source State;

(b) payments from debt-claims which carry a right to participate in the debtor's profits;

(c) payments from debt-claims which entitle the creditor to exchange his right to interest for a right to participate in the debtor's profits;

(d) payments from debt-claims which contain no provision for repayment of the principal amount or where the repayment is due more than 50 years after the date of issue.

2. Where, by reason of a special relationship between the payer and the beneficial owner of interest or royalties, or between one of them and some other person, the amount of the interest or royalties exceeds the amount which would have been agreed by the payer and the beneficial owner in the absence of such a relationship, the provisions of this Directive shall apply only to the latter amount, if any.

Article 5

Fraud and abuse

1. This Directive shall not preclude the application of domestic or agreement-based provisions required for the prevention of fraud or abuse.

2. Member States may, in the case of transactions for which the principal motive or one of the principal motives is tax evasion, tax avoidance or abuse, withdraw the benefits of this Directive or refuse to apply this Directive.

Article 6

Transitional rules for Greece, Spain and Portugal

1. Greece and Portugal shall be authorised not to apply the provisions of Article 1 until the date of application referred to in Article 17(2) and (3) of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments ([1]). During a transitional period of eight years starting on the aforementioned date, the rate of tax on payments of interest or royalties made to an associated company of another Member State or to a permanent establishment situated in another Member State of an associated company of a Member State must not exceed 10 % during the first four years and 5 % during the final four years.

Spain shall be authorised, for royalty payments only, not to apply the provisions of Article 1 until the date of application referred to in Article 17(2) and (3) of Directive 2003/48/EC. During a transitional period of six years starting on the aforementioned date, the rate of tax on payments of royalties made to an associated company of another Member State or to a permanent establishment situated in another Member State of an associated company of a Member State must not exceed 10 %.

These transitional rules shall, however, remain subject to the continued application of any rate of tax lower than those referred to in the first and second subparagraphs provided by bilateral agreements concluded between Greece, Spain or Portugal and other Member States. Before the end of any of the transitional periods mentioned in this paragraph the Council may decide unanimously, on a proposal from the Commission, on a possible extension of the said transitional periods.

2. Where a company of a Member State, or a permanent establishment situated in that Member State of a company of a Member State:

— receives interest or royalties from an associated company of Greece or Portugal,

— receives royalties from an associated company of Spain,

— receives interest or royalties from a permanent establishment situated in Greece or Portugal of an associated company of a Member State, or

— receives royalties from a permanent establishment situated in Spain of an associated company of a Member State,

the first Member State shall allow an amount equal to the tax paid in Greece, Spain or Portugal in accordance with paragraph 1 on that income as a deduction from the tax on the income of the company or permanent establishment which received that income.

3. The deduction provided for in paragraph 2 need not exceed the lower of:

(a) the tax payable in Greece, Spain or Portugal on such income on the basis of paragraph 1, or

(b) that part of the tax on the income of the company or permanent establishment which received the interest or royalties, as computed before the deduction is given, which is attributable to those payments under the domestic law of the Member State of which it is a company or in which the permanent establishment is situated.

Article 7

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 2004. They shall forthwith inform the Commission thereof.

([1]) See page 38 of this Official Journal.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive, together with a table showing how the provisions of this Directive correspond to the national provisions adopted.

Article 8

Review

By 31 December 2006, the Commission shall report to the Council on the operation of this Directive, in particular with a view to extending its coverage to companies or undertakings other than those referred to in Article 3 and the Annex.

Article 9

Delimitation clause

This Directive shall not affect the application of domestic or agreement-based provisions which go beyond the provisions of this Directive and are designed to eliminate or mitigate the double taxation of interest and royalties.

Article 10

Entry into force

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

Article 11

Addressees

This Directive is addressed to the Member States.

Done at Luxembourg, 3 June 2003.

For the Council

The President

N. CHRISTODOULAKIS

ANNEX

List of companies covered by Article 3(a) of the Directive

(a) Companies under Belgian law known as: 'naamloze vennootschap/société anonyme, commanditaire vennootschap op aandelen/société en commandite par actions, besloten vennootschap met beperkte aansprakelijkheid/société privée à responsabilité limitée' and those public law bodies that operate under private law;

(b) companies under Danish law known as: 'aktieselskab' and 'anpartsselskab';

(c) companies under German law known as: 'Aktiengesellschaft, Kommanditgesellschaft auf Aktien, Gesellschaft mit beschränkter Haftung' and 'bergrechtliche Gewerkschaft';

(d) companies under Greek law known as: 'ανώνυμη εταιρία';

(e) companies under Spanish law known as: 'sociedad anónima, sociedad comanditaria por acciones, sociedad de responsabilidad limitada' and those public law bodies which operate under private law;

(f) companies under French law known as: 'société anonyme, société en commandite par actions, société à responsabilité limitée' and industrial and commercial public establishments and undertakings;

(g) companies in Irish law known as public companies limited by shares or by guarantee, private companies limited by shares or by guarantee, bodies registered under the Industrial and Provident Societies Acts or building societies registered under the Building Societies Acts;

(h) companies under Italian law known as: 'società per azioni, società in accomandita per azioni, società a responsabilità limitata' and public and private entities carrying on industrial and commercial activities;

(i) companies under Luxembourg law known as: 'société anonyme, société en commandite par actions and société à responsabilité limitée';

(j) companies under Dutch law known as: 'naamloze vennootschap' and 'besloten vennootschap met beperkte aansprakelijkheid';

(k) companies under Austrian law known as: 'Aktiengesellschaft' and 'Gesellschaft mit beschränkter Haftung';

(l) commercial companies or civil law companies having a commercial form, cooperatives and public undertakings incorporated in accordance with Portuguese law;

(m) companies under Finnish law known as: 'osakeyhtiö/aktiebolag, osuuskunta/andelslag, säästöpankki/sparbank' and 'vakuutusyhtiö/försäkringsbolag';

(n) companies under Swedish law known as: 'aktiebolag' and 'försäkringsaktiebolag';

(o) companies incorporated under the law of the United Kingdom.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 27 November 2002
on the aid scheme implemented by Germany: 'Thuringia working capital programme'

(notified under document number C(2003) 4359)

(Text with EEA relevance)

(Only the German text is authentic)

(2003/469/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 Article 88(2) of the EC Treaty,

Whereas:

1. PROCEDURE

(1) The *Land* of Thuringia's rules governing its working capital programme (hereinafter referred to as 'the rules'), adopted on 20 July 1993, entered into force in 1993 [1]. The Thuringian *Land* authorities took the view that the rules complied with the *de minimis* provisions introduced in the Community's 1992 Guidelines on State aid for small and medium-sized enterprises [2] (hereinafter referred to as 'the SME Guidelines') and so did not notify them under Article 88(3) of the EC Treaty.

(2) Following a press article on the loan programme, under which firms without sufficient bank security apparently obtained loans on favourable conditions in order to finance inventories, the Commission asked Germany, by letter DG IV/D3761 of 2 May 1994, for information to enable it to assess the compatibility of the rules with the common market. By letter dated 31 May 1994, Germany provided the following information: the Thuringia working capital programme of 20 July 1993 applied to small and medium-sized enterprises (as defined in the Community's 1992 SME Guidelines) in a sound economic position which, because of their small size, lack of bank security and the general situation on the capital market, would have had difficulty in obtaining outside resources. Aid for firms in difficulty was not possible, but such firms could apply for aid under other approved programmes. The rules were moreover designed as a *de minimis* programme in line with the *de minimis* provisions of the Community's 1992 SME Guidelines.

(3) Germany agreed with the assessment by the Thuringian authorities that the rules were not subject to the notification requirement under Article 88(3).

(4) In response to a request for information dated 29 May 1995, Germany sent the Commission, by letter of 27 June 1995, a copy of the rules governing the working capital programme.

(5) In the course of the proceedings in case C 85/98 (ex NN 106/98 — Incorrect application of the *de minimis* rules under the Thuringia consolidation programme of 20 July 1993), Germany confirmed by letter dated 8 June 1998 that the rules at issue in these proceedings had expired

[1] Thüringer Staatsanzeiger No 33/1993, p. 1415.
[2] OJ C 213, 19.8.1992, p. 2.

on 16 January 1996. By letter dated 7 December 1998, Germany provided information on the implementation of the rules and on the recipient firms from which the Commission concluded that firms in sensitive sectors (products in Annex I to the EC Treaty) had received aid. The information also showed that firms in difficulty which had that same year or the previous year been assisted under approved programmes for firms in difficulty had received loans under the rules. This supposition was confirmed by a letter sent by Germany on 29 January 1999 from which it was also apparent that some of the beneficiaries under the rules had also received aid under the consolidation programme of 20 July 1993, whose incorrect application was the subject of proceedings in case C 85/98.

(6) By letter dated 18 May 1999 (ref. SG(99) D/3539), the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid scheme.

(7) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ([3]). The Commission called on interested parties to submit their comments on the scheme but did not receive any comments from interested parties.

Germany's comments were sent by letters dated 24 June and 19 August 1999.

(8) Germany submitted its final comments by letter on 26 November 2001.

2. DESCRIPTION OF THE MEASURE

2.1. Title and legal basis

(9) The aid is granted by the public-sector Thüringer Aufbaubank (Thuringia Reconstruction Bank), acting on behalf of the Thuringia Ministry for Economic Affairs and Transport on the basis of Sections 23, 44 and 44a of the *Land* Budget Order, in accordance with the rules on the Thuringia working capital programme.

2.2. Recipients

(10) The rules are directed at small and medium-sized enterprises (SMEs) defined according to the 'turnover' and 'employees' criteria, but not the 'independence' criterion, set out in the SME Guidelines, as well as at start-ups, management buy-outs, management buy-ins and privatisations, with priority given to consolidation projects. The eligibility of the foodstuffs industry, which can cover both the activities specified in Annex I to the EC Treaty and other activities, is explicitly mentioned in point 3 ('Aid recipients') of the rules. The other sensitive sectors (steel, shipbuilding, synthetic fibres, the motor industry, agriculture, fisheries, transport and the coal industry) are not explicitly excluded. In exceptional cases (by decision of the relevant minister), aid may also be granted to firms which exceed the turnover and employee thresholds laid down in the SME Guidelines.

2.3. Duration

(11) The rules governing the Thuringia working capital programme entered into force on 20 July 1993 for an unlimited period and were replaced on 16 January 1996 by the Thuringia loan programme for small and medium-sized enterprises.

2.4. Objective

(12) The rules are aimed at firms which neither have sufficient bank security nor are in a position to pay the high interest rates charged on short-term loans. The objective is to make available to such firms soft loans for the financing of working capital. Point 1 of the rules ('Objective') stipulates that support is to be provided to small and medium-sized enterprises to set up business or to safeguard their activities, in particular in order to avert risks to their operation or existing jobs.

(13) The aid is granted by the public-sector Thüringer Aufbaubank in the form of soft loans which are paid via the firm's main bank at the latter's primary risk. The main bank may receive a guarantee (release from liability) of 60 % of the amount of the loan, with no fee being provided for in the rules. The Thüringer Aufbaubank and the main bank receive a single processing fee of 0,1 % of the amount of the loan.

(14) Rescheduling at the expense of the Thüringer Aufbaubank is ruled out.

(15) The loans are granted at an interest rate of between 5 % and 8 % for a renewable period of three years. The relevant *Land* minister can approve other implementing provisions.

2.5. Intensity

(16) Point 5 of the rules ('Nature, scope and amount of the payment') refers expressly to the programme's *de minimis* nature and to the *de minimis* provisions of the 1992 Community SME Guidelines.

([3]) OJ C 203, 17.7.1999, p. 3.

(17) Under the rules, the aid element of the soft loan is calculated on the basis of the difference between the effective interest rate and the applicable reference rate. No direct ceiling is laid down in respect of the loan, but the amount of aid that a firm can receive for the same purpose within a period of 36 months (i.e. the aid element resulting from the soft loan) may not exceed the *de minimis* thresholds laid down in the *de minimis* provisions of the 1992 SME Guidelines ([4]). The aid element linked to the guarantee was not taken into account.

(18) According to the documents submitted by Germany during the preliminary proceedings, 460 loans amounting to a total of DEM 202 million were granted and disbursed between 1993 and 1996; some 20 of them went to the foodstuffs industry. In at least two cases, firms which had that year or the previous year received aid under approved schemes for firms in difficulty received such loans (Thuro Back Südthüringer Backwaren and Bergner & Weiser GmbH).

2.6. **Cumulation**

(19) The rules do not contain any provisions on cumulation.

2.7. **Grounds for initiating the procedure**

(20) The Commission initiated the procedure in respect of the scheme's application to firms operating in the sensitive sectors and to firms in difficulty. It raised no objections to the scheme's application to viable firms outside the sensitive sectors.

(21) The Commission's grounds were as follows.

(22) Since the sensitive sectors were not excluded from the scheme, this constituted incorrect application of the *de minimis* provisions of the 1992 Community Guidelines. According to point 3.2 of those Guidelines, they do not apply to aid for firms in the sectors subject to special rules. Since the rules were applied to one of these sectors, they must be regarded as non-notified aid.

(23) Given the specific characteristics of the sensitive sectors, the measures concerned constituted State aid within the meaning of Article 87(1) of the EC Treaty and Article 61 of the EEA Agreement. The aid made it possible for firms which could not easily access the capital market to obtain loans in order to finance their working capital on favourable terms and safeguard or even extend their activities. In the Commission's view, therefore, the measures were liable to affect competition.

([4]) Stricter provisions than at present were in force at the time, with the *de minimis* threshold set at ECU 50 000 (see OJ C 68, 6.3.1996, p. 9).

(24) In so far as loans were granted to economically viable firms in the sensitive sectors, the Commission had doubts about the working capital programme's compatibility with the relevant provisions on regional aid.

(25) The loans for economically viable firms in the sensitive sectors constituted operating aid, which the Commission had to assess in the light of the regional aid provisions applicable. In particular, in accordance with the Commission's established practice, such aid had to meet the following criteria:

(a) it had to be limited in time and degressive;

(b) it had to be granted only in regions covered by Article 87(3)(a) of the EC Treaty;

(c) the sensitive sectors had to be excluded.

(26) In its decision initiating the procedure, the Commission concluded that the scheme was not degressive and did not exclude the sensitive sectors.

(27) The information from Germany showed that in at least two cases the rules were applied to firms in difficulty as defined in the 1994 Guidelines on State aid for rescuing and restructuring firms in difficulty ([5]) (hereinafter referred to as the '1994 Guidelines'). The wording of the rules did not exclude firms in difficulty from its scope. The Commission therefore took the view that the scheme also applied in part to firms in difficulty.

(28) The soft loans backed by a guarantee from the Thüringer Aufbaubank and granted to firms in difficulty could have exceeded the *de minimis* threshold. The aid element associated with the guarantee and the special difficulties of the recipient firms should have been taken into account in the calculation of the *de minimis* threshold. The aid element of the guarantee must reflect the specific risk attached to a firm in difficulty and can be as high as the full amount of the loan secured.

(29) The application of the rules to firms in difficulty thus took insufficient account of the *de minimis* provisions. It was only where the amount from the loan and other aid taken into account under the provisions on cumulation did not exceed the *de minimis* threshold that this was not the case. In the form in which it was applied, however, the Thuringia working capital programme had to be regarded as a non-notified aid scheme.

([5]) OJ C 368, 23.12.1994, p. 12.

(30) The loans made financial resources available to the firms, allowing them to avoid being forced out of the market. If a firm had been forced out of the market, either existing overcapacities would have been reduced or the market shares made available would have been acquired by competitors, which could in either case have improved their profitability. The rules did not exclude the granting of loans to firms engaged in intra-Community trade. It therefore had to be assumed that the working capital loans concerned by the proceedings were liable to affect trade between Member States.

(31) The working capital loans provided to firms in difficulty by the Thüringer Aufbaubank thus constituted State aid within the meaning of Article 87(1) of the EC Treaty and Article 61(1) of the EEA Agreement and had to be assessed on the basis of the relevant guidelines.

(32) In as much as the rules were concerned with the rescue of firms in difficulty, the relevant provisions made it a condition for the compatibility of rescue aid with the common market that it be granted in the form of either a State loan on market terms or a guarantee for a private loan. This condition was not met in the case in point since the loans in question were soft loans. The provisions also required individual notification of aid to large firms and firms operating in sensitive sectors. However, the scheme under examination did not rule out aid to large firms and was applied in a sensitive sector.

(33) In as much as the rules were concerned with the restructuring of firms in difficulty, it must be noted that the relevant provisions (as most recently confirmed by the 1999 Community Guidelines on State aid for rescuing and restructuring firms in difficulty [6]) require the following main conditions for compatibility:

(a) submission and implementation of a restructuring plan capable of restoring the long-term viability of the firm;

(b) limitation of the aid to the strict minimum required to achieve this goal;

(c) a significant contribution from the recipient firm and its shareholders;

(d) compliance with the special rules governing the sensitive sectors, requiring in principle the notification of individual cases;

(e) individual notification of aid to large firms;

(f) restructuring aid to be granted only once except in unforeseen circumstances for which the firm is not responsible.

[6] OJ C 288, 9.10.1999, p. 2.

(34) The rules under examination do not provide for individual notification of aid to large firms or prohibit the repeated grant of restructuring aid.

3. COMMENTS FROM GERMANY

(35) In its comments, Germany put the total number of loans granted under the working capital programme at 365, amounting to a total of EUR 81,6 million. It explained the difference between this figure and the figure given in the decision initiating proceedings by the fact that the latter also included working capital loans under the 1996 Thuringia loan programme. The 1996 programme is the subject of proceedings in case C 87/98 (ex NN 137/98).

(36) The information in the decision initiating proceedings regarding Thuro Back Südthüringer Backwaren GmbH and Bergner & Weiser GmbH was incorrect, according to Germany, since neither of these firms had received a working capital loan under the Thuringia working capital programme.

(37) Germany took the view that the Thuringia working capital programme did not apply to firms in difficulty. While it did not explicitly exclude them and while three out of a total of 365 loans granted did go to firms in difficulty, the scheme was not open to firms in difficulty, nor was it intended to be. The Thuringia working capital programme had to be seen in an overall context together with the Thuringia consolidation programme (case C 85/98, ex NN 106/98). While the scope of the consolidation programme explicitly covered firms in difficulty, this was not the case with the Thuringia working capital programme.

(38) Furthermore, the high level of own risk which the firms' main banks were facing, meant that the banks had to check the creditworthiness of the borrower and to limit the credit risk.

(39) According to the information from Germany, calculation of the *de minimis* amount was based solely on the aid element contained in the interest-rate subsidy, calculated on the basis of the difference between the effective interest rate for the final borrower and the reference interest rate. The aid element contained in the guarantee had not been taken into account in implementing the working capital programme because, it was argued, the German authorities were not aware in the period from 1993 to early 1996 that the aid element associated with the guarantee should be taken into account. This changed only with the Commission's letter of 11 November 1998 (ref. D/54570).

(40) As far as the sensitive sectors are concerned, Germany argued that aid to firms in sensitive sectors was excluded by the reference contained in point 5 of the rules governing the Thuringia working capital programme. Point 5 explicitly states that 'the loans […] are granted in accordance with the Community Guidelines on State aid for small and medium-sized enterprises (OJ C 213, 19.8.1992, p. 2)'. As a result of this reference, the provisions concerning sensitive sectors had been directly applicable and the granting of aid for these sectors strictly ruled out.

(41) According to the information provided by Germany, no loans were granted to firms in the sensitive sectors referred to in point 1.6 of the 1992 Community Guidelines on State aid for SMEs.

(42) Moreover, in Germany's view, it was only since 1998 that the special aid rules under the 1996 Guidelines for State aid in connection with investments in the processing and marketing of agricultural products ([7]) had been applicable pursuant to Commission Decision 1999/183/EC of 20 May 1998 concerning State aid for the processing and marketing of German agricultural products which might be granted on the basis of existing regional aid schemes ([8]). For the period from 1993 to 1996, therefore, it considered that no special State aid rules applied.

(43) Of the 365 working capital loans committed, only five had been granted to firms in the food and tobacco sector.

(44) The application of the rules to non-SMEs in exceptional cases was, in Germany's view, in line with the requirements set out in the *de minimis* rule contained in the 1992 SME Guidelines.

(45) Germany sent the Commission a table listing the working capital loans granted in the period from 1993 to 1995. The list shows that, of the 365 loans granted, firms in difficulty were involved in three cases. The table also showed that loans were granted in agriculture (a sensitive sector) in only five instances, although a letter from Germany dated 29 January 1999 showed that a total of some 20 loans were granted to firms in the foodstuffs industry.

(46) It is not clear from the documents sent by Germany what criteria were used to define the sensitive sector of agriculture or a firm in difficulty.

4. ASSESSMENT OF THE MEASURE

4.1. Existence of State aid

(47) Although any financial payment to a firm alters the conditions of competition to some extent, not all aid has a perceptible impact on trade and competition between Member States. Against this background, the notification requirement under Article 88(3) of the EC Treaty does not apply to aid that does not exceed an absolute maximum amount and, as *de minimis* aid, does not fall within the scope of Article 87(1) of the EC Treaty.

(48) A definition of what the Commission understood by *de minimis* aid was first set out in the 1992 SME Guidelines. ([9]) The scope of the *de minimis* provisions is defined at point 3.2 of the Guidelines as payments of ECU 50 000 to any one firm in respect of a given broad type of expenditure (e.g. investment and training) over a three-year period. Therefore, one-off payments of aid of up to ECU 50 000 in respect of a given type of expenditure and schemes under which the amount of aid that a given firm may receive in respect of a given type of expenditure over a three-year period was limited to that figure were no longer considered notifiable under Article 88(3) (formerly Article 93(3)) of the EC Treaty. However, there had to be an express condition in the grant decision or scheme that any further aid which the same firm might receive in respect of the same type of expenditure from other sources or under other schemes did not take the total aid received over the ECU 50 000 limit. It was made clear in point 3.2 that the *de minimis* facility was not available in sensitive sectors (steel, shipbuilding, synthetic fibres, the motor industry, agriculture, fisheries, transport and the coal industry).

(49) The 1996 Commission notice on the *de minimis* rule for State aid ([10]) amended the *de minimis* provisions of the 1992 SME Guidelines. The ceiling for aid covered by the *de minimis* provisions was set at ECU 100 000 over a three-year period beginning when the first *de minimis* aid was granted. This ceiling applied to all types of public assistance considered to be *de minimis* aid and did not affect the possibility of the recipient obtaining other aid under schemes approved by the Commission.

(50) The provisions did not apply to the industries covered by the ECSC Treaty, to shipbuilding, to transport or to aid towards expenditure in connection with agriculture or fisheries.

(51) Article 1 of Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid ([11]) extended the scope of the *de minimis* provisions, albeit still to the exclusion of aid granted to the transport sector and to activities linked to the production, processing or marketing of products listed in Annex I to the EC Treaty. Similarly, the Regulation does not apply to aid for

([7]) OJ C 29, 2.2.1996, p. 4.
([8]) OJ L 60, 9.3.1999, p. 61.
([9]) See footnote 2.
([10]) OJ C 68, 6.3.1996, p. 9.
([11]) OJ L 10, 13.1.2001, p. 30.

export-related activities, i.e. aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to an export activity. Lastly, aid contingent upon the use of domestic over imported goods is also excluded from the scope of the Regulation.

(52) Article 2 of the Regulation stipulates that the total *de minimis* aid granted to any one enterprise must not exceed EUR 100 000 over any period of three years. This ceiling applies irrespective of the form of the aid or the objective pursued.

(53) Since Regulation (EC) No 69/2001 entered into force only on 2 February 2001, whereas the rules under examination applied from 20 July 1993 to 16 January 1996, the question arises whether the Commission, for the purposes of this Decision, can apply the Regulation retroactively to financial assistance paid before it entered into force or whether the *de minimis* provisions in the 1992 SME Guidelines in force in the relevant period should be taken into account (*consecutio legis*).

(54) Commission Regulation (EC) No 69/2001 does not indicate whether it is applicable to the assessment of aid granted before its entry into force. However, its wording does not rule out its application to previous cases, which in any event are subject to the control mechanism under Article 3. The Commission has reached the conclusion that, given the absence of any other express provision, Regulation (EC) No 69/2001 should apply to *de minimis* aid granted before its entry into force. For one thing, the Regulation, in so far as it exempts a particular category of measure from the notification requirement, is a procedural regulation and should thus apply immediately to all pending proceedings. For another, the immediate application of the Regulation is in line with the underlying objectives of procedural simplification and decentralisation. Only in respect of aid not caught by the Regulation and thus not eligible for exemption on this basis will the Commission take account of the provisions that were in force when the aid was granted. Since the Regulation is, in principle, more generous than its *de minimis* predecessors and since the latter apply in any event to cases where the aid concerned is not exempt under the Regulation, the general legal principles of legitimate expectation and legal certainty are suitably accounted for. From an economic standpoint, the Commission takes the view that a financial measure which cannot be classed as aid within the meaning of Article 87(1) of the EC Treaty under Regulation (EC) No 69/2001, in force today in an integrated market, cannot in the past have given rise to any aid in a less integrated market. It will therefore base its further assessment of the financial measures on Regulation (EC) No 69/2001, which does not rule out the possibility of the provisions in force at the time the measures were implemented being applied, provided that the measures concerned are not exempt under Regulation (EC) No 69/2001.

(55) The proceedings initiated thus cover both the rules at issue and the cases of application which do not fall within the scope of Regulation (EC) No 69/2001 or the other relevant *de minimis* provisions and the cases which do fall within the scope of the Regulation or of the other relevant *de minimis* provisions and in which cumulation with other aid has led to the *de minimis* ceiling being exceeded.

(56) Aid for activities relating to the manufacture, processing or marketing of the goods listed in Annex I to the EC Treaty are excluded from the scope of Regulation (EC) No 69/2001.

(57) The Commission therefore takes the view that all the working capital loans granted to the foodstuffs industry fall outside the scope of Regulation (EC) 69/2001 or of the previous *de minimis* provisions in so far as they were granted for the manufacture of the goods listed in Annex I to the EC Treaty and must thus be classed in the sensitive sector of agriculture.

(58) Germany's argument that the special aid rules contained in the 1996 Community Guidelines for State aid in connection with investments in the processing and marketing of agricultural products were applicable only as from 1998 is immaterial here since the special rules did not affect the scope of the *de minimis* provisions ([12]).

(59) In the Commission's view, the residual scope of Regulation (EC) No 69/2001 or other relevant *de minimis* provisions might be exceeded because failure to take account of the aid element contained in the guarantee might mean that, in granting working capital loans, the ceilings

([12]) The Guidelines concerned entered into force on their publication in the Official Journal (OJ C 29, 2.2.1996, p. 4). By Decision 1999/183/EC, the Commission found that national aid schemes in Germany were incompatible with the common market within the meaning of Article 87(1) of the EC Treaty in so far as they did not comply with the Guidelines and appropriate measures for State aid (in connection with investments in the processing and marketing of agricultural products) which were communicated to Germany by letter SG (95) D/13086 of 20 October 1995.

laid down in Article 2 of the Regulation or in other, previously applicable *de minimis* provisions might be exceeded. The rules do not offer any assurance that the *de minimis* ceiling is complied with in every instance. There is in particular no guarantee that it was complied with where the rules were applied to firms in difficulty, involving as they do a high risk of default.

(60) In the Commission's view, the beneficiaries under the rules at least included firms in difficulty.

(61) For the purpose of differentiating between firms in difficulty and viable firms, the Commission included an explanation of what is meant by a firm in difficulty in point 2.1 of the 1994 Community Guidelines ([13]). This definition essentially confirmed the Commission's decision-making practice of the preceding years, as described in its Eighth Report on Competition Policy published in 1979 (points 227 to 229) ([14]).

(62) The definition of a firm in difficulty, which the Commission will use here, is given in the 1994 Guidelines as a firm which is 'unable to recover through its own resources or by raising the funds it needs from shareholders or borrowing. The typical symptoms are deteriorating profitability or increasing size of losses, diminishing turnover, growing inventories, excess capacity, declining cash flow, increasing debt, rising interest charges and low net asset value. In acute cases the company may already have become insolvent or gone into liquidation.'

(63) According to point 3 ('Aid recipients') of the rules, they are directed at start-ups, management buy-outs and management buy-ins and privatisations, with priority given to applications related to consolidation measures. The Commission takes the view that the inclusion of firms in need of consolidation indicates that those in need of recovery within the meaning of the definition of firms in difficulty could receive subsidised working capital loans.

(64) Germany argues that the Thuringia working capital programme should be viewed in an overall context together with the Thuringia consolidation programme. While the scope of the consolidation programme explicitly covered firms in difficulty, this was not the case with the Thuringia working capital programme. In determining the substance of the rules, the wording should not be viewed in isolation, but the consolidation programme should be included in the assessment and the scope of the working capital programme determined by viewing both schemes as a whole. The Thuringia working capital programme therefore did not apply to firms in difficulty.

(65) This argument is not convincing as evidence that the working capital programme was not applied to firms in difficulty. According to their wording, the specific purpose of the rules was to assist firms to set up business or to safeguard their activities, in particular in order to avert risks to their operation or existing jobs. Moreover, applications related to consolidation measures were to be given priority.

(66) Germany also argues that the main bank's own risk was an incentive to it to check the creditworthiness of the borrower.

(67) Although the likelihood of the recipient actually being a firm in difficulty may perhaps have been reduced by the risk which the main bank still faced, the granting of aid to firms in difficulty was by no means ruled out by the wording of the rules. The Commission also takes the view that it could be advantageous for the main bank, in particular in the case of firms in difficulty, to participate in granting loans under the rules since the granting of a working capital loan improves the overall liquidity of the recipient firm and reduces the risk of default on loans previously granted by the main bank. It may in fact make economic sense for a bank to reduce a high risk of default in respect of existing loans by acting in such a way as to ensure that new funds are made available to the firm for its restructuring. This is particularly true where the associated risk is partly assumed by the State.

(68) After all, the individual lists sent by Germany of aid promised or disbursed under the rules show that firms in difficulty were assisted. Germany also conceded in its comments that firms in difficulty had been assisted under the Thuringia working capital programme.

(69) The aid element of the guarantee should have been taken into account in the calculation of the aid intensity of the loans, especially bearing in mind the risk of default in the case of firms in difficulty.

([13]) See footnote 5.

([14]) As regards non-notified aid, paragraph 101 of the 1999 Community Guidelines on State aid for rescuing and restructuring firms in difficulty (Notice to Member States including proposals for appropriate measures: OJ C 288, 9.10.1999, p. 2) lays down that the Commission will examine for its compatibility with the common market any rescue or restructuring aid granted without its authorisation and therefore in breach of Article 88(3) of the EC Treaty on the basis of the Guidelines in force at the time the aid was granted. The Commission accordingly assessed the rules on the basis of the decision-making practice set out in its Eighth Report on Competition Policy (published in 1979) and on the basis of the 1994 Guidelines.

(70) This assessment is not affected either by Germany's statement in its comments that the German authorities, between 1993 and early 1996, did not know that the aid element associated with the guarantee and the particular risks involved in the granting of loans to firms in difficulty should have been taken into account in calculating the aid intensity. The Commission cannot accept this argument since back in 1989 it sent a letter to Member States pointing out that, in its view, all guarantees given by the State fell within the scope of Article 87(1) of the EC Treaty ([15]). The German authorities should, in granting guarantees to firms facing liquidity difficulties, at least have had doubts as to whether the measures involved aid and they should have notified the measures contained in the scheme in good time to the Commission, in order to allow it to give its opinion on the matter.

(71) Under the Commission notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees ([16]), the cash grant equivalent of a loan guarantee in a given year can be:

(a) calculated in the same way as the grant equivalent of a soft loan, the interest subsidy representing the difference between the market rate and the rate obtained thanks to the State guarantee after any premiums paid have been deducted; or

(b) taken to be the difference between the outstanding sum guaranteed, multiplied by the risk factor (the probability of default) and any premium paid, i.e. (guaranteed sum x risk) — premium; or

(c) calculated by any other objectively justifiable and generally accepted method.

(72) The Commission thus confirmed its long-held view that, if at the time of the loan decision the probability of the borrower being unable to pay is evidently very high, the intensity of the aid can be equivalent to the sum actually secured by the guarantee.

(73) Furthermore, the aid element of the guarantee can, even in the case of viable firms, result in the *de minimis* ceiling being exceeded.

(74) In the Commission's view, the rules and their application involve aid within the meaning of Article 87(1) of the EC Treaty in so far as they do not fall within the scope of Regulation (EC) No 69/2001 or do fall within the scope of the Regulation but exceed the *de minimis* ceiling. The same applies in respect of the other *de minimis* provisions in force at the time the measures were implemented.

(75) Where applied to firms in difficulty, the rules meant that recipient firms received from a private bank financial resources which, in view of their financial situation, they would not otherwise have received from private credit institutions on the basis of the loan terms normally applied by the latter.

(76) These financial resources made it possible for recipient firms either to avoid being forced out of the market or to improve their market position. If the firm had been forced out of the market, either existing overcapacities would have been reduced or the market shares made available would have been acquired by competitors, which could in either case have improved their profitability. The working capital loans do not preclude loans being granted to firms which produce goods or provide services that are the subject of intra-Community trade. It must therefore be assumed that the financial measures concerned by the proceedings are liable to affect trade between Member States.

(77) Even viable firms would not have obtained such finance from private banks on the terms offered and were therefore able to improve their market position vis-à-vis competitors within the common market as a result of the working capital loans provided. This applies in particular to viable firms operating in sensitive sectors. Community markets in sensitive sectors are faced with overcapacity. The financial advantage conferred on the specific firms by the working capital loans led to their position being strengthened vis-à-vis competitors, with the result that trade between Member States might be affected.

(78) The rules thus might have distorted or threatened to distort competition.

(79) The Commission accordingly concludes that the rules and their application constitute State aid within the meaning of Article 87(1) of the EC Treaty for firms involved in intra-Community trade.

4.2. **Lawfulness of the aid**

(80) The Commission regrets that, in granting the aid, Germany acted in breach of Article 88(3) of the EC Treaty.

4.3. **Compatibility of the aid with the common market in so far as the scope of application of Regulation (EC) No 69/2001 or of the other, previously applicable, *de minimis* provisions was exceeded**

(81) The Commission assessed the rules on the assumption that they were directed both at viable firms and at firms in difficulty.

([15]) Commission letter to Member States (SG(89) D/4328 of 5 April 1989).
([16]) OJ C 71, 11.3.2000, p. 14.

(82) In as much as aid was granted to firms in difficulty, it constituted restructuring or rescue aid as defined in the Commission's Eighth Report on Competition Policy published in 1979 and in the 1994 Guidelines ([17]), confirmed by the Guidelines adopted in 1999 ([18]).

(83) In so far as the aid was granted to viable firms in the sensitive sectors, it constituted operating aid within the meaning of the Commission communication of 1979 on regional aid systems ([19]) and of the Commission communication of 1988 on the method for the application of Article 92(3)(a) and (c) to regional aid ([20]). These communications were confirmed by the 1998 guidelines on national regional aid ([21]).

(84) The compatibility of the rules will be examined in the light of the relevant provisions applicable ([22]).

(85) In so far as the restructuring of firms in difficulty is involved, it should be noted that, in accordance with the Commission's practice and the 1994 Guidelines, the following criteria had to be met as a precondition for compatibility of the aid with the common market:

(a) submission and implementation of a restructuring plan capable of restoring the long-term viability of the firm;

(b) a significant contribution from the recipient firm and its shareholders;

(c) limitation of the aid to the strict minimum required;

(d) compliance with the special rules governing the sensitive sectors, requiring in principle the notification of individual cases;

(e) individual notification of aid to large firms;

(f) restructuring aid to be granted only once in so far as there are no unforeseen circumstances for which the company is not responsible.

([17]) Under point 2.2 of the 1994 Guidelines, they applied only to the extent that they were consistent with the special rules in the sensitive sectors. At the time in question, there were special aid rules in agriculture, fisheries, steel, shipbuilding, textiles and clothing, synthetic fibres, the motor industry, transport and the coal industry. In the agricultural sector, as an alternative to these Guidelines, special Commission rules for rescue and restructuring aid could still be applied to individual recipients at the discretion of the Member State concerned.

([18]) See point 101 of the Guidelines.

([19]) OJ C 31, 3.2.1979, p. 9.

([20]) OJ C 212, 12.8.1988, p. 2.

([21]) OJ C 74, 10.3.1998, p. 9.

([22]) OJ C 119, 22.5.2002, p. 22. (For the definitions applied, the Commission refers to the provisions specified. It examined the aid to viable firms in the light of its 1988 communication on the method for the application of Article 92(3)(a) and (c) to regional aid. Its assessment is not affected by application of the 1998 Guidelines on national regional aid).

(86) Under the rules, the only precondition for the granting of funds was that the applicant bank representing a firm had to provide appropriate backing from its own resources in the provision of the working capital.

(87) However, the rules did not require submission of a viable restructuring plan which, taking account of the working capital loan, made it likely that profitability could be restored on a long-term basis.

(88) The wording of the rules does not prohibit the repeated grant of restructuring aid or limit the amount of aid to the strict minimum required to achieve the goal. Germany did not indicate whether these criteria were taken into account in the granting of aid.

(89) The rules did not provide for individual notification of aid for large firms or require compliance with the special rules for sensitive sectors.

(90) The Commission therefore finds that, to the extent that the rules provide for restructuring aid to firms in difficulty, such aid is not compatible with the common market.

(91) In so far as the rescue of firms in difficulty is involved, it must be noted that the established policy in this respect was to make it a precondition of compatibility with the common market that rescue aid be granted either in the form of public loans on market terms or in the form of a State guarantee on a private-sector loan. This condition was not met in the case in point since the loans in question were soft loans.

(92) To the extent that the provision of rescue aid under the rules is involved, this aid is incompatible with the common market.

(93) In as much as loans were granted to economically viable firms in the sensitive sectors, they constituted operating aid, which had to be assessed by the Commission in the light of the provisions on regional aid that applied to the rules.

(94) Thuringia is an assisted area under Article 87(3)(a) (formerly Article 92(3)(a)) of the EC Treaty. The Commission communications on regional aid of 1979 and 1988 ([23]) allowed the Commission exceptionally and on certain conditions to approve certain types of operating aid in assisted areas in view of the particular difficulties they face.

(95) A prerequisite for approval of operating aid was that it should contribute to durable and balanced economic development and should not give rise to sectoral overcapacity at Community level, such that the resulting Community sectoral problem was more serious than the original regional problem. A sectoral approach was required here whereby the Community rules and guidelines applicable to certain sectors of industry (steel, shipbuilding, synthetic fibres, textiles and clothing) and agriculture and to industrial firms involved in processing agricultural products were to be observed. Under these Community rules and guidelines, operating aid cannot be granted in the sectors concerned.

(96) The rules are incompatible with the common market in so far as aid to viable firms in the sensitive sectors is involved, since the Community rules and guidelines applicable to sensitive sectors, which prohibit the granting of operating aid to viable firms, should have been observed.

(97) The Commission takes the view that the exemptions under Article 87(2) of the EC Treaty do not apply in this case as the rules do not pursue any of the aims listed there. Nor did Germany claim that those exemptions applied ([24]).

(98) The Commission concludes that, apart from the Guidelines for assessing aid for rescuing and restructuring firms in difficulty, no special provisions concerning aid with horizontal objectives pursuant to Article 87(3)(c) of the EC Treaty are applicable to the rules since they do not pursue one of the special objectives and Germany has not argued that this is the case.

(99) In the Commission's view, the aid is equally not intended to promote an important project of common European interest or to remedy a serious disturbance in the economy of a Member State. Nor does it promote culture or heritage conservation. The Commission therefore concludes that neither Article 87(3)(b) nor Article 87(3)(d) of the EC Treaty applies to the rules.

(100) Some of the individual cases covered by the rules may have been the subject of other formal investigation proceedings under Article 88(2) of the EC Treaty. This decision does not apply to them.

5. **CONCLUSION**

(101) The aid scheme is unlawful. Aid that exceeded the scope of Regulation (EC) No 69/2001 or, where it was not caught by the Regulation, exceeded the scope of the other applicable *de minimis* provisions in force at the time the scheme was implemented was granted unlawfully.

(102) The aid scheme is incompatible with the common market in that it allows rescue aid to be granted at subsidised interest rates outside its *de minimis* scope, allows restructuring aid to be granted without taking account of the conditions that it was the Commission's established practice to impose, does not require notification of individual cases in the sensitive sectors and does not rule out aid to viable firms in the sensitive sectors.

(103) Accordingly, application of the rules outside the scope of Regulation (EC) No 69/2001 or of the other relevant *de minimis* provisions to firms in difficulty and in respect of operating aid to viable firms in the sensitive sectors was incompatible with the common market.

(104) It is the Commission's long-established practice to require recovery from the recipient of aid which, under Article 87 of the EC Treaty, has been unlawfully granted and is incompatible, provided that the aid is not covered by *de minimis* provisions. This practice was confirmed by Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([25]). This Article requires Member States to take all necessary measures to recover the aid from the beneficiary. To clarify the number of cases where recovery is required, the Commission considers that Germany should draw up a list of all firms not covered by the scope of Regulation (EC) No 69/2001,

([23]) See footnotes 19 and 20.

([24]) As regards application of the exemption under Article 87(2)(c) of the EC Treaty, the Commission refers to the Court of Justice ruling of 19 September 2000 in Case C-156/98, *Germany v Commission* (not yet published) concerning Section 52(8) of the German Income Tax Law.

([25]) OJ L 83, 27.3.1999, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

The rules governing the Thuringia working capital programme (hereinafter referred to as 'the rules') establish State aid within the meaning of Article 87(1) of the EC Treaty.

The rules do not establish aid within the meaning of Article 87(1) of the EC Treaty if the payments fall within the scope of Regulation (EC) No 69/2001 or, where this is not the case, within the scope of the *de minimis* provisions in force at the time the rules were implemented and, in combination with other *de minimis* aid, do not exceed the relevant *de minimis* ceiling of Regulation (EC) No 69/2001 or the previous *de minimis* provisions.

The rules do not establish aid within the meaning of Article 87(1) of the EC Treaty if the payments were for firms not involved in producing goods or providing services for intra-Community trade.

To the extent that the rules are caught by Article 87(1), they involve unlawful aid.

Article 2

In so far as the rules establish aid for viable firms outside the sensitive sectors, they are compatible with the common market.

Article 3

In so far as the rules establish rescue and restructuring aid for firms in difficulty, they are incompatible with the common market where they fall within the scope of Article 87(1) of the EC Treaty.

Article 4

In so far as the rules establish operating aid for firms in the sensitive sectors, they are incompatible with the common market where they fall within the scope of Article 87(1) of the EC Treaty.

Article 5

Germany shall take all necessary measures to recover from the beneficiaries the aid referred to in Articles 3 and 4 and unlawfully made available to them.

Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the Decision. The aid to be recovered shall include interest from the date on which it was at the disposal of the beneficiaries until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.

Article 6

This Decision does not apply to those cases covered by the rules that have been the subject of other Commission proceedings or of a final Commission decision. Germany shall draw up a list of the cases concerned.

Article 7

Germany shall, in implementing this Decision, draw up a list of the firms concerned in cases which fall outside the sectoral scope of Regulation (EC) No 69/2001 or which, if the aid element contained in the guarantee and other *de minimis* aid granted during the relevant period are included, exceed the ceiling laid down in that Regulation.

In implementing this Decision, Germany shall draw up a list of all firms in difficulty assisted under the rules which are not caught by Regulation (EC) No 69/2001 and shall indicate the criteria on which the classification is based.

In this connection, Germany shall also devise a method to identify the aid element in the guarantee.

In implementing this Decision, it shall draw up a list of firms assisted under the rules which are not caught by Regulation (EC) No 69/2001 and which were not involved in producing goods or providing services for intra-Community trade and shall indicate the criteria applied.

Article 8

Germany shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 9

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 27 November 2002.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION

of 24 June 2003

on the authorisation of certain alternative methods to be used in microbiological testing of meat intended for Finland and Sweden

(notified under document number C(2003) 1928)

(Text with EEA relevance)

(2003/470/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 95/409/EC of 22 June 1995 laying down the rules for the microbiological testing of fresh beef and veal and pigmeat intended for Finland and Sweden [1] as amended by Council Decision 98/227/EC [2], and in particular the first paragraph of section C in the Annex thereof,

Having regard to Council Decision 95/411/EC of 22 June 1995 laying down the rules for the microbiological testing for salmonella by sampling of fresh poultrymeat intended for Finland and Sweden [3] as amended by Council Decision 98/227/EC, and in particular the first paragraph of section C in the Annex thereof,

Whereas:

(1) There is a need to use rapid analytical methods when fresh meat and poultrymeat intended for Finland and Sweden is being tested for *Salmonella spp*. due to the limited shelf-life of these products. Therefore it is appropriate to introduce the possibility to use more rapid alternative methods offering equivalent guarantees to the methods authorised by Council Decisions 95/409/EC and 95/411/EC.

(2) The Scientific Committee on Veterinary Matters relating to Public Health issued an opinion on criteria for evaluation of methods of *Salmonella* detection on 19-20 June 2002. In this opinion the Committee recommended that the validation of new alternative methods should follow an official procedure, favouring the procedure of EN/ISO 16140 standard [4].

(3) The Scientific Committee also concluded that the procedures for validation, as described by the standardisation bodies of Association Française de Normalisation (AFNOR), Association of Official Analytical Chemists (AOAC), European Committee for Standardisation (CEN), International Organisation for Standardisation (ISO) and Nordic System for Validation of Alternative Microbiological Method (NordVal), are similar in their general outline, but differ in small details.

(4) It is appropriate to take account of the opinion of the Scientific Committee.

(5) EN/ISO 16140 standard was adopted in 2002 and there is as yet little experience of the application of this standard. Therefore, it is necessary to allow, for a provisional period, the use of methods validated in accordance with the validation procedures similar to the procedure described in EN/ISO 16140 standard. This possibility should be reviewed and the relevant provisions revised, if necessary.

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

HAS ADOPTED THIS DECISION:

Article 1

The use of the following alternative analytical methods is authorised in the microbiological testing referred to in Decisions 95/409/EC and 95/411/EC:

— methods, which have been validated against the latest editions of ISO 6579 standard [5] or method No 71 of the Nordic Committee on Food Analyses (NMKL) [6] and certified by a third party in accordance with the protocol set in the latest edition of EN/ISO 16140 standard,

— pending experience from the application of EN/ISO 16140 standard, methods, which have been validated against the abovementioned analytical methods and certified to provide equivalent guarantees in accordance with protocols described by Association Française de Normalisation (AFNOR), Nordic System for Validation of Alternative Microbiological Method (NordVal) or Association of Official Analytical Chemists (AOAC).

[1] OJ L 243, 11.10.1995, p. 21.
[2] OJ L 87, 21.3.1998, p. 14.
[3] OJ L 243, 11.10.1995, p. 29.
[4] EN/ISO 16140:2003 Microbiology of food and animal feeding stuffs - Protocol for the validation of alternative methods

[5] ISO 6579:2002 Microbiology of food and animal feeding stuffs — Horizontal method for the detection of *Salmonella spp*.
[6] NMKL method No 71, 5. Ed., 1999: Salmonella. Detection in food

The validation of these alternative methods shall include the use of meat samples in the validation studies.

Article 2

This Decision shall be reviewed within two years after its adoption in order to take into account experience gained and progress made in the validation of alternative microbiological methods.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 24 June 2003.

For the Commission
David BYRNE
Member of the Commission

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

COMMON STRATEGY 2003/471/CFSP OF THE EUROPEAN COUNCIL

of 20 June 2003

amending Common Strategy 1999/414/CFSP on Russia in order to extend the period of its application

THE EUROPEAN COUNCIL,

Having regard to the Treaty on European Union, in particular Article 13(2) thereof,

Having regard to the recommendation of the Council,

Whereas:

(1) Common Strategy 1999/414/CFSP of the European Union of 4 June 1999 on Russia [1] expires on 24 June 2003.

(2) It is considered necessary to amend this Common Strategy in order to extend the period of its application,

HAS ADOPTED THIS COMMON STRATEGY:

Sole Article

In Part IV of Common Strategy 1999/414/CFSP the first point entitled 'DURATION' shall be replaced by the following:

'This Common Strategy shall apply until 24 June 2004. It may be prolonged, reviewed and, if necessary, adapted by the European Council on the recommendation of the Council.'

This Common Strategy shall be published in the *Official Journal of the European Union*.

Done at Thessaloniki, 20 June 2003.

For the European Council

The President

C. SIMITIS

[1] OJ L 157, 24.6.1999, p. 1.

COUNCIL JOINT ACTION 2003/472/CFSP

of 24 June 2003

on the continuation of the European Union cooperation programme for non-proliferation and disarmament in the Russian Federation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union (TEU), and in particular Article 14, in conjunction with Article 23(2) thereof,

Having regard to Common Strategy 1999/414/CFSP of the European Union on Russia [1], adopted by the European Council on 4 June 1999 as amended by Common Strategy 2003/471/CFSP of the European Council amending Common Strategy 1999/414/CFSP on Russia in order to extend the period of its application [2], adopted by the European Council on 20 June 2003, which, *inter alia*, expressed the European Union's commitment to promote disarmament and curbing of the proliferation of weapons of mass destruction (WMD), support for arms control, the implementation of existing agreements and the strengthening of export controls,

Whereas:

(1) The Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part [3], promotes, *inter alia*, an increasing convergence of positions on international issues of mutual concern thus increasing security and stability.

(2) On 25 and 26 June 2002 in Kananaskis, Canada, the leaders of the G8 nations launched the global partnership against the spread of weapons and materials of mass destruction initiative, under which they will support specific cooperation projects, initially in the Russia Federation, to address non-proliferation, disarmament, counter-terrorism and nuclear safety issues.

(3) The European Union supports the aim and principles of the G8 global partnership initiative and continues to promote cooperative threat reduction activities and the safe and secure dismantlement of WMD-related resources in the Russian Federation.

(4) The European Union activities would take place in parallel with activities carried out by the European Community as well as bilaterally and multilaterally by the Member States.

(5) All such activities should be coordinated to the greatest possible extent to avoid unnecessary duplication.

(6) European Union activities can also be undertaken in cooperation with other countries.

(7) Commission has agreed to be entrusted with certain tasks necessary for the implementation of this Joint Action,

HAS ADOPTED THIS JOINT ACTION:

Article 1

1. The European Union cooperation programme for non-proliferation and disarmament in the Russian Federation (hereinafter referred to as 'the Programme'), which was established by Council Joint Action 1999/878/CFSP of 17 December 1999, establishing an EU cooperation programme for non-proliferation and disarmament in the Russian Federation [4] shall be hereby continued.

2. The objective of the programme is to support the Russian Federation in its efforts towards arms control, disarmament and non-proliferation and, to that end:

— to cooperate with the Russian Federation in the latter's pursuit of a safe, secure and environmentally sound dismantlement and/or reconversion of infrastructure and equipment linked to its WMD,

— to provide a legal and operational framework for an enhanced European Union role in cooperative threat-reduction activities in the Russian Federation through project orientated cooperation,

— to promote coordination as appropriate of programmes and projects in this field at Community, Member State and international level.

Article 2

1. The Council shall decide, on the basis of a recommendation of a Member State and/or the Commission, which new disarmament and non-proliferation projects shall be funded under the programme.

2. The new projects to be adopted under the programme shall be in the chemical, nuclear or biological field or relate to export controls.

Article 3

1. The Council shall entrust the Commission, for the duration of the programme and subject to Article 5, with the task of preparing the projects to be approved, as well as with supervising their proper implementation. The Commission shall report to the Council, on a regular basis and as the need arises, under the authority of the Presidency assisted by the Secretary-General of the Council, High Representative for the CFSP.

[1] OJ L 157, 24.6.1999, p. 1.
[2] See page 68 of this Official Journal.
[3] OJ L 327, 28.11.1997, p. 3.
[4] OJ L 331, 23.12.1999, p. 11.

2. The Commission shall be assisted by a unit of experts including a project assistance team in Moscow. The number of members of the unit and a definition of their tasks are specified in the terms of reference set out in the Annex.

3. The Commission shall continue to have a project assistance team in Moscow, in order to:

— operate in close coordination with personnel working under Community-funded projects,

— as appropriate, carry out feasibility studies,

— liaise with the local authorities and with the representatives of other contributing countries,

— negotiate with the local authorities the arrangements necessary for the implementation of the programme,

— monitor the expenditure of the funds committed for the implementation of the programme.

Article 4

1. The financial reference amount intended to cover the administrative costs of the unit of experts referred to in Article 3(2) and (3) shall be EUR 680 000.

2. The management of the expenditure financed by the amount specified in paragraph 1 shall be subject to the procedures and rules of the Community applying to budget matters.

3. The European Union shall finance the infrastructure and current expenditure of the programme.

4. The Council and the Commission shall ensure appropriate coordination between the programme, Community assistance as well as the bilateral and multilateral assistance provided by the Member States. In that context, the Council notes that the Commission intends to direct its action towards achieving the objectives and the priorities of this Joint Action, where appropriate by pertinent Community measures.

5. The implementation of this Joint Action shall be the subject of bilateral consultations with the Russian Federation and other partners within the framework of existing political dialogue meetings.

Article 5

1. The Council shall regularly review the actions taken pursuant to the programme. This review shall also assess Russian capabilities to absorb and utilise increased assistance.

2. Independent evaluations and audit shall be conducted at periodic stages, depending on progress of the programme.

3. The Council may suspend the programme, if the Russian Federation fails:

— fully to cooperate with the implementation of the programme,

— to allow European Union monitoring and/or periodical external evaluations and audit to that effect.

Article 6

This Joint Action shall enter into force on the date of its adoption.

It shall expire on the date of expiry of European Union Common Strategy 1999/414/CFSP on Russia.

Article 7

This Joint Action shall be published in the *Official Journal of the European Union*.

Done at Brussels, 24 June 2003.

For the Council

The President

G. PAPANDREOU

ANNEX

Terms of reference for the unit of experts under the EU cooperation programme for non-proliferation and disarmament in the Russian Federation

Joint Action 1999/878/CFSP entrusted the Commission to set up a unit of experts under the cooperation programme for non-proliferation and disarmament in the Russian Federation. The said Joint Action was complemented by two implementing decisions (2001/493/CFSP of 25 June 2001 defining additional projects and 2002/381/CFSP of 21 May 2002 providing an additional budget for the unit of experts).

Some activities of the projects decided in 1999 and 2001 could not be finalised by the date of expiry of the Joint Action 1999/878/CFSP and decisions on new projects are expected to be taken under this Joint Action. This requires the prolongation of the mandate of the unit of experts.

The unit of experts comprises a policy and project coordination section at the Commission in Brussels and a project assistance team based in Moscow, reporting to the policy and project coordination section in Brussels. The policy and project coordination section comprises two EU experts and a head of section, who is seconded by the Commission. The section is administratively supported by one secretary and one administrative assistant. The Moscow-based project assistance team comprises one EU expert and one local secretary.

The head of section assumes overall responsibility for the implementation of the Joint Action. He maintains close relations with the Presidency of the Council of the EU, and the Member States and the Secretary-General of the Council, High Representative for the CFSP.

Tasks related to policy and project coordination and development shall comprise, *inter alia*, the following:

— support coordination of programmes on non-proliferation and disarmament in the Russian Federation at Community, Member State and wider levels,

— establishing a database of projects funded by the EU, Community and Member States,

— establishing and maintaining a database on EU experts, broken down by policy areas,

— establishing a network of Member States points of contact, supplementing the competent Council working groups as regards the implementation of the Joint Action and related activities,

— to prepare and submit regular progress reports,

— to function as point of contact for international initiatives,

— to liaise with the recipient country authorities and official representatives of other non-EU contributing countries,

— to organise or co-organise conferences in the frame of the non-proliferation and disarmament cooperation initiative (NDCI).

Sectoral tasks cover, *inter alia*, the following:

— drawing up comprehensive sector reports,

— providing an in-depth analysis on sectoral core problems,

— defining and implementing limited feasibility studies, when needed,

— identifying projects to address core problems,

— preparing projects to be submitted to the Council with a view to possible future funding under follow-up measures to this Joint Action,

— finalising and coordinating implementation of projects funded under Joint Action and Joint Action 1999/878/CFSP, including by decisions implementing the Joint Actions, in close cooperation, as appropriate, with the Member States hosting the projects,

— ensuring close cooperation with personnel working under projects funded by the EU.

COUNCIL JOINT ACTION 2003/473/CFSP

of 25 June 2003

regarding a contribution of the European Union to the conflict settlement process in Georgia/ South Ossetia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 14 thereof,

Whereas:

(1) On 26 February 2001, the Council declared its willingness to play a more active political role in the Southern Caucasus and to look for further ways to support efforts to prevent and resolve conflicts in the region, in particular through strengthening cooperation with the Organisation for Security and Cooperation in Europe (OSCE).

(2) On 29 October 2001, the Council adopted Joint Action 2001/759/CFSP [1], regarding a contribution from the European Union to the conflict settlement process in South Ossetia.

(3) The EU contribution under that Joint Action to the OSCE mission to Georgia has been effective in ensuring the functioning of permanent secretariats for the Georgian and the South Ossetian sides, under the aegis of the OSCE, and in facilitating meetings of the Joint Control Commission (JCC) and of the Experts' Group, which are the main instruments of the conflict settlement process.

(4) The EU considers that its assistance has reinforced the effectiveness of its role, as well as that of the OSCE, in the settlement of the conflict.

(5) The OSCE and the co-Chairs of the JCC have appealed for follow-up assistance from the EU, and the EU has agreed to offer further financial assistance to the conflict settlement process.

(6) The Commission has agreed to be entrusted with the implementation of this Joint Action.

(7) The Commission will ensure an adequate visibility of the contribution of the EU to the project,

HAS ADOPTED THIS JOINT ACTION:

Article 1

1. The European Union shall contribute to strengthening the conflict settlement process in South Ossetia.

2. For this purpose, the European Union shall provide a contribution to the OSCE to finance meetings of the JCC and Experts' Group, to provide for organisation of conferences under the aegis of the JCC and to provide for publication of a JCC newsletter.

Article 2

1. Disbursement of financial aid provided under this Joint Action shall be conditional upon the holding of not less than two JCC and two Experts' group meetings within 12 months of the starting date of the financing agreement to be concluded between the Commission and the OSCE mission to Georgia. Both the Georgian and South Ossetian sides should make demonstrable efforts to achieve real political progress towards a lasting and peaceful settlement of their differences.

2. The Council shall entrust the Commission with the implementation of this Joint Action, with a view to meeting the objective specified in Article 1(2). To that end, the Commission shall conclude a financing agreement with the OSCE mission to Georgia on the use of the European Union contribution, which shall take the form of a grant.

3. The OSCE mission to Georgia shall be responsible for reimbursing mission expenses, for the organisation of conferences under the aegis of the JCC, and for the publication of a JCC newsletter. The financing agreement will stipulate that the OSCE mission to Georgia shall ensure visibility of the EU contribution to the project.

4. The Commission, through its Delegation in Tbilisi, shall liaise closely with the OSCE mission to Georgia in order to monitor and evaluate progress, so as to ensure the success of the action, as well as the correct use of the grant for the purposes set out in Article 1(2).

5. The Commission shall report in writing on the implementation of this Joint Action to the Council under the authority of the Presidency, assisted by the Secretary General of the Council, High Representative for the CFSP. This information will in particular be based on regular reports to be provided by the OSCE mission to Georgia under its contractual relationship with the Commission, as stipulated in Article 2(2) above.

Article 3

1. The financial reference amount for the purposes referred to in Article 1(2) shall be EUR 160 000.

[1] OJ L 286, 30.10.2001, p. 4.

2. The management of the expenditure financed by the amount specified in paragraph 1 shall be subject to the European Community procedures and rules applicable to the general budget of the European Communities, with the exception that any pre-financing shall not remain the property of the European Community.

Article 4

1. This Joint Action shall enter into force on 1 July 2003.

It shall expire on 30 June 2004.

2. This Joint Action shall be reviewed ten months after entering into force.

Article 5

This Joint Action shall be published in the *Official Journal of the European Union*.

Done at Brussels, 25 June 2003.

For the Council

The President

G. PAPANDREOU