

Official Journal

of the European Communities

ISSN 0378-6978

L 320

Volume 34

22 November 1991

English edition

Legislation

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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 3391/91

of 19 November 1991

amending Regulation (EEC) No 1799/87 on special arrangements for imports of maize and sorghum into Spain from 1987 to 1990

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas, by its Decision 91/30/EEC ⁽³⁾, the Council approved an Exchange of Letters supplementing the Agreement between the European Economic Community and the United States of America concluded on 30 January 1987 under GATT Article XXIV.6 and providing in particular for its extension to 1991; whereas Regulation (EEC) No 1799/87 ⁽⁴⁾ should consequently also be extended;

Whereas the extension of Regulation (EEC) No 1799/87 means that imports must be actually effected, in respect of any given year, by the end of February of the following year; whereas experience has shown that technical problems may arise which make it difficult to apply this time limit to the letter; whereas this consideration must therefore be taken into account;

Whereas Regulation (EEC) No 1799/87 must be amended as a result,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1799/87 is hereby amended as follows:

1. in the title, 'from 1987 to 1990' shall be replaced by 'from 1987 to 1991'.

2. the first recital shall be replaced by the following:

'Whereas under agreements between the European Economic Community and the United States of America concerning the conclusion of the negotiations under Article XXIV.6 of the General Agreement on Tariffs and Trade (GATT), approved by Decisions 87/224/EEC ⁽²⁾ and 91/30/EEC ^(2a), the Community undertook, in respect of the years 1987 to 1991, to open annual quotas for imports into Spain of 2 million tonnes of maize and 300 000 tonnes of sorghum, minus the quantities of certain grain substitutes imported into that country during the same year, either directly or indirectly; whereas the quantities of maize and sorghum imported must be used or processed in Spain;

⁽²⁾ OJ No L 98, 10. 4. 1987, p. 1.

^(2a) OJ No L 17, 23. 1. 1991, p. 17.

3. Article 1 shall be replaced by the following:

Article 1

For a period of five years from 1987 onwards, a maximum quantity of 2 million tonnes of maize and 300 000 tonnes of sorghum shall be imported annually from third countries for free circulation in Spain under the conditions laid down in the following Articles.'

4. Article 6 shall be replaced by the following:

Article 6

The imports referred to in Article 2 must be effected, in respect of any given year, by the end of February of the following year. In the case of technical difficulties duly noted by the Commission, an import period exceeding the time limit of the end of February may be determined according to the procedure provided for in Article 26 of Regulation (EEC) No 2727/75.'

Article 2

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

It shall apply from 1 January 1991.

⁽¹⁾ OJ No C 143, 1. 6. 1991, p. 10.

⁽²⁾ Opinion delivered on 25 October 1991 (not yet published in the Official Journal).

⁽³⁾ OJ No L 17, 23. 1. 1991, p. 17.

⁽⁴⁾ OJ No L 170, 30. 6. 1987, p. 1.

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

Done at Brussels, 19 November 1991.

For the Council

The President

P. BUKMAN

COUNCIL REGULATION (EEC) No 3392/91

of 19 November 1991

opening and providing for the administration of a Community quota for chemically pure fructose originating in third countries not bound to the Community by a preferential trade agreement (1992)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

the year 1992, a Community quota, exempt from the variable component, for an amount equal to 4 504 tonnes ;

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas Article 7a of Council Regulation (EEC) No 3033/80 of 11 November 1980 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products ⁽¹⁾, as last amended by Regulation (EEC) No 1436/90 ⁽²⁾, provides that the variable component which imposes, as from 1 July 1990, on imports of the products falling within CN code 1702 50 00, originating in third countries not bound to the Community by a preferential trade agreement, will be equal to the levy referred to in Article 16 (6) of Regulation (EEC) No 1785/81 ⁽³⁾, as last amended by Regulation (EEC) No 305/91 ⁽⁴⁾, imposed on imports of products falling within CN codes 1702 30 10, 1702 40 10, 1702 60 10 and 1702 90 30 ;

Whereas, in the current context of the Uruguay Round, it is appropriate to maintain the possibility of exporting to the Community market chemically pure fructose originating in third countries not bound to the Community by a preferential trade agreement ; whereas this aspect is fulfilled if the possibility for individual agricultural products, originating in the aforesaid third countries, to penetrate the Community market is not less, in 1992, than the average for 1987 and 1988 ; whereas the average imports of chemically pure fructose, originating in these countries, during 1987 and 1988, amounted to 4 504 tonnes ; whereas it is therefore appropriate to open, for

Whereas equal and continuous access to the quota should be ensured for all Community importers and the rates laid down for the quota should be applied consistently to all imports of the product in question into all the Member States until the quota is exhausted ; whereas it is appropriate not to provide for allocation among Member States, without prejudice to the drawing on the amount of the quota, of such quantities as they may need, under conditions and according to the procedure provided for in Article 3 ;

Whereas, since the Kingdom of Belgium, the Kingdom of the Netherlands and the Grand Duchy of Luxembourg are united within and jointly represented by the Benelux Economic Union, any operation concerning the administration of the drawings made by that economic union may be carried out by any one of its members,

HAS ADOPTED THIS REGULATION :

Article 1

From 1 January to 31 December 1992, the variable component applicable to imports, into the Community, of the following product, originating in third countries not bound to the Community by a preferential trade agreement, shall be suspended totally, within the limits of a Community quota as shown below :

Order No	CN code	Description	Amount of quota (in tonnes)	Quota duty (%)
09.0091	1702 50 00	Chemically pure fructose	4 504	20

⁽¹⁾ OJ No L 323, 29. 11. 1980, p. 1.

⁽²⁾ OJ No L 138, 31. 5. 1990, p. 9.

⁽³⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽⁴⁾ OJ No L 37, 9. 2. 1991, p. 1.

Article 2

The quota referred to in Article 1 shall be administered by the Commission, which may take any appropriate measure with a view to ensuring the efficient administration thereof.

Article 3

If an importer presents in a Member State a declaration of entry into free circulation including a request for preferential benefit of the quota for a product covered by this Regulation, and if this declaration is accepted by the customs authorities, the Member State concerned shall draw, from the quota, by means of notification to the Commission, a quantity corresponding to these needs.

The requests for drawing, with the indication of the date of acceptance of the said declaration, must be communicated to the Commission without delay.

The drawings shall be granted by the Commission on the basis of the date of acceptance of the declarations of entry

into free circulation by the customs authorities of the Member State concerned, to the extent that the available balance so permits.

If a Member State does not use the quantities drawn, it shall return them as soon as possible to the tariff quota.

If the quantities requested are greater than the available balance of the tariff quota, allocation shall be made on a pro rata basis with respect to the requests, Member States shall be informed by the Commission of the drawings made.

Article 4

Each Member State shall ensure that importers of the product concerned have equal and continuous access to the quota for such times as the residual balance of the quota so permits.

Article 5

This Regulation shall enter into force on 1 January 1992.

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

Done at Brussels, 19 November 1991.

For the Council

The President

P. BUKMAN

COMMISSION REGULATION (EEC) No 3393/91

of 21 November 1991

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 3577/90⁽²⁾, and in particular Article 13 (5) thereof,Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy⁽³⁾, as last amended by Regulation (EEC) No 2205/90⁽⁴⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the import levies on cereals, wheat and rye flour, and wheat groats and meal were fixed by Commission Regulation (EEC) No 2661/91⁽⁵⁾ and subsequent amending Regulations;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,

- for the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

Whereas these exchange rates being those recorded on 20 November 1991;

Whereas the aforesaid corrective factor affects the entire calculation basis for the levies, including the equivalence coefficients;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 2661/91 to today's offer prices and quotations known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 2727/75 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 22 November 1991.

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

Done at Brussels, 21 November 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.⁽⁴⁾ OJ No L 201, 31. 7. 1990, p. 9.⁽⁵⁾ OJ No L 250, 7. 9. 1991, p. 1.

ANNEX

to the Commission Regulation of 21 November 1991 fixing the import levies on cereals and on wheat or rye flour, groats and meal

CN code	Levy
0709 90 60	129,91 ^(?) ^(?)
0712 90 19	129,91 ^(?) ^(?)
1001 10 10	179,99 ⁽¹⁾ ^(?)
1001 10 90	179,99 ⁽¹⁾ ^(?)
1001 90 91	156,74
1001 90 99	156,74
1002 00 00	162,35 ⁽⁶⁾
1003 00 10	141,02
1003 00 90	141,02
1004 00 10	130,05
1004 00 90	130,05
1005 10 90	129,91 ^(?) ^(?)
1005 90 00	129,91 ^(?) ^(?)
1007 00 90	138,84 ^(*)
1008 10 00	65,81
1008 20 00	128,08 ^(*)
1008 30 00	80,12 ^(?)
1008 90 10	^(?)
1008 90 90	80,12
1101 00 00	232,44 ⁽⁶⁾
1102 10 00	240,29 ⁽⁶⁾
1103 11 10	292,24 ⁽⁶⁾
1103 11 90	250,36 ⁽⁶⁾

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

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

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

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

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

⁽⁶⁾ The import levy charged on rye produced in Turkey and transported directly from that country to the Community is laid down in Council Regulation (EEC) No 1180/77 (OJ No L 142, 9. 6. 1977, p. 10) and Commission Regulation (EEC) No 2622/71 (OJ No L 271, 10. 12. 1971, p. 22).

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

⁽⁸⁾ On importation into Portugal the levy is increased by the amount specified in Article 2 (2) of Regulation (EEC) No 3808/90.

COMMISSION REGULATION (EEC) No 3394/91

of 21 November 1991

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 3577/90⁽²⁾, and in particular Article 15 (6) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy⁽³⁾, as last amended by Regulation (EEC) No 2205/90⁽⁴⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the premiums to be added to the levies on cereals and malt were fixed by Commission Regulation (EEC) No 1845/91⁽⁵⁾ and subsequent amending Regulation;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,

- for the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

Whereas these exchange rates being those recorded on 20 November 1991;

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

HAS ADOPTED THIS REGULATION:

Article 1

The premiums referred to in Article 15 of Regulation (EEC) No 2727/75 to be added to the import levies fixed in advance in respect of cereals and malt coming from third countries shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 22 November 1991.

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

Done at Brussels, 21 November 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁵⁾ OJ No L 168, 29. 6. 1991, p. 4.

ANNEX

to the Commission Regulation of 21 November 1991 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

(ECU/tonne)

CN code	Current 11	1st period 12	2nd period 1	3rd period 2
0709 90 60	0	0	0	0
0712 90 19	0	0	0	0
1001 10 10	0	0	0	0
1001 10 90	0	0	0	0
1001 90 91	0	0	0	0
1001 90 99	0	0	0	0
1002 00 00	0	0	0	0
1003 00 10	0	0	0	0
1003 00 90	0	0	0	0
1004 00 10	0	0	0	0
1004 00 90	0	0	0	0
1005 10 90	0	0	0	0
1005 90 00	0	0	0	0
1007 00 90	0	0	0	0
1008 10 00	0	0	0	0
1008 20 00	0	0	0	0
1008 30 00	0	0	0	0
1008 90 90	0	0	0	0
1101 00 00	0	0	0	0

B. Malt

(ECU/tonne)

CN code	Current 11	1st period 12	2nd period 1	3rd period 2	4th period 3
1107 10 11	0	0	0	0	0
1107 10 19	0	0	0	0	0
1107 10 91	0	0	0	0	0
1107 10 99	0	0	0	0	0
1107 20 00	0	0	0	0	0

COMMISSION REGULATION (EEC) No 3395/91

of 21 November 1991

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EEC) No 1720/91⁽²⁾, and in particular Article 16 (2) thereof,Having regard to Council Regulation (EEC) No 1514/76 of 24 June 1976 on imports of olive oil originating in Algeria⁽³⁾, as last amended by Regulation (EEC) No 728/91⁽⁴⁾, and in particular Article 5 thereof,Having regard to Council Regulation (EEC) No 1521/76 of 24 June 1976 on imports of olive oil originating in Morocco⁽⁵⁾, as last amended by Regulation (EEC) No 729/91⁽⁶⁾, and in particular Article 5 thereof,Having regard to Council Regulation (EEC) No 1508/76 of 24 June 1976 on imports of olive oil originating in Tunisia⁽⁷⁾, as last amended by Regulation (EEC) No 413/86⁽⁸⁾, and in particular Article 5 thereof,Having regard to Council Regulation (EEC) No 1180/77 of 17 May 1977 on imports into the Community of certain agricultural products originating in Turkey⁽⁹⁾, as last amended by Regulation (EEC) No 730/91⁽¹⁰⁾, and in particular Article 10 (2) thereof,Having regard to Council Regulation (EEC) No 1620/77 of 18 July 1977 laying down detailed rules for the importation of olive oil from Lebanon⁽¹¹⁾,Whereas by Regulation (EEC) No 3131/78⁽¹²⁾, as amended by the Act of Accession of Greece, the Commission decided to use the tendering procedure to fix levies on olive oil;

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

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

Whereas application of the rules recalled above to the levy rates indicated by tenderers on 18 and 19 November 1991 leads to the minimum levies being fixed as indicated in Annex I to this Regulation;

Whereas the import levy on olives falling within 29 codes 0709 90 39 and 0711 20 90 and on products falling within CN codes 1522 00 31, 1522 00 39 and 2306 90 19 must be calculated from the minimum levy applicable on the olive oil contained in these products; whereas, however, the levy charged for olive oil may not be less than an amount equal to 8 % of the value of the imported product, such amount to be fixed at a standard rate; whereas application of these provisions leads to the levies being fixed as indicated in Annex II to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

Article 3

This Regulation shall enter into force on 22 November 1991.

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

⁽²⁾ OJ No L 162, 26. 6. 1991, p. 27.

⁽³⁾ OJ No L 169, 28. 6. 1976, p. 24.

⁽⁴⁾ OJ No L 80, 27. 3. 1991, p. 1.

⁽⁵⁾ OJ No L 169, 28. 6. 1976, p. 43.

⁽⁶⁾ OJ No L 80, 27. 3. 1991, p. 2.

⁽⁷⁾ OJ No L 169, 28. 6. 1976, p. 9.

⁽⁸⁾ OJ No L 48, 26. 2. 1986, p. 1.

⁽⁹⁾ OJ No L 142, 9. 6. 1977, p. 10.

⁽¹⁰⁾ OJ No L 80, 27. 3. 1991, p. 3.

⁽¹¹⁾ OJ No L 181, 21. 7. 1977, p. 4.

⁽¹²⁾ OJ No L 370, 30. 12. 1978, p. 60.

⁽¹³⁾ OJ No L 331, 28. 11. 1978, p. 6.

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

Done at Brussels, 21 November 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX I

Minimum import levies on olive oil

(ECU/100 kg)

CN code	Non-member countries
1509 10 10	63,00 ⁽¹⁾
1509 10 90	63,00 ⁽¹⁾
1509 90 00	74,00 ⁽²⁾
1510 00 10	77,00 ⁽¹⁾
1510 00 90	122,00 ⁽²⁾

⁽¹⁾ For imports of oil falling within this CN code and produced entirely in one of the countries listed below and transported directly from any of those countries to the Community, the levy to be collected is reduced by :

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

⁽²⁾ For imports of oil falling within this CN code :

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

⁽³⁾ For imports of oil falling within this CN code :

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

ANNEX II

Import levies on other olive oil sector products

(ECU/100 kg)

CN code	Non-member countries
0709 90 39	13,86
0711 20 90	13,86
1522 00 31	31,50
1522 00 39	50,40
2306 90 19	6,16

COMMISSION REGULATION (EEC) No 3396/91**of 21 November 1991****amending Regulation (EEC) No 1627/89 on the buying-in of beef by invitation to tender**

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

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal ⁽¹⁾, as last amended by Regulation (EEC) No 1628/91 ⁽²⁾, and in particular Article 6 (8) thereof,

Whereas Commission Regulation (EEC) No 1627/89 of 9 June 1989 on the buying-in of beef by invitation to tender ⁽³⁾, as last amended by Regulation (EEC) No 2765/91 ⁽⁴⁾, opens buying-in by invitation to tender in certain Member States or regions of a Member State for certain quality groups;

Whereas the application of Article 6 (2), (3) and (4) of Regulation (EEC) No 805/68 and the need to limit intervention to the buying-in of the quantities necessary to ensure reasonable support for the market result, on the basis of the prices of which the Commission is aware, in

an amendment, in accordance with the Annex hereto, to the list of Member States or regions of a Member State where buying-in is open by invitation to tender, and the list of the quality groups which may be bought in;

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

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EEC) No 1627/89 are hereby replaced by Annexes I and II hereto.

Article 2

This Regulation shall enter into force on 26 November 1991.

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

Done at Brussels, 21 November 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ No L 150, 15. 6. 1991, p. 16.

⁽³⁾ OJ No L 159, 10. 6. 1989, p. 36.

⁽⁴⁾ OJ No L 265, 21. 9. 1991, p. 17.

*ANEXO I — BILAG I — ANHANG I — ΠΑΡΑΡΤΗΜΑ I — ANNEX I — ANNEXE I —
ALLEGATO I — BIJLAGE I — ANEXO I*

Estados miembros o regiones de Estados miembros y grupos de calidades previstos en el apartado 1 del artículo 1

Medlemsstater eller regioner og kvalitetsgrupper, jf. artikel 1, stk. 1

Mitgliedstaaten oder Gebiete eines Mitgliedstaats sowie die in Artikel 1 Absatz 1 genannten Qualitätsgruppen

Κράτη μέλη ή περιοχές κρατών μελών και ομάδες ποιότητας που αναφέρονται στο άρθρο 1 παράγραφος 1

Member States or regions of a Member State and quality groups referred to in Article 1 (1)

États membres ou régions d'États membres et groupes de qualités visés à l'article 1^{er}, paragraphe 1

Stati membri o regioni di Stati membri e gruppi di qualità di cui all'articolo 1, paragrafo 1

In artikel 1, lid 1 bedoelde Lid-Staten of gebieden van een Lid-Staat en kwaliteitsgroepen

Estados-membros ou regiões de Estados-membros e grupos de qualidades referidos no n.º 1 do artigo 1.º

Estados miembros o regiones de Estados miembros	Categoría A			Categoría C		
Medlemsstat eller region	Kategori A			Kategori C		
Mitgliedstaaten oder Gebiete eines Mitgliedstaats	Kategorie A			Kategorie C		
Κράτος μέλος ή περιοχή κράτους μέλους	Κατηγορία Α			Κατηγορία Γ		
Member States or regions of a Member State	Category A			Category C		
États membres ou régions d'États membres	Catégorie A			Catégorie C		
Stati membri o regioni di Stati membri	Categoria A			Categoria C		
Lid-Staat of gebied van een Lid-Staat	Categorie A			Categorie C		
Estados-membros ou regiões de Estados-membros	Categoria A			Categoria C		
	U	R	O	U	R	O
Belgique	x	x	x			
Denmark		x	x			
Deutschland	x	x				
España	x	x	x			
France	x	x	x		x	x
Italia			x			
Luxembourg		x	x			x
Nederland		x				

*ANEXO II — BILAG II — ANHANG II — ΠΑΡΑΡΤΗΜΑ II — ANNEX II — ANNEXE II —
ALLEGATO II — BIJLAGE II — ANEXO II*

Estados miembros o regiones de Estados miembros y grupos de calidades previstos en el apartado 2 del artículo 1

Medlemsstater eller regioner og kvalitetsgrupper, jf. artikel 1, stk. 2

Mitgliedstaaten oder Gebiete eines Mitgliedstaats sowie die in Artikel 1 Absatz 2 genannten Qualitätsgruppen

Κράτη μέλη ή περιοχές κρατών μελών και ομάδες ποιότητας που αναφέρονται στο άρθρο 1 παράγραφος 2

Member States or regions of a Member State and quality groups referred to in Article 1 (2)

États membres ou régions d'États membres et groupes de qualités visés à l'article 1^{er}, paragraphe 2

Stati membri o regioni di Stati membri e gruppi di qualità di cui all'articolo 1, paragrafo 2

In artikel 1, lid 2 bedoelde Lid-Staten of gebieden van een Lid-Staat en kwaliteitsgroepen

Estados-membros ou regiões de Estados-membros e grupos de qualidades referidos no n.º 2 do artigo 1.º

Estados miembros o regiones de Estados miembros	Categoría A			Categoría C		
Medlemsstat eller region	Kategori A			Kategori C		
Mitgliedstaaten oder Gebiete eines Mitgliedstaats	Kategorie A			Kategorie C		
Κράτος μέλος ή περιοχή κράτους μέλους	Κατηγορία Α			Κατηγορία Γ		
Member States or regions of a Member State	Category A			Category C		
États membres ou régions d'États membres	Catégorie A			Catégorie C		
Stati membri o regioni di Stati membri	Categoria A			Categoria C		
Lid-Staat of gebied van een Lid-Staat	Categorie A			Categorie C		
Estados-membros ou regiões de Estados-membros	Categoria A			Categoria C		
	U	R	O	U	R	O
Denmark					x	x
Deutschland					x	x
Ireland				x	x	x
Great-Britain				x	x	x
Northern Ireland				x	x	x

COMMISSION REGULATION (EEC) No 3397/91

of 21 November 1991

amending Regulation (EEC) No 1609/88 as regards the latest date by which butter must have been taken into storage in order to be sold under Regulations (EEC) No 3143/85 and (EEC) No 570/88

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EEC) No 1630/91 ⁽²⁾, and in particular Article 6 (7) thereof,

Having regard to Council Regulation (EEC) No 985/68 of 15 July 1968 laying down general rules for intervention on the market in butter and cream ⁽³⁾, as last amended by Regulation (EEC) No 2045/91 ⁽⁴⁾, and in particular Article 7a thereof,

Whereas, pursuant to Article 1 of Commission Regulation (EEC) No 3143/85 of 11 November 1985 on the sale at reduced prices of intervention butter intended for direct consumption in the form of concentrated butter ⁽⁵⁾, as last amended by Regulation (EEC) No 3060/91 ⁽⁶⁾, the butter put up for sale must have been taken into storage before a date to be determined; whereas the same applies to butter sold under the arrangements laid down in Commission Regulation (EEC) No 570/88 of 16 February 1988 on the sale of butter at reduced prices and the granting of aid for butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other food stuffs ⁽⁷⁾, as last amended by Regulation (EEC) No 1157/91 ⁽⁸⁾;

Whereas, in view of butter stocks and quantities available, the dates in Article 1 of Council Regulation (EEC) No

1609/88 of 9 June 1988 setting the latest time of entry into storage for butter sold under Regulations (EEC) No 3143/85 and (EEC) No 570/88 ⁽⁹⁾, as last amended by Regulation (EEC) No 3176/91 ⁽¹⁰⁾, should be amended;

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

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 of Regulation (EEC) No 1609/88 is hereby replaced by the following:

'Article 1

The butter referred to in Article 1 (1) of Regulation (EEC) No 3143/85 must have been taken into storage before 1 September 1990.

The butter referred to in Article 1 of Regulation (EEC) No 570/88 must have been taken into storage before 1 September 1990.'

Article 2

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

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

Done at Brussels, 21 November 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 150, 15. 6. 1991, p. 19.

⁽³⁾ OJ No L 169, 18. 7. 1968, p. 1.

⁽⁴⁾ OJ No L 187, 13. 7. 1991, p. 1.

⁽⁵⁾ OJ No L 298, 12. 11. 1985, p. 9.

⁽⁶⁾ OJ No L 289, 19. 10. 1991, p. 23.

⁽⁷⁾ OJ No L 55, 1. 3. 1988, p. 31.

⁽⁸⁾ OJ No L 112, 4. 5. 1991, p. 57.

⁽⁹⁾ OJ No L 143, 10. 6. 1988, p. 23.

⁽¹⁰⁾ OJ No L 300, 31. 10. 1991, p. 31.

COMMISSION REGULATION (EEC) No 3398/91

of 20 November 1991

on the sale by invitation to tender of skimmed-milk powder for the manufacture of compound feedingstuffs and amending Regulation (EEC) No 569/88

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EEC) No 1630/91 ⁽²⁾, and in particular Articles 7 (5) and 28 thereof,

Whereas Council Regulation (EEC) No 1014/68 of 20 July 1968 laying down general rules for the public storage of skimmed-milk powder ⁽³⁾, as last amended by Regulation (EEC) No 3577/90 ⁽⁴⁾, sets the resale requirements for skimmed-milk powder held by intervention agencies; whereas there is now a possibility of disposing of skimmed-milk powder from public stocks, owing to a fall in the quantities available on the market, in particular for use in the manufacture of compound feedingstuffs for calves; whereas supplies should therefore be provided for this purpose by sales of skimmed-milk powder from public stocks;

Whereas Commission Regulation (EEC) No 1725/79 of 26 July 1979 on the rules for granting aid to skimmed milk processed into compound feedingstuffs and skimmed-milk powder intended for feed for calves ⁽⁵⁾, as last amended by Regulation (EEC) No 3480/90 ⁽⁶⁾, should be referred to in connection with the use to which skimmed milk must be put;

Whereas in order to ensure equality of access for all potential purchasers, to arrive at a selling price reflecting market conditions and to provide for effective verification of the quantities sold, a standing invitation to tender should be organized;

Whereas Commission Regulation (EEC) No 569/88 of 16 February 1988 laying down common detailed rules for verifying the use and/or destination of products from intervention ⁽⁷⁾, as last amended by Regulation (EEC) No 3380/91 ⁽⁸⁾ will be applicable; whereas an addition must therefore be made to its Annex;

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

HAS ADOPTED THIS REGULATION:

Article 1

Skimmed-milk powder bought in pursuant to Article 7 (1) of Regulation (EEC) No 804/68 and taken into storage before a date to be determined shall be sold under the terms laid down herein.

Article 2

The skimmed-milk powder shall be sold by means of a standing invitation to tender organized by each intervention agency.

Article 3

Tenders shall not be valid unless the tenderer makes a written undertaking to:

- (a) denature the powder or have it denatured or process the powder or have it processed into compound feedingstuffs in accordance with Article 2 or 4 of Regulation (EEC) No 1725/79, within 60 days of the closing date for the submission of tenders in response to each round of the invitation to tender, as specified in Article 4 (3) of this Regulation;
- (b) apply or have an application made for the aid granted pursuant to Regulation (EEC) No 1725/79 and observe the provisions of that Regulation or ensure that they are observed.

Article 4

1. A standing invitation to tender shall be published in the *Official Journal of the European Communities* at least eight days before the first closing date laid down for the submission of tenders.

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 150, 15. 6. 1991, p. 19.

⁽³⁾ OJ No L 173, 22. 7. 1968, p. 4.

⁽⁴⁾ OJ No L 353, 17. 12. 1990, p. 23.

⁽⁵⁾ OJ No L 199, 7. 8. 1979, p. 1.

⁽⁶⁾ OJ No L 336, 1. 12. 1990, p. 68.

⁽⁷⁾ OJ No L 55, 1. 3. 1988, p. 1.

⁽⁸⁾ OJ No L 319, 21. 11. 1991, p. 48.

2. The intervention agency shall organize tendering rounds during the term of validity of the standing invitation to tender.

To this end it shall draw up a notice of invitation to tender indicating in particular the closing date and address for submission of tenders.

It shall also, for the skimmed-milk powder held by it, indicate :

- (a) the locations of the warehouses where the powder to be sold is in store ;
- (b) the quantity held for sale in each warehouse.

3. The period for the submission of tenders for each round shall expire at 12 noon on the second and fourth Tuesdays of the month, except for the fourth Tuesday in December. If Tuesday is a public holiday the period shall be extended to 12 noon on the next working day.

Article 5

1. The intervention agency shall keep up to date and make available to interested parties on request a list of the information referred to in point (a) of the third subparagraph of Article 4 (2) and the corresponding quantities. It shall also publish regular updates of the list in an appropriate form, to be indicated in the notice of invitation to tender referred to in Article 4 (2).

2. The intervention agency shall make the necessary arrangements to enable interested parties to examine at their own expense, before submitting a tender, samples of the skimmed-milk powder put up for sale.

Article 6

1. Tenders under each round shall be submitted by registered letter or delivered by hand to the intervention agency against acknowledgement of receipt, or by any other means of written telecommunication.

Tenders shall be submitted to the intervention agency holding the skimmed-milk powder for which an offer is made.

2. Tenders shall state :

- (a) the name and address of the tenderer ;
- (b) the quantity desired ;
- (c) the price tendered per 100 kilograms, not including national taxes, ex-warehouse, in ecus ;
- (d) the Member State in which denaturing or processing into compound feedingstuffs is to take place ;
- (e) if appropriate, the warehouse where the skimmed-milk powder is and if desired a substitute warehouse.

3. A tender shall not be valid unless :

- (a) it relates to at least 10 tonnes ; if, however, the quantity available in a warehouse is less than 10 tonnes, that amount shall be the minimum quantity for which an offer may be made ;
- (b) it is accompanied by the undertaking referred to in Article 3 ;
- (c) it is accompanied by a statement by the tenderer waiving all right of complaint with regard to the quality and characteristics of any skimmed-milk powder assigned ;
- (d) proof is furnished that the tendering security provided for in Article 7 (1) has been lodged by the tenderer for the tendering round in question before expiry of the period set for submission of tenders.

4. Tenders may not be withdrawn after expiry of the time limit provided for in Article 4 (3).

Article 7

1. For the purposes of this Regulation the maintenance of tenders after the closing date laid down for submission of tenders, the lodging of the processing security referred to in Article 8 (2) and the payment of the price within the time limit laid down in Article 1 (2) shall constitute primary requirements compliance with which shall be guaranteed by the lodging of a tendering security of ECU 30 per tonne.

2. The tendering security shall be lodged in the Member State in which the tender is submitted.

Article 8

1. A minimum selling price shall be fixed on the basis of the tenders received under each round and in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68.

It may be decided to make no award under the round.

2. The amount of the processing security shall be fixed per 100 kilograms of skimmed-milk powder at the same time as the minimum selling price and in accordance with the same procedure.

The purpose of the processing security shall be to ensure fulfilment of the primary requirement concerning the use of the skimmed-milk powder in accordance with Article 3 within the time limit provided for.

Article 9

1. Tenders shall be rejected if the price offered is lower than the minimum price.

2. Where the acceptance of two or more tenders offering the same price for skimmed-milk powder in a particular warehouse would lead to contracts being awarded in excess of the quantity available, the award shall be made by allocation of the quantity available in proportion to the quantities tendered for. However, should such allocation lead to the award of quantities of less than five tonnes, the award shall be made by drawing lots.

3. Rights and obligations arising in connection with the invitation to tender shall not be transferable.

Article 10

1. Each tenderer shall immediately be notified by the intervention agency of the outcome of his participation in a tendering round.

2. Within the period specified in Article 11 (2) the successful tenderer shall, before the removal of the skimmed-milk powder, pay the intervention agency the amount corresponding to his tender, for each quantity that he wishes to withdraw.

3. Except in cases of *force majeure*, if the successful tenderer has not paid for the skimmed-milk powder within the prescribed period the tendering security referred to in Article 7 (1) shall be forfeit and the sale cancelled in respect of the remaining quantities.

Article 11

1. When the amount referred to in Article 10 (2) has been paid and the security referred to in Article 8 (2) has been lodged the intervention agency shall issue a removal warrant indicating:

- (a) the quantity in respect of which the abovementioned requirements have been met;
- (b) the warehouse in which the skimmed-milk powder is in store;
- (c) the final date for removal of the skimmed-milk powder;
- (d) the final date for denaturing or processing into compound feedingstuffs.

2. Within 30 days of the closing date for the submission of tenders the successful tenderer shall remove the skimmed-milk powder awarded to him. Removal may be effected by instalments.

Except in cases of *force majeure*, if the skimmed-milk powder has not been removed within the period laid

down in the first subparagraph, the cost of storage of the powder shall be borne by the successful tenderer from the day following the day on which the period expired.

3. The skimmed-milk powder shall be handed over by the intervention agency in packages bearing a reference to this Regulation in clearly visible and legible characters.

Article 12

The tendering security referred to in Article 7 (1), the minimum price referred to in Article 8 (1) and the processing security referred to in Article 8 (2) shall be converted into national currency at the agricultural conversion rate applicable on the closing date for the submission of tenders under the round in question.

Article 13

Member States shall notify the Commission by Tuesday of each week at the latest of the quantities of skimmed-milk powder that left storage in the previous week.

Article 14

The following point 41 and the relevant footnote are hereby added to Part II (Products subject to a use and/or destination other than that mentioned under I) of the Annex to Regulation (EEC) No 569/88:

- ‘41. “Commission Regulation (EEC) No 3398/91 of 20 November 1991 on the sale by invitation to tender of skimmed-milk powder for the manufacture of compound feedingstuffs⁽⁴¹⁾:

— Section 104:

“To be denatured or processed (Regulation (EEC) No 3398/91)”

— Section 106:

“The final date for denaturing or processing into compound feedingstuffs.”

⁽⁴¹⁾ OJ No L 320, 22. 11. 1991, p. 16.’

Article 15

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

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

Done at Brussels, 20 November 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

COMMISSION REGULATION (EEC) No 3399/91

of 21 November 1991

amending Regulation (EEC) No 137/79 on the institution of a special method of administrative cooperation for applying intra-Community treatment to the fishery catches of vessels of Member States

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal, and in particular Articles 27 and 396 thereof,

Whereas Commission Regulation (EEC) No 137/79 ⁽¹⁾, as last amended by Regulation (EEC) No 3634/89 ⁽²⁾, introduced a special method of administrative cooperation for applying intra-Community treatment to the fishery catches of vessels of Member States;

Whereas under the terms of Council Regulation (EEC) No 1911/91 ⁽³⁾ and with effect from 1 July 1991, the Canary Islands became part of the customs territory of the Community;

Whereas Regulation (EEC) No 137/79 should be amended accordingly,

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

Done at Brussels, 21 November 1991.

For the Commission

Christiane SCRIVENER

Member of the Commission

Article 1

In Article 14a of Regulation (EEC) No 137/79, paragraphs 1 and 2 shall be replaced by the following:

'1. For the purposes of Articles 1 and 2, vessels definitively entered in the registers of the competent authorities at local level (registros de base) of Ceuta or Melilla shall not be considered as vessels of a Member State.

2. The customs authorities at the port of registry or home port of a fishing vessel definitively entered in the registers of the competent authorities at local level (registros de base) of Ceuta or Melilla shall not be entitled to issue booklets of T2M forms to such a vessel.'

Article 2

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

It shall apply with effect from 1 July 1991.

⁽¹⁾ OJ No L 20, 27. 1. 1979, p. 1.

⁽²⁾ OJ No L 355, 5. 12. 1989, p. 22.

⁽³⁾ OJ No L 171, 29. 6. 1991, p. 1.

COMMISSION REGULATION (EEC) No 3400/91
of 21 November 1991
introducing a countervailing charge on apples originating in Hungary

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables⁽¹⁾, as last amended by Regulation (EEC) No 1623/91⁽²⁾, and in particular the second subparagraph of Article 27 (2) thereof,

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

Whereas Commission Regulation (EEC) No 1875/91 of 28 June 1991 fixing for the 1991/92 marketing year the reference prices for apples⁽³⁾ fixed the reference price for products of Quality class I at ECU 44,61 per 100 kilograms net for the month of November 1991;

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

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

Regulation (EEC) No 3811/85⁽⁵⁾, the prices to be taken into consideration must be recorded on the representative markets or, in certain circumstances, on other markets;

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

Whereas, if the system is to operate normally, the entry price should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Council Regulation (EEC) No 1676/85⁽⁶⁾, as last amended by Regulation (EEC) No 2205/90⁽⁷⁾,
- for the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent,

HAS ADOPTED THIS REGULATION:

Article 1

A countervailing charge of ECU 8,02 per 100 kilograms net is applied to apples (CN codes 0808 10 91, 0808 10 93 and 0808 10 99) originating in Hungary.

Article 2

This Regulation shall enter into force on 23 November 1991.

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽²⁾ OJ No L 150, 15. 6. 1991, p. 8.

⁽³⁾ OJ No L 168, 29. 6. 1991, p. 70.

⁽⁴⁾ OJ No L 220, 10. 8. 1974, p. 20.

⁽⁵⁾ OJ No L 368, 31. 12. 1985, p. 1.

⁽⁶⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁷⁾ OJ No L 201, 31. 7. 1990, p. 9.

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

Done at Brussels, 21 November 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

COMMISSION REGULATION (EEC) No 3401/91

of 21 November 1991

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EEC) No 3577/90 ⁽²⁾, and in particular the fourth subparagraph of Article 16 (2) thereof,

Having regard to the opinion of the Monetary Committee,

Whereas Article 16 of Regulation (EEC) No 2727/75 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products in the Community may be covered by an export refund;

Whereas export possibilities exist for a quantity of 750 000 tonnes of soft wheat flour to certain destinations; whereas the procedure laid down in Article 9 (4) of Regulation (EEC) No 891/89 ⁽³⁾, as last amended by Regulation (EEC) No 675/91 ⁽⁴⁾, should be used; whereas account should be taken of this when the refunds are fixed;

Whereas Article 2 of Council Regulation (EEC) No 2746/75 of 29 October 1975 laying down general rules for granting export refunds on cereals and criteria for fixing the amount of such refunds ⁽⁵⁾ provides that when refunds are being fixed, account must be taken of the existing situation and the future trend with regard to prices and availabilities of cereals on the Community market on the one hand, and prices for cereals and cereal products on the world market on the other; whereas the same Article provides that it is also important to ensure equilibrium and the natural development of prices and trade on cereal markets and, furthermore, to take into account the economic aspect of the proposed exports and the need to avoid disturbances on the Community market;

Whereas Article 3 of Regulation (EEC) No 2746/75 defines the specific criteria to be taken into account when the refund on cereals is being calculated;

Whereas these specific criteria are defined, as far as wheat and rye flour, groats and meal are concerned, in Article 4 of Regulation (EEC) No 2746/75; whereas furthermore, when the refund on these products is being calculated, account must be taken of the quantities of cereals required for their manufacture; whereas these quantities

were fixed in Commission Regulation No 162/67/EEC ⁽⁶⁾, as last amended by Regulation (EEC) No 2849/91 ⁽⁷⁾;

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

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

Whereas, if the refund system is to operate normally, refunds should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 % a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Council Regulation (EEC) No 1676/85 ⁽⁸⁾, as last amended by Regulation (EEC) No 2205/90 ⁽⁹⁾;
- for the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

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

Whereas the Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 2727/75, exported in the natural state, shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 22 November 1991.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.

⁽³⁾ OJ No L 94, 7. 4. 1989, p. 13.

⁽⁴⁾ OJ No L 75, 21. 3. 1991, p. 30.

⁽⁵⁾ OJ No L 281, 1. 11. 1975, p. 78.

⁽⁶⁾ OJ No L 128, 27. 6. 1967, p. 2574/67.

⁽⁷⁾ OJ No L 272, 28. 9. 1991, p. 62.

⁽⁸⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁹⁾ OJ No L 201, 31. 7. 1990, p. 9.

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

Done at Brussels, 21 November 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

to the Commission Regulation of 21 November 1991 fixing the export refunds on cereals
and on wheat or rye flour, groats and meal

(ECU/tonne)

Product code	Destination (1)	Amount of refund
0709 90 60 000	—	—
0712 90 19 000	—	—
1001 10 10 000	—	—
1001 10 90 000	04	120,00
	05	40,00
	06	35,00
	02	0
1001 90 91 000	—	—
1001 90 99 000	04	77,00
	05	32,00
	09	99,00 (2)
	02	20,00
1002 00 00 000	03	31,00
	07	85,00
	02	30,00
1003 00 10 000	08	80,00
	02	0
1003 00 90 000	04	31,00
	05	32,00
	02	30,00
1004 00 10 000	—	—
1004 00 90 000	—	—
1005 10 90 000	—	—
1005 90 00 000	04	60,00
	02	0
1007 00 90 000	—	—
1008 20 00 000	—	—
1101 00 00 100	01	122,00
1101 00 00 130	01	114,00
1101 00 00 150	01	105,00
1101 00 00 170	01	97,00
1101 00 00 180	01	91,00
1101 00 00 190	—	—
1101 00 00 900	—	—
1102 10 00 600	01	122,00
1102 10 00 900	—	—
1103 11 10 100	01	200,00
1103 11 10 200	01	200,00
1103 11 10 500	01	0
1103 11 10 900	01	0
1103 11 90 100	01	122,00
1103 11 90 900	—	—

(¹) The destinations are identified as follows :

- 01 All third countries,
- 02 Other third countries,
- 03 Switzerland, Austria and Liechtenstein,
- 04 Switzerland, Austria, Liechtenstein, Ceuta and Melilla,
- 05 The Soviet Union,
- 06 Algeria,
- 07 Zone II b),
- 08 Turkey,
- 09 People's Republic of China.

(²) Refund fixed under the procedure laid down in Article 9 (4) of amended Regulation (EEC) No 891/89 in respect of a quantity of 750 000 tonnes of soft wheat flour destined for the People's Republic of China.

NB: The zones are those defined in Commission Regulation (EEC) No 1124/77 (OJ No L 134, 28. 5. 1977, p. 53), as last amended by Regulation (EEC) No 3049/89 (OJ No L 292, 11. 10. 1989, p. 10).

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 31 July 1991

declaring the compatibility of a concentration with the common market

(Case No IV/M012 Varta/Bosch)

Council Regulation (EEC) No 4064/89

(Only the German text is authentic)

(91/595/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Whereas :

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings ⁽¹⁾, and in particular Article 8 (2) thereof,

Having regard to the request of the German *Bundeskartellamt* of 18 March 1991 for referral of the case according to Article 9 (2) of the aforesaid Council Regulation,

Having regard to the Commission Decision of 12 April 1991 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the opinion of the Advisory Committee on Concentrations ⁽²⁾,

I. CONCENTRATION

- (1) The proposed concentration was notified on 25 February 1991. It concerns the creation of a new company, Starterbatterie GmbH, by Varta Batterie AG (Varta) and Robert Bosch GmbH (Bosch), to which the companies will transfer their starter battery business. Varta will acquire a 65 %, and Bosch a 35 % interest in the new company.
- (2) The notified operation is a concentration within the meaning of Article 3 (1) (b) and (2) of Council Regulation (EEC) No 4064/89.
- (3) Varta and Bosch will control the new company jointly. A specific agreement concluded by the parties (*Rahmenvertrag*) provides for participation of both parent companies in the management and supervisory board of the new company. In particular, both parties will have the right to appoint managing directors of the joint venture. A number of decisions directly related to the management of the new company will have to be taken by a 75 % majority. This applies, for example, to the approval of detailed budget plans for the joint venture and to the appointment and dismissal of the directors and members of the executive and supervisory boards of the subsidiaries of the new company, thus ensuring the influence of both parties in the management of Starterbatterie GmbH. Furthermore, Varta and Bosch will be equally represented on the supervisory board of the joint venture.

⁽¹⁾ OJ No 395, 30. 12. 1989, p. 1, amended version : OJ No L 257, 21. 9. 1990, p. 13.

⁽²⁾ OJ No C 302, 22. 11. 1991, p. 6.

- (4) The new company will perform on a lasting basis all the functions of an autonomous economic entity. Starterbatterie GmbH will carry on the development, production and distribution of starter batteries. It will be economically independent of its parent companies and will be responsible for its own commercial policy.
- (5) Varta and Bosch will transfer all their national and international starter battery activities to the joint venture, including product-related R&D, production and distribution facilities, and will withdraw from such activities. Although Bosch will sell some starter batteries produced by the joint venture through its distribution network for other automotive parts, it will act as a commission agent only on the instructions and for the account of Starterbatterie GmbH. From an economic point of view, it cannot be considered likely that one of the companies will re-enter the market as an independent supplier. Varta will continue to produce other battery products (traction, stationary consumer batteries), whereas Bosch will continue its traditional activity as a producer of automotive parts. Nevertheless, the Commission does not have any indication that the creation of the joint venture will have anti-competitive effects on the abovementioned activities of the two companies. In this respect there is no risk of coordination of the competitive behaviour of the undertakings which remain independent.

II. COMMUNITY DIMENSION

- (6) The proposed concentration has a Community dimension. Worldwide turnover (Varta: ECU 1 billion, Bosch: ECU 15 billion) and Community-wide turnover (Varta: ECU 0,7 billion Bosch: ECU 11 billion) of the parties for 1989 exceed Article 1 (2) of Regulation (EEC) No 4064/89 thresholds. Neither Varta nor Bosch achieve more than two-thirds of their Community turnover in one and the same Member State.

III. THE PARTIES

- (7) Varta is the most important battery producer (starter batteries, industry batteries, consumer batteries) in Germany and one of the most important battery manufacturers in the Community. As far as starter batteries are concerned, the company is active in every Member State as a supplier to vehicle producers as well as to retailers.
- (8) Bosch is *inter alia* a worldwide producer of automotive parts, including starter batteries; telecommunication equipment and consumer goods. Up to

now, Bosch has offered starter batteries mainly to the replacement market, where it is well represented all over Europe. Bosch supplies the original equipment market for starter batteries mainly in Spain, through its Spanish subsidiary Femsa.

IV. DECISIONS TAKEN BY THE COMMISSION DURING THE PROCEEDINGS

1. The Decision to initiate proceedings

- (9) After examination of the notification, the Commission concluded that the notified operation raised serious doubts as to its compatibility with the common market. It therefore decided on 12 April 1991 to initiate proceedings pursuant to Article 6 (1) (c) of Regulation (EEC) No 4064/89.

2. The Statement of Objections

- (10) Following investigations carried out amongst a broad range of undertakings operating in the affected markets as competitors or customers, the Commission sent the parties, on 24 May 1991, a Statement of Objections in which it raised objections regarding the replacement market for starter batteries in Germany and Spain.
- (11) The objections set out in the Statement of Objections may be summarized as follows:

(a) *Relevant product market*

- (12) The starter battery sector has to be divided into two distinct product markets:
- the original equipment market, which comprises the supply of starter batteries for vehicle producers for the initial equipment of new vehicles;
 - the replacement market, which comprises the supply of replacement batteries to the retail market for the equipment of used cars.
- (13) In general terms the distinction between the two product markets is not mainly based on a difference in the product itself or on the function of the product. It resides mainly in the fact that the conditions of competition differ significantly on the two markets, as a consequence of which the producers have to adapt their commercial and entrepreneurial policies to the different requirements of the two sales markets.
- (14) In general terms, the original equipment market is characterized by its specific demand side, the automobile industry, which gives the market specific features. In particular, supply to the original equipment market implies a steady demand of a reduced number of battery types [Bosch (<40), Varta (>100)] by a small number of clients. According to

the notification of the parties concerned Varta sold [...] %⁽¹⁾ and Bosch [...] % of their respective sales volume to five clients of the original equipment market. As to the nature of the product, batteries for the original equipment market have to correspond to the specifications required by the car manufacturers (Bosch, Varta, letter of 8 March 1991, page 4), they are supplied charged and on specific pallets (Bosch, letter of 30 October 1990, page 2). The quality and standard including zero-defect reliability of the products is prescribed and controlled by the car manufacturers. Supply to the original equipment market is generally linked to R&D cooperation for new products with the car manufacturers which enables the suppliers to follow the latest technical developments in the market. Distribution on the original equipment market means just-in-time delivery to a small number of clients.

- (15) Supply to the replacement market, on the other hand, implies strong seasonal fluctuations in demand for a larger number of battery types (Bosch : >200, Varta : <300), with a variety of different distributors ranging from purchase organizations, wholesalers, car producers and department stores to ultimate dealers. As to the nature of the product, replacement batteries, even if sold to car manufacturers, are adapted to current standards so that the same type can be used in some cars of different producers (Varta, Bosch, letter of 8 March 1991, page 4). They are mainly delivered as dry batteries. The quality and standards are not controlled by the customers (Varta, Bosch, letter of 8 March 1991, page 5) nor is there any feedback or cooperation as to R&D for new products. Distribution to the sales markets requires the existence of a distribution and service network system because a number of clients require delivery to the local outlets and service.

- (16) The distinction between the original equipment market and the replacement market is common practice in the industry (Bosch, letter of 30 October 1990, page 2). It has in general terms been confirmed by the Court of Justice for heavy goods vehicle tyres [see Court of Justice, *Industrie Michelin v. Commission*⁽²⁾]. The parties in the present case consider that such a differentiation cannot be justified but have nevertheless in practice made a clear distinction between the two markets. In the organization of their new joint venture they establish separate divisions for the original equip-

ment and replacement market with different managing directors (*Rahmenvertrag* 3.1.).

(b) *Relevant geographical markets*

- (17) The replacement markets for starter batteries in Germany and Spain are still considered as national markets. Investigation has shown sufficiently homogeneous conditions of competition in both countries, which differ appreciably from the conditions of competition in the other Member States, to establish separate geographic markets.
- (18) Two factors indicate this :
- the market shares of the manufacturers are very different in each Member State,
 - as shown by the information communicated by the parties and their competitors, the manufacturers are able to charge in Germany and Spain for the same types of batteries different prices to those which they charge in the other Member States.
- (19) These differences, which continue to exist despite the absence of any specific legal barriers, may be attributed to a range of causes which taken as a whole establish appreciably different conditions of competition in the various Member States.
- (i) *Nature and characteristics of the product*
- (20) Different product ranges reflecting different requirements of the demand side are sold in the various Member States.
- (21) Starter batteries are adapted to the specific electrical requirements of the different types of vehicles. Despite the fact that one type of replacement battery can be used for a number of different types of cars, more than 400 different types of replacement batteries are currently produced in the Community. Each type varies in relation to size, power, etc.
- (22) The importance of sales of these different types varies in the respective Member States. The different stock of cars in the different Member States influences the battery types sold in the Member States. The four large producers, Varta, Bosch, CEAC and Magneti Marelli, having together more than 50 % of the market in Germany, Spain, France and Italy, were asked for their 10 most popular battery types (best sellers) in each of these Member States, where about 20 million batteries were sold in 1990. The results are the following :

⁽¹⁾ In the published version of the Decision, some information has hereinafter been omitted, pursuant to the provisions of Article 17 (2) of Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets.

⁽²⁾ 1983 ECR. 3461.

— the total number of different battery types included in the 10 best sellers of the four suppliers in the four Member States mentioned above is 77,

— 59 of these types are among the best sellers in one Member State (volume : 2,3 million),

— 11 types are among the best sellers in two Member States (volume : 1 million),

— three types are among the best sellers in three Member States (volume : 0,5 million),

— four types are among the best sellers in all four Member States (volume : 2,3 million).

(23) Given the large variety in types offered in the Community, replacement batteries cannot be regarded as homogeneous products. Therefore the different product ranges sold in the various Member States constitute a structural difference in the conditions of competition.

(24) A change in this respect cannot be expected in the near future. This is particularly because the national product range of replacement batteries is related to the stock of vehicles in a country, the composition of which has not significantly changed in the last few years. Taking into account that the life-cycle of a battery of a new car is approximately five years, even a strong alignment in the stock of new vehicles would have only a very small effect on the replacement battery markets within the near future.

(ii) Buyer preferences

(25) The preferences of buyers for branded replacement starter batteries are evident in every Member State and they differ significantly in brands favoured.

(26) On the Italian market all large suppliers sell their batteries — with a few exceptions — under their own brand. In Spain and Germany the share of manufacturer brands is estimated at above 80 %. In France, the share of manufacturer brands has declined in the past as a result of the expansion of modern distribution systems. According to Fiat's estimates, it is currently about 60 % of the sales volume. Generally, shares in value terms are higher than shares in volume terms, because of the higher prices charged for manufacturer brands.

(27) The fact that suppliers use different brands in different Member States can be demonstrated by the information provided by Bosch and Varta. In Germany Bosch sells (a very substantial share) of its branded batteries under the 'Bosch' label whereas

in France and Spain it sells (a very substantial share) and (a very substantial share) respectively under its 'FEMSA' label. In Spain and Germany Varta sells (a substantial share) and (a substantial share) respectively of its branded batteries under the 'Varta' label, whereas it sells in France (a substantial share) under its brand 'Baroclem' (Varta, Bosch, 8 March 1991, Annexes 1a and 1b).

(iii) Structure of the demand side

(28) An important element establishing different conditions of competition is the structure of the demand side. There are substantial differences in the spread and importance of the different distribution channels present in each Member State.

(29) This is confirmed by the notifying parties as well as by competitors and checked by an investigation. The results of this investigation show, for example :

— the share of the replacement batteries sold through the own distribution network of battery producers differs from more than 20 % in Member State [...] and in Member State [...] to less than 10 % in Member State [...] and in Member State [...];

— replacement batteries sold through the distribution channels of the vehicle producers, their dealers or importers account for about 20 % of the market in France and 15 % in Germany but less than 10 % in Spain and less than 5 % of the Italian market;

— the distribution channel of independent dealers of automotive parts is in every Member State the most important distribution channel but its share in the total replacement market differs from about 40 % in France to above 80 % in Italy. Also within this distribution channel the structure of the clients is very different. In Italy and Spain this distribution channel is characterized in particular by a large share of ultimate dealers, followed by wholesalers; in Germany and the United Kingdom it is dominated by wholesalers; and in France by purchasing organizations of wholesalers;

— department stores and supermarkets are significant only in France (above 20 % of the market) but not in Spain, Germany and Italy (less than 5 %);

— oil companies have a small share in the German and French market (about 5 %) but are of no relevance in Spain, Italy and the United Kingdom (less than 1 %).

- (30) Although a tendency towards concentration on the demand side is to be expected, particularly in Germany and Spain where modern distribution systems are not yet very important, it cannot be considered that these developments will lead to radical change in the structure of the distribution systems in these Member States in the near future.

(iv) Supply side and barriers to entry

- (31) The concentration of supply varies considerably from one Member State to another. The more supply is concentrated in one market, the more difficult it will be for actual or potential competitors to increase their market shares or to penetrate a market. Market-related barriers do still exist, which is confirmed by the fact that although there have been no legal or other trade barriers to entry for batteries within the European Community for years (apart from customs duty levied in Spain until 31 December 1992), significant market penetration in the five largest Member States in most cases only became possible through acquisition of a national company or of an existing plant. Tudor, after an unsuccessful attempt to enter the German market on its own, has acquired the German company Hagen.

(c) *Market dominance*

- (32) The proposed concentration would give the new entity a dominant position in Germany and Spain, with the result that effective competition would be significantly impeded, because of the following factors:

The German market

The market share of the new entity would amount to 44,3 %.

The lead of the order of (> 25 %) over the next largest competitors would be considerable.

The other competitors are small and medium-sized battery specialists.

Varta/Bosch has greater financial strength than the most important competitors.

The new entity has leading production capacity in comparison with its nearest competitors and furthermore the existing use of capacity by its nearest competitors is already high.

The other large European producers on the German market have only small market shares.

The Spanish market

The market share of the new entity would amount to 44,5 %.

The existence of an equally strong competitor, Tudor SA, could lead for several reasons to alignment of the behaviour of both competitors.

In particular the absence of other large actual competitors able to counter any alignment of the behaviour of the main competitors on the Spanish market is noted.

V. CHANGES AFTER SENDING THE STATEMENT OF OBJECTIONS

- (33) Following the Statement of Objections an oral hearing of the parties was held. As a result the Commission maintained its objections as to the German market.

- (34) Since the Statement of Objections was sent, the following factual changes have occurred:

- Fiat has acquired the French battery producer CEAC, which has a market share of between 2 and 5 % in Germany;
- the Fiat group has entered into an agreement to acquire via CEAC the German battery producer Sonnenschein. Sonnenschein has a market share of between 5 and 10 % in Germany,

and the following commitments have been entered into by Varta:

- Varta has informed the Commission that it will cut its cooperative links with the Deta/Mareg group of companies. It will, for this purpose, within an agreed period:
 - terminate its licence agreement with the Deta/Mareg group and will not prolong Deta/Mareg's right to use any of Varta's property rights. Any new licence agreements on starter batteries will only be concluded with the consent of the Commission,
 - end any overlapping between membership of the management and supervisory board of Varta on the one hand and of the Deta/Mareg group on the other hand.

VI. IMPLICATIONS OF FACTUAL CHANGES AND COMMITMENTS IN THE AFFECTED MARKETS

- (35) The abovementioned concentration projects of Fiat (CEAC and Sonnenschein) and Varta's commitment constitute an important change in the market

structure and have an influence on the assessment of the concentration project Varta/Bosch as far as the creation of a dominant position is concerned. They do not however influence the Commission's overall assessment of the definition of the relevant product and the relevant geographic markets.

- (36) The Advisory Committee on Concentrations expressed on 17 July 1991 the majority opinion that the factual changes were insufficient to alter the appraisal given in the Statement of Objections. The Commission has taken the utmost account of the Advisory Committee's opinion in drawing up this Decision.

1. Relevant product market

- (37) As to the relevant product market, the parties have claimed that the original equipment sector and the replacement sector for starter batteries belong to the same product market. They have nevertheless confirmed, before the oral hearing, that technical and qualitative differences exist between the two markets, and they have organized the new joint venture by clearly separating the directorates dealing with the original equipment activities and those dealing with the replacement market activities. Given the reasons set out in the Statement of Objections and the fact that distinguishing between the original equipment market and the replacement market for starter batteries is common practice in the industry, the Commission maintains its original assessment.

2. Relevant geographic market

- (38) The parties further stated that the relevant geographic market for replacement batteries is the European market. They object to the Commission's appraisal that different conditions of competition exist in different Member States. In particular they attack the following criteria put forward to establish the existence of these different conditions of competition:

- (39) (a) As to the nature and characteristics of the product, the parties state that batteries are homogeneous products and that no different product ranges are offered in different Member States. Nevertheless, Varta has provided information about the 20 most popular battery types (best sellers) it sells in the five largest Member States (Germany, Spain, France, Italy, United Kingdom). Analysis of these shows that only a very small number of battery types are best sellers in more than one Member State. The results were the following:

- the total number of different battery types included amongst the 20 best sellers in the five Member States mentioned above is 77; these represent 69 % of the total volume of sales (volume: [...] million),
- 62 of these types are among the best sellers in one Member State (volume: [...] million),
- eight types are among the best sellers in two Member States (volume: [...] million),
- three types are among the best sellers in three Member States (volume: [...] million),
- two types are among the best sellers in four Member States (volume: [...] million),
- one type is among the best sellers in five Member States (volume: [...] million).

- (40) Furthermore it cannot be expected, as the parties presume, that the differences in the product ranges existing in the different Member States will decrease to a significant extent, because in the last 20 years the percentage share of imported vehicles has increased. On the one hand, vehicle imports into the Member States can be very different. Approximately one third of imports into Germany are, for example, Japanese cars, which is not the case for France and Italy. On the other hand, it cannot be expected that a strong rapprochement of the different product ranges will take place in the near future.

- (41) (b) With regard to the assessment of existing consumer preferences and in particular to the importance of brands in the German market, the estimates of the Commission (about 80 %) and the parties (78,8 %) correspond as to the share of the manufacturer's brand in the market. Furthermore the parties have declared that they sell (a very substantial share) % (Bosch) and about (a very substantial share) % (Varta, dual brands included) of their batteries under their own brands (Varta, Bosch, letter of 8 March 1991, Annexes 1a and 1b) in Germany.

- (42) (c) As to the structure of the supply side, the parties claim that the Commission has not sufficiently taken into consideration the imports into the German and Spanish markets. For the German market the proportion of imports in value is estimated by the Commission to be about 15 %, by the parties to be 16,4 %, having increased since 1975 and been stagnant in the last years. This difference cannot be considered substantial enough to change the general assessment.

- (43) (d) The parties further claimed that the Commission should have based its analysis on the import volume in units. With regard to the question whether the assessment has to be based on the imports measured in value or in volume, the Commission considers that, in particular in this case, only the figures in value are reliable. Firstly there is large uncertainty in the import quotas in terms of volume: the official import statistics are measured in weight not in units which makes further estimates necessary; and they include group internal imports (e.g. Varta's group internal exchange of starter batteries within the Community amounts to [...] million batteries) and sales to competitors (more than [...] million batteries in the Community). Secondly, import figures in volume do not reflect the qualitative significance from a competitive point of view. Figures in volume do not weight the different types of batteries, e.g. batteries for motor cycles or trucks. Therefore it is considered as justified and necessary to base the assessment on imports in value as they reflect the evaluation of the market for the product concerned and take into account all other elements influencing competition.

3. Market dominance

- (44) The abovementioned factual changes have, in contrast, an impact on the legal assessment as to whether the concentration would create a dominant position for the new entity on the German market.

(a) *Acquisitions by Fiat*

- (45) Fiat/Magneti Marelli's acquisition of CEAC and Sonnenschein would change the structural market conditions in several respects.
- (46) Due to the acquisitions of CEAC and Sonnenschein, Fiat's market share in Germany will increase from 1 % to more than 10 %.
- (47) More important than the pure increase of market share is the substantial material change of the competitive potential that accompanies this increase.
- (48) Before the two acquisitions, Fiat/Magneti Marelli's, as well as CEAC's, market potential in Germany was largely restricted although both companies had financial strength and, with regard to Fiat, also spare capacity. The reason for this restricted market potential was that Fiat and CEAC did not have a physical presence in the German market. In particular they did not have well-known German brands and they had at their disposal only a marginal distribution network. Fiat and CEAC therefore had to be considered in Germany as a kind of niche supplier, e.g. for wholesalers specialized in the

distribution of French or Italian automotive parts. In this respect they could not be regarded as a real alternative to the other suppliers in the market, such as Varta, Bosch, Deta/Mareg, Hoppecke, Tudor/Hagen or Sonnenschein, offering well-known brands and having distribution networks.

- (49) Before the acquisition, Sonnenschein's market potential was even weaker than indicated by its market share because it faced considerable financial difficulties and was confronted with ecological problems. It had planned to reduce its production capacity despite an existing full capacity use.

- (50) The concentration of Fiat, CEAC and Sonnenschein will create substantial synergy effects which give rise to the expectation that the competitive potential of the new entity will be more important than the current market shares achieved through the merger might indicate. In particular, Fiat will be able to compensate its competitive shortcomings. It will have access to a well-known German brand and to all distribution channels. By that improved market access, Fiat's financial strength and its spare capacity will be able to have, for the first time, an impact on the German market. Due to the merger of Fiat/CEAC/Sonnenschein, a strong competitor will emerge whose competitive potential will be significantly larger than the sum of the separate potential of each of the companies before the merger.

(b) *Ending the cooperation with Deta/Mareg*

- (51) Ending the cooperation between Varta and Deta/Mareg will influence the competitive relationship between the two groups in the sense that Deta/Mareg will be able to become an independent operator on the German market, and to enter into effective competition with the new entity Varta/Bosch.
- (52) Before 1977 Deta/Mareg belonged, like Varta, to the Herbert Quandt group of companies. This group was then split up, as a result of which Varta and Deta/Mareg were separated and are now controlled by different members of the Quandt family. According to the information available to the Commission, the two new groups are not linked by cross-shareholding or by any other means that would establish any legal relationship between them.
- (53) Nevertheless, there are two factual elements which can be considered as influencing the competitive relationship between the two groups of companies. Firstly, there is an overlapping membership between the supervisory boards of the two groups. Secondly, Varta and Deta/Mareg have concluded an automatically renewable licence agreement, the complexity of which far exceeds licence agreements that commonly exist between different producers in this industry. The agreement does not,

as can usually be found, refer to a specific technical application or area, but comprises a commitment to cooperation on a full scale ranging from mutual exchange of know-how on the production process, product development, respective use of patents and other intellectual property rights, exchange of R&D, to technical support in the form of exchange of experts for the respective production facilities. The agreement itself states the influence that Varta possesses in Deta and Mareg.

(54) Because of this comprehensive technical cooperation and the personal links on the supervisory boards, a relationship of mutual consideration has been and could be maintained which excludes effective competition between the two companies in the sales markets.

(55) The dissolution of this comprehensive agreement between Varta and Deta/Mareg is considered to break up the cooperative relationship between the two groups. It leads the way for Deta/Mareg to become an independent producer in the market.

(56) Given the complexity of the licence agreement it is considered that this factual change cannot be achieved by immediate dissolution, but has to take into account a certain transitional period during which the companies involved can adapt themselves to the future termination of their cooperation. In this respect the envisaged dissolution would have an immediate effect on the strategies and the competition concept of the companies.

(c) *Impact on competition*

(57) Both factual changes, the increase of the market potential of Fiat in the German market as well as the dissolution of the cooperative relationship between Varta and Deta/Mareg, give rise to the expectation that after the merger Varta/Bosch will not have an appreciable scope of action uncontrolled by its competitors.

(58) In the Statement of Objections, the creation of a possible dominant position of the new entity in the German market was concluded on the basis of an overall appraisal of a number of structural market criteria which primarily favoured the strong market position of the companies. In addition to the market share of 44 % and the lead of about (25 %) over the next competitor, particular account was taken of the fact that the next competitors for the new entity in terms of market share were small and medium-sized companies with far less financial strength and smaller production capacity. Furthermore, the strongest of these competitors, Deta/Mareg with a market share of over 10 %, was not considered to be an independent competitor in

relation to Varta/Bosch because of its comprehensive cooperative links with Varta. It was also taken into account that the big European competitors Fiat and CEAC, being only marginally represented in Germany, could not be expected to gain importance because of their lack of physical presence in the German market. These structural conditions will be different after the factual changes come into force.

(59) Although the market share of Varta/Bosch as well as the lead over the next competitor will remain high, the new entity will face in the future a different competitive environment in two respects.

(60) Fiat will not only be Varta/Bosch's second-strongest competitor in terms of market shares (more than 10 %), but above all it will have in future a number of competition parameters which were in the past only accessible to the national producers like Varta, Bosch, Hoppecke, Deta/Mareg, Tudor/Hagen: Fiat will be able to offer a well-established German brand in a downstream market, which is still significantly characterized by brand preferences. Fiat will through the Sonnenschein network have a physical presence in the German market and thereby be able to react in a rapid and flexible way to clients' demands. It can enlarge its access to the sales market by taking advantage of Sonnenschein's traditional supply relationships. Consequently, the possible scope for action by Fiat in the market is significantly opened in the sense that it will allow competitive moves into all other segments of the market.

(61) This improved access through Sonnenschein into the market will now give Fiat/CEAC the choice to use to a significant extent its financial strength and spare capacity also in the German market, which it could not do before because of its restricted clientele.

(62) Previously, the high combined market share of Varta/Bosch together with the above structural factors supported a possible creation of a dominant market position. However, through the factual changes these structural factors now favour its second most important competitor. As a result it is now at least doubtful if a market share of 44 % and the current lead over the next competitor is sufficient to prove a dominant position.

(63) Furthermore, Deta/Mareg will become an independent player in the near future in the German market. Given the complexity of the licence agreement described above, the termination of the cooperation and the overlapping membership in the supervisory board is considered to be significant. The fact that the links will be terminated only

after a certain period of time does not contradict this appraisal. It will enable the Deta/Mareg group to adapt its commercial strategy to the new situation and thus foster its development as an independent player or as a cooperative partner for a new competitor in the market. Furthermore it has to be expected that the dissolution process will start already in the near future following the need to adapt to the post-cooperation period. This might be accelerated by the specific dynamics which can be expected through the integration of the new five Länder into the German economy.

4. Conclusion

- (64) Under these conditions the Commission deems the concentration of Varta/Bosch compatible with the common market,

HAS ADOPTED THIS DECISION :

Article 1

The proposed concentration notified by Varta Batterie AG and Robert Bosch GmbH is hereby declared compatible with the common market, subject to the obligations set out in Article 2.

Article 2

In order to ensure independence between Deta/Mareg and Varta/Bosch the following obligations are attached to this Decision :

- (a) Varta will terminate the licence agreement with Deta/Mareg at the earliest possible termination date. The agreement provides for termination on 31 December 1993. With the coming into effect of the termination,

any right to use intellectual property rights will also terminate.

Any new licence agreements on starter batteries shall be concluded only with the consent of the Commission ;

- (b) Varta shall ensure that there will be no overlapping membership of the boards (supervisory, management board) of Varta and Deta/Mareg. This obligation will come into force with the next appointment of the Varta supervisory board in the summer of 1993 ;
- (c) For the purpose of this Article,
- (i) Varta means Varta AG, Varta Batterie AG and any company controlled by any part of the Varta Group ;
- (ii) Deta/Mareg means Delton AG, CEAG Industrie-Aktien und Anlagen AG, Deta Akkumulatorenwerke GmbH, Mareg Akkumulatoren GmbH and any company controlled by the Delton/CEAG/Deta/Mareg group of companies.

Article 3

This Decision is addressed to :

Varta Batterie AG,
Am Leineufer 51,
D-3000 Hannover 21,
and

Robert Bosch GmbH,
D-7000 Stuttgart 10.

Done at Brussels, 31 July 1991.

For the Commission

Leon BRITTAN

Vice-President

CORRIGENDA

Corrigendum to Commission Directive 91/507/EEC of 19 July 1991 modifying the Annex to Council Directive 75/318/EEC on the approximation of the laws of Member States relating to analytical, pharmacotoxicological and clinical standards and protocols in respect of the testing of medicinal products

(Official Journal of the European Communities No L 270 of 26 September 1991)

On page 40 in Part 2. D. 1 of the Annex, third line of the second paragraph :

for: '... the assay of all the same requirements ...',

read: '... the assay of all the active ingredients (or of all the excipient constituents subject to the same requirements ...'.

On page 41 in Part 2. E. 1, third line of the fourth paragraph :

for: '... all products such as vaccines, ...',

read: '... all products defined therein. For all controls of biological medicinal products such as vaccines, ...'.

On page 44 in Part 3. I. 2 of the Annex, in the third and fourth lines of the first paragraph and the first line of the second paragraph :

for: 'systematic',

read: 'systemic';

on page 46 in last paragraph of II. A. 2 :

for: '... be suitable modified ...',

read: '... be suitably modified ...',

and on page 47 in the third line of II. H :

for: '... with the products as a result of ...',

read: '... with the product as a result of ...'.

On page 52 in Part 4. G the first line of subparagraph (a) :

for: '(a) the applicant completed an identified programme ...',

read: '(a) the applicant completes on identified programme ...'.
