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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 3345/93
of 6 December 1993
amending Regulation (EEC) No 2137/93 fixing the export refunds in the wine
sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine ⁽¹⁾, as last amended by Regulation (EEC) No 1566/93 ⁽²⁾, and in particular Article 56 (4) thereof,

Whereas Commission Regulation (EEC) No 2137/93 ⁽³⁾, as amended by Regulation (EC) No 3169/93 ⁽⁴⁾, fixing the export refunds on wine for certain destinations, including east European countries, should be amended;

Whereas certain disturbances on the world market and the necessity to carry out control measures necessitate a temporary suspension of export refunds on export to Bosnia-Herzegovina, Croatia, Slovenia, the former Yugoslav Republic of Macedonia, Republics of Serbia and Montenegro, Bulgaria, the Czech Republic, the Slovak Republic, Hungary and Romania;

Whereas exporters of wine sector products benefiting from export refunds should be admitted a delay allowing the completion of appropriate arrangements;

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

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EEC) No 2137/93 is hereby replaced by the Annex hereto.

No application for refunds for the countries mentioned in the Annex, note (1), point (09) (b) can be presented before 1 February 1994.

Article 2

This Regulation shall enter into force on the 14th 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, 6 December 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 84, 27. 3. 1987, p. 1.

⁽²⁾ OJ No L 154, 25. 6. 1993, p. 39.

⁽³⁾ OJ No L 191, 31. 7. 1993, p. 91.

⁽⁴⁾ OJ No L 284, 19. 11. 1993, p. 4.

ANNEX

CN code	Product code	For export to ⁽¹⁾	Refund
2009 60 11 2009 60 19 2009 60 51 2009 60 71 2204 30 91 2204 30 99	100	01 ; 02 ; 04	ECU 1,04/%/vol/hl ⁽²⁾
2204 21 25 2204 21 35 2204 29 25 2204 29 35	110	02 ; 09	ECU 4,40/hl
2204 21 25 2204 21 29 2204 21 35 2204 21 39 2204 29 25 2204 29 29 2204 29 35 2204 29 39	190	02	ECU 1,44/%/vol/hl ⁽²⁾
		09	ECU 1,32/%/vol/hl ⁽²⁾
	910	02 ; 09	ECU 4,40/hl
	910	02 ; 09	ECU 13,80/hl

⁽¹⁾ The destinations are as follows :

01 Venezuela ;

02 All countries of the African continent with the exception of those explicitly excluded under 09 ;

04 All other destinations with the exception of Sweden and those explicitly excluded under 09 ;

09 All other destinations with the exception of the following third countries and territories :

(a) — all countries of the American continent within the meaning of Commission Regulation (EEC) No 208/93 (OJ No L 25, 2. 2. 1993, p. 11),

— Algeria,
— Australia,
— Austria,
— Cyprus,
— Israel,
— Morocco,
— South Africa,
— Switzerland,
— Tunisia and
— Turkey ;

(b) — and until 31 January 1994 :

— Bulgaria,
— the Czech Republic,
— the Slovak Republic,
— Hungary,
— Romania,
— Bosnia-Herzegovina, Croatia, Slovenia and the former Yugoslav Republic of Macedonia, the Republics of Serbia and Montenegro.

⁽²⁾ Potential alcoholic strength by volume as defined in Annex II to Regulation (EEC) No 822/87.

⁽³⁾ Total alcoholic strength by volume as defined in Annex II to Regulation (EEC) No 822/87.

NB : The product codes are defined in Commission Regulation (EEC) No 3846/87 (OJ No L 366, 24. 12. 1987, p. 1), as amended by Regulation (EC) No 3198/93 (OJ No L 288, 23. 11. 1993, p. 10).

COMMISSION REGULATION (EC) No 3346/93

of 6 December 1993

fixing, for 1994, the quota for imports into Spain of pigmeat products from third countries and certain detailed rules for the application thereof

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Council Regulation (EEC) No 491/86 of 25 February 1986 laying down detailed rules concerning quantitative restrictions on imports into Spain of certain agricultural products from third countries⁽¹⁾, as amended by Regulation (EEC) No 3296/88⁽²⁾, and in particular Article 3 thereof,

Whereas the quota for 1993 for imports into Spain of pigmeat products from third countries is set out in the Annex to Commission Regulation (EEC) No 3697/92⁽³⁾; whereas Article 3 of the said Regulation also lays down a minimum rate of progressive increases of the quota of 10 %; whereas this increase still reflects market needs; whereas the quota for 1994 should be fixed;

Whereas, to ensure proper management of the quota, applications for import authorizations should be subject to the lodging of a security to cover, as a primary requirement within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85⁽⁴⁾, as last amended by Regulation (EEC) No 3745/89⁽⁵⁾, the effective importation of the goods; whereas provision should also be made for the quotas to be staggered over the year;

Whereas provision should be made for Spain to communicate information to the Commission on the application of the quota;

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

HAS ADOPTED THIS REGULATION:

Article 1

The quota for 1994 that Spain may apply, pursuant to Article 77 of the Act of Accession, to imports of pigmeat

products from third countries shall be as shown in the Annex hereto.

Article 2

1. The Spanish authorities shall issue import authorizations so as to ensure a fair allocation of the available quantity between the applicants.

The quota shall be staggered over the year as follows:

- 50 % during the period 1 January to 30 June 1994,
- 50 % during the period 1 July to 31 December 1994.

2. Applications for import authorizations shall be subject to the lodging of a security. The primary requirement within the meaning of Article 20 of Regulation (EEC) No 2220/85 covered by the security shall consist in the effective importation of the goods.

Article 3

The minimum rate of progressive increase of the quotas shall be 10 % at the beginning of each year.

The increase shall be added to each quota and the subsequent increase shall be calculated on the basis of the total figure obtained.

Article 4

The Spanish authorities shall communicate to the Commission the measures which they adopt for the application of Article 2.

They shall transmit, not later than the 15th of each month, the following information on import authorizations issued in the preceding month:

- the quantities covered by the import authorizations issued, by country of provenance,
- the quantities imported, by country of provenance.

Article 5

This Regulation shall enter into force on 1 January 1994.

⁽¹⁾ OJ No L 54, 1. 3. 1986, p. 25.

⁽²⁾ OJ No L 293, 27. 10. 1988, p. 7.

⁽³⁾ OJ No L 374, 22. 12. 1992, p. 50.

⁽⁴⁾ OJ No L 205, 3. 8. 1985, p. 5.

⁽⁵⁾ OJ No L 364, 14. 12. 1989, p. 54.

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

Done at Brussels, 6 December 1993.

For the Commission
René STEICHEN
Member of the Commission

ANNEX

CN code	Description	Quota for 1994
ex 0103	Live swine, of domestic species, other than pure-bred breeding animals	2 143
ex 0203	Meat of domestic swine, fresh, chilled or frozen	
ex 0206	Edible offal of domestic swine, other than for the manufacture of pharmaceutical products, fresh, chilled or frozen	
ex 0209	Pig fat free of lean meat (not rendered), fresh, chilled, frozen, salted, in brine, dried or smoked	
ex 0210	Meat and edible meat offal of domestic swine, salted, in brine, dried or smoked	
1501 00 11	Lard and other pig fat, rendered, whether or not pressed or solvent extracted	
1501 00 19		
1601	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products	
1602 10	Homogenized preparations of meat, meat offal or blood	
1602 20 90	Preparations or preserves of liver of any animal, other than goose or duck	
1602 41 10	Other preparations and preserves containing meat or offal of domestic swine	
1602 42 10		
1602 49 11		
to		
1602 49 50		
1602 90 10	Preparations of blood of any animal	
1602 90 51	Other preparations or preserves containing meat or meat offal of domestic swine	
1902 20 30	Stuffed pasta, whether or not cooked or otherwise prepared, containing more than 20 % by weight of sausages and the like, of meat and meat offal of any kind, including fats of any kind or origin	

COMMISSION REGULATION (EC) No 3347/93

of 6 December 1993

amending Regulation (EEC) No 2295/92 on detailed rules for the application of the support system for producers of the protein crops referred to in Article 6 of Council Regulation (EEC) No 1765/92

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Article 2

Having regard to the Treaty establishing the European Community,

1. The compensatory payment provided for in Article 6 of Regulation (EEC) No 1765/92 shall be allocated solely to areas under protein crops:

Having regard to Council Regulation (EEC) No 1765/92⁽¹⁾, as last amended by Regulation (EEC) No 1552/93⁽²⁾, and in particular Article 12 thereof,

(a) situated in production regions or parts of production regions declared climatically and agronomically suitable for the cultivation of protein crops by the Member State;

Whereas the planting of areas of land with the sole purpose of receiving the compensatory payment for protein crops should be prevented; whereas to this end land in respect of which a compensatory payment is applied for must be cultivated normally and the crop maintained for a certain minimum period; whereas because of modifications to the rules as regards which peas were eligible to receive compensatory payments during the 1993/94 marketing year, it is appropriate to clarify that producers are not eligible to receive compensatory payments in respect of protein crops harvested at the stage of lactic ripeness; whereas in consequence Commission Regulation (EEC) No 2295/92⁽³⁾, as last amended by Regulation (EEC) No 1664/93⁽⁴⁾, should be amended;

(b) included in a "general scheme" as referred to in Article 2 (5) (a) of Regulation (EEC) No 1765/92;

(c) covered by an application including reference documents enabling the land in question to be identified, and lodged with the competent authority by 15 May at the latest;

(d) entirely sown by that date at the latest with peas, field beans or sweet lupins in accordance with locally-recognized standards;

(e) in respect of which the total area in the application is at least 0,3 hectares and each cultivated plot of which exceeds the minimum size set by the Member State for the production region in question;

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

(f) not harvested at the stage of lactic ripeness.

HAS ADOPTED THIS REGULATION:

2. Protein crops shall be maintained until at least the beginning of flowering in normal local growth conditions. Furthermore, protein crops shall be maintained until at least 30 June prior to the marketing year in question, except in those cases where a harvest takes place at the stage of full agricultural ripeness before this date.

Article 1

Article 2 of Regulation (EEC) No 2295/92 shall be replaced by the following:

Article 2

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 12.
⁽²⁾ OJ No L 154, 25. 7. 1993, p. 19.
⁽³⁾ OJ No L 221, 6. 8. 1992, p. 28.
⁽⁴⁾ OJ No L 158, 30. 6. 1993, p. 19.

This Regulation shall enter into force on the seventh 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, 6 December 1993.

For the Commission

René STEICHEN

Member of the Commission

COMMISSION REGULATION (EC) No 3348/93

of 6 December 1993

amending Regulation (EEC) No 1445/93 with regard to the operative events
applicable in the fruit and vegetables sector

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

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy ⁽¹⁾, and in particular Article 6 (2) thereof,

Whereas Article 7 of Council Regulation (EEC) No 2019/93 of 19 July 1993 introducing specific measures for the smaller Aegean islands concerning certain agricultural products ⁽²⁾ introduces aid for the execution of programmes of initiatives concerning fruit, vegetables and flowers and fixes the maximum level of aid in ecus; whereas the aid is paid annually for a maximum of three years; whereas the detailed rules for the application of the aid arrangements are laid down by Commission Regulation (EC) No 3253/93 ⁽³⁾; whereas those detailed rules lay down, in particular, that aid applications must be submitted each year before a date to be determined by the competent authorities of the Member States concerned; whereas, therefore, the operative event for the agricultural conversion rate applicable to the maximum level of aid should be 1 January of the year of execution of the programme of initiatives; whereas an addition should

therefore be made to Commission Regulation (EEC) No 1445/93 ⁽⁴⁾;

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

HAS ADOPTED THIS REGULATION:

Article 1

The following Article is inserted into Regulation (EEC) No 1445/93:

'Article 12a

The operative event for the agricultural conversion rate applicable to the aid referred to in Article 7 of Regulation (EEC) No 2019/93 shall be 1 January of the year of execution in progress of the programme of initiatives.'

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, 6 December 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽²⁾ OJ No L 184, 27. 7. 1993, p. 1.

⁽³⁾ OJ No L 293, 27. 11. 1993, p. 28.

⁽⁴⁾ OJ No L 142, 12. 6. 1993, p. 27.

COMMISSION REGULATION (EC) No 3349/93

of 6 December 1993

fixing the aid for cotton

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

Having regard to the Act of Accession of Greece, and in particular paragraphs 3 and 10 of Protocol 4 thereto, as amended by the Act of Accession of Spain and Portugal, and in particular Protocol 14 annexed thereto, and Commission Regulation (EEC) No 4006/87 ⁽¹⁾,

Having regard to Council Regulation (EEC) No 2169/81 of 27 July 1981 laying down the general rules for the system of aid for cotton ⁽²⁾, as last amended by Regulation (EEC) No 1554/93 ⁽³⁾, and in particular Article 5 (1) thereof,

Whereas the amount of the additional aid referred to in Article 5 (1) of Regulation (EEC) No 2169/81 was fixed by Commission Regulation (EEC) No 2419/93 ⁽⁴⁾, as last amended by Regulation (EC) No 3281/93 ⁽⁵⁾;

Whereas it follows from applying the rules and other provisions contained in Regulation (EEC) No 2419/93 to the information at present available to the Commission that the amount of the aid at present in force should be altered as shown in Article 1 to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The aid for unginned cotton provided for in Article 5 of Regulation (EEC) No 2169/81 shall be ECU 62,489 per 100 kilograms.

Article 2

This Regulation shall enter into force on 7 December 1993.

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

Done at Brussels, 6 December 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 377, 31. 12. 1987, p. 49.

⁽²⁾ OJ No L 211, 31. 7. 1981, p. 2.

⁽³⁾ OJ No L 154, 25. 6. 1993, p. 23.

⁽⁴⁾ OJ No L 222, 1. 9. 1993, p. 35.

⁽⁵⁾ OJ No L 296, 1. 12. 1993, p. 13.

COMMISSION REGULATION (EC) No 3350/93

of 6 December 1993

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

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

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

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy ⁽³⁾,

Whereas the import levies on cereals, wheat and rye flour, and wheat groats and meal were fixed by Commission Regulation (EEC) No 2703/93 ⁽⁴⁾ and subsequent amending Regulations;

Whereas, in order to make it possible for the levy arrangements to function normally, the representative market rate established during the reference period from 3

December 1993, as regards floating currencies, should be used to calculate the levies;

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 7 December 1993.

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

Done at Brussels, 6 December 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 196, 5. 8. 1993, p. 22.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 245, 1. 10. 1993, p. 108.

ANNEX

to the Commission Regulation of 6 December 1993 fixing the import levies on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)

CN code	Third countries ^(*)
0709 90 60	80,51 ⁽²⁾ ⁽³⁾
0712 90 19	80,51 ⁽²⁾ ⁽³⁾
1001 10 00	0 ⁽¹⁾ ⁽⁵⁾
1001 90 91	87,03
1001 90 99	87,03 ⁽²⁾
1002 00 00	112,66 ⁽⁶⁾
1003 00 10	117,98
1003 00 20	117,98
1003 00 80	117,98 ⁽²⁾
1004 00 00	90,74
1005 10 90	80,51 ⁽²⁾ ⁽³⁾
1005 90 00	80,51 ⁽²⁾ ⁽³⁾
1007 00 90	97,09 ⁽⁴⁾
1008 10 00	25,31 ⁽²⁾
1008 20 00	25,14 ⁽⁴⁾
1008 30 00	23,66 ⁽²⁾
1008 90 10	⁽⁷⁾
1008 90 90	23,66
1101 00 00	159,36 ⁽²⁾
1102 10 00	196,51
1103 11 30	25,41
1103 11 50	25,41
1103 11 90	182,51
1107 10 11	165,79
1107 10 19	126,62
1107 10 91	220,88 ⁽¹⁰⁾
1107 10 99	167,79 ⁽²⁾
1107 20 00	193,75 ⁽¹⁰⁾

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

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

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

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

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

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

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

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

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

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

COMMISSION REGULATION (EC) No 3351/93**of 6 December 1993****fixing the premiums to be added to the import levies on cereals, flour and malt**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy⁽³⁾,

Whereas the premiums to be added to the levies on cereals and malt were fixed by Commission Regulation (EEC) No 1681/93⁽⁴⁾ and subsequent amending Regulations;

Whereas, in order to make it possible for the levy arrangements to function normally, the representative market

rate established during the reference period from 3 December 1993, as regards floating currencies, should be used to calculate the levies;

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 7 December 1993.

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

Done at Brussels, 6 December 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 196, 5. 8. 1993, p. 22.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 159, 1. 7. 1993, p. 11.

ANNEX

to the Commission Regulation of 6 December 1993 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

(ECU/tonne)

CN code	Current 12	1st period 1	2nd period 2	3rd period 3
0709 90 60	0	0	0	0
0712 90 19	0	0	0	0
1001 10 00	0	0	0	0
1001 90 91	0	0	0	0
1001 90 99	0	0	0	0
1002 00 00	0	0	0	0
1003 00 10	0	0	0	0
1003 00 20	0	0	0	0
1003 00 80	0	0	0	0
1004 00 00	0	0	0	0
1005 10 90	0	0	0	0
1005 90 00	0	0	0	0
1007 00 90	0	0	0	0
1008 10 00	0	0	0	0
1008 20 00	0	0	0	0
1008 30 00	0	0	0	0
1008 90 90	0	0	0	0
1101 00 00	0	1,04	0	0
1102 10 00	0	0	0	0
1103 11 30	0	0	0	0
1103 11 50	0	0	0	0
1103 11 90	0	0	0	0

B. Malt

(ECU/tonne)

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

COMMISSION REGULATION (EC) No 3352/93

of 6 December 1993

altering the import levies on products processed from cereals and rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice⁽³⁾, as last amended by Regulation (EEC) No 1544/93⁽⁴⁾, and in particular Article 12 (4) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy⁽⁵⁾,

Whereas the import levies on products processed from cereals and rice were fixed by Commission Regulation (EC) No 3263/93⁽⁶⁾, as amended by Regulation (EC) No 3299/93⁽⁷⁾;

Whereas the levy on the basic product as last fixed differs from the average levy by more than ECU 3,02 per tonne

of basic product; whereas, pursuant to Article 1 of Commission Regulation (EEC) No 1579/74⁽⁸⁾, as last amended by Regulation (EEC) No 1740/78⁽⁹⁾, the levies at present in force must therefore 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 processed from cereals and rice covered by Commission Regulation (EEC) No 1620/93⁽¹⁰⁾ as fixed in the Annex to amended Regulation (EC) No 3263/93 are hereby altered to the amounts set out in the Annex.

Article 2

This Regulation shall enter into force on 7 December 1993.

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

Done at Brussels, 6 December 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 196, 5. 8. 1993, p. 22.

⁽³⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽⁴⁾ OJ No L 154, 25. 6. 1993, p. 5.

⁽⁵⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁶⁾ OJ No L 293, 27. 11. 1993, p. 54.

⁽⁷⁾ OJ No L 296, 1. 12. 1993, p. 50.

⁽⁸⁾ OJ No L 168, 25. 6. 1974, p. 7.

⁽⁹⁾ OJ No L 202, 26. 7. 1978, p. 8.

⁽¹⁰⁾ OJ No L 155, 26. 6. 1993, p. 29.

ANNEX

to the Commission Regulation of 6 December 1993 altering the import levies on products processed from cereals and rice

(ECU/tonne)

CN code	Import levies (°)	
	ACP	Third countries (other than ACP)
1103 21 00	158,02	164,06
1104 19 10	158,02	164,06
1104 29 11	116,76	119,78
1104 29 31	140,46	143,48
1104 29 91	89,55	92,57
1104 30 10	65,84	71,88
1108 11 00	193,14	213,69
1109 00 00	351,16	532,50

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

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 22 September 1993

concerning aid granted by the French Government to the Pari mutuel urbain (PMU) and to the racecourse undertakings

(Only the French text is authentic)

(93/625/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having, in accordance with the abovementioned Article, given notice to the parties concerned to submit their comments,

Whereas :

I

On 7 April 1989, seven companies belonging to the Ladbroke group lodged a complaint with the Commission against aid granted by the French Government to the economic interest grouping Pari mutuel urbain (PMU). By letter dated 27 July 1989, the Commission asked the French authorities for information on the aid.

In the light of the information provided to it, the Commission concluded that the PMU had benefited and was continuing to benefit from a series of facilities granted by the French State. Such facilities consisted mainly of tax exemptions or reliefs under which the Treasury waived certain revenue payable to it or granted deferrals of payment. The measures are described in detail below.

After having examined the measures, the Commission decided, on 17 December 1990, to initiate Article 93 (2)

proceedings⁽¹⁾ in respect of the aid for the following reasons. Thanks to the resources which the French State had waived, the PMU had been able to reverse an unfavourable financial situation and had been able to computerize its network for taking bets on horse-races. Availing itself of this situation, it had moreover endeavoured, since the beginning of the 1990s, to increase its share of the betting market in other Member States, where it was in competition with, amongst others, companies belonging to the Ladbroke group. Such measures had to be regarded as State aid within the meaning of Article 92 (1) of the EEC Treaty.

Since three of the measures had continued to be granted after the initiation of the Article 93 (2) proceedings, the Commission adopted, on 11 June 1991, an interim Decision requiring the French authorities to stop granting the aid forthwith⁽²⁾.

II

As part of the proceedings, the French Government submitted its comments to the Commission by letters from its Permanent Representation dated 12 April 1991 and 7 February 1992. In them, it stated that it had never regarded its economic relations with the PMU as possibly involving State aid and requiring notification. The total amount of the levies received by the State was more than it would have obtained through strict application of the ordinary rules of law. It had never been the State's

⁽¹⁾ OJ No C 38, 14. 2. 1991, p. 3.

⁽²⁾ OJ No L 14, 21. 1. 1992, p. 35.

intention to give any backing whatsoever to the PMU's export activities, which were a matter for the racecourse undertakings alone.

On 27 December 1991, the French Government also informed the Commission that it was prepared to abolish on 31 December 1991 the measures referred to in the interim Decision. Subsequently, the French authorities put forward a series of other dates for abolishing the measures, finally informing the Commission on 20 July 1993 that one of the measures had been adopted with effect from 1 October 1992, the second with effect from 1 July 1993 and the third as from 1 January 1994.

The comments received by the Commission as part of the Article 93 (2) proceedings following publication of its notice initiating them were communicated to the French authorities, translated into French, by letter dated 23 May 1991. The Commission staff had several meetings with the French authorities and the management of the PMU in the period 1991 to 1993.

III

In France, racecourse undertakings are responsible for organizing and ensuring the proper conduct of horse-races and for organizing betting on such races. Only 10 racecourse undertakings are authorized to organize totalizator betting outside their racecourses, by the Decree of 11 July 1930, as amended in particular by the Decree of 12 May 1948. For this purpose, they set up the economic interest grouping *Pari mutuel urbain* (PMU), which is permitted to take bets placed in France. The PMU holds a monopoly in off-course horse-race betting. It has existed as a legal entity only since 13 September 1985. Previously, it had merely been a joint technical service operated by the 10 racecourse undertakings.

For every FF 100 in registered bets, the PMU levies about FF 30 and pays back about FF 70 to the bettors. Of the FF 30 withheld, the PMU uses about FF 5,5 to cover its expenses whilst the national authorities and the city of Paris keep about FF 18, and the rest is allocated to the racecourse undertakings. The amounts not distributed to bettors are called levies. The levy for the racecourse undertakings is intended to allow them to cover the costs associated with organizing races and to finance the bulk of the incentives for horse-breeding. In 1990, the amount of bets handled by the PMU totalled some FF 33 billion.

Horse-race betting is organized in most Member States, and bettors in one Member State can bet on races run in

another Member State. There are two types of horse-race betting. The totalizator system is used in several Member States, either exclusively, as in France, or together with the bookmaking system. Under the totalizator system, the amounts bet are pooled and, after deduction of a levy, part of the total is paid back to the winners. Under the bookmaking system, the bookmaker offers bettors odds on horses and pays the winners the odds multiplied by the stake.

As far as its horse-racing activities are concerned, the Ladbroke group acts mainly as a bookmaker and to a lesser extent also as a taker of totalizator bets. It is established in several Member States.

The amounts bet annually in games of chance in the Community are estimated, as far as legal betting is concerned, at some ECU 50 billion. Whilst lotteries are the preferred betting medium in Germany and Spain for example, horse-race betting is more popular in France and the United Kingdom. However, the markets have traditionally been partitioned, either *de jure* or *de facto*, along national or even regional lines.

The amounts bet on horse-races in the Community totalled an estimated ECU 14 billion in 1990. The PMU took ECU 4,87 billion in bets in 1990.

While horse-races are organized and run on national racecourses, betting on such races is organized internationally. Thus, the PMU accepts in France bets on races run in Belgium, and Ladbroke accepts in Belgium bets on French races. In Germany, 40 % of bookmakers' revenue comes from bets on French races and 20 % from bets on races run in the United Kingdom.

Trade here does not therefore involve the physical movement of products from one Member State to another, but the supply of services in one Member State by an undertaking (or in connection with the activities of an undertaking) established in another Member State.

Ladbroke's activities in this respect are significant. In most of the countries in which it is established, the company takes bets either on national horse-races or on races run in other countries. Whereas the PMU's activities outside France were limited before 1989, the setting up of the *Pari mutuel international* (PMI) in that year so as to allow it to extend its activities internationally shows that the PMU does not wish to confine its business to France alone. The PMI has moreover concluded an agreement with a German undertaking for the televising of French races to German bookmakers and another agreement with

the PMU Belge allowing it to take bets in France on races run in Belgium.

It is in fact since January 1989, when the PMI (in which the PMU has a majority shareholdings) was set up, that the PMU has expressly made clear its desire to extend its activities beyond France. It is through the agreements concluded in Germany and Belgium that it has entered into active competition with other betting organizations and racecourse undertakings, and more particularly with Ladbroke.

IV

Seven aid measures taken by the French State in support of the PMU were in force when the Article 93 (2) proceedings were initiated, namely:

1. the amounts resulting from unclaimed winnings are handed over to the PMU, but must be used primarily to finance social security expenditure and secondarily to finance monitoring, supervision and operating costs, horse-breeding incentives and investment directly connected with the organization of horse-racing and of totalizator betting. The allocation of unclaimed winnings is governed by Decree No 83/878 of 4 October 1983. If the amounts thus allocated are not entirely used up on the abovementioned expenditure, the remainder is paid into the general budget of the State. The French authorities state that the sums deriving from unclaimed winnings have always been considered normal resources;
2. the amount deriving from the rounding of better's winnings down to the nearest 10 centimes has since 1967 been allocated to the general budget of the State (Finance Law of 17 December 1966). In 1982, the French State temporarily waived this revenue in favour of the PMU until 1985. The total amount which the PMU received during that period was FF 315 million. The French authorities argue that the awarding of this sum was justified by the PMU's computerization requirements at the time. The PMU was carrying out manually millions of operations involved in recording, pooling and processing bets. The racecourse undertakings were not able to finance all the necessary investment themselves;
3. as from 1984, the racecourse undertakings were showing a deficit. As a result, in addition to the introduction of a recovery plan, the French authorities decided, by Decrees of 23 January 1985 and 12 March 1986, to change the share-out of the levies. This change in the levies was subsequently maintained in force. The French authorities consider that the changes in the levels of the levy are an essential instrument in

the arrangements for organizing betting on horse-racing;

4. the PMU is exempt from corporation tax. The French Government argues that, since the PMU was legally set up as an economic interest grouping ('Groupement d'Intérêt Économique'), it cannot show any profits at the end of a financial year. The exemption cannot constitute aid;
5. the PMU has to pay the French State the share of the levies going to the Treasury. In normal circumstances, these public levies would have to be paid into the budget in three instalments, namely on 20 and 30 of the month in which the charges were levied and on 10 of the following month. On 24 April 1980, the Minister for the Budget allowed such payments to be deferred and to be reduced to a single instalment. The deferral amounted to 20 days' additional cash resources. The French authorities stated that the measure was justified in order to bring the arrangements for paying the PMU levies into line with those for the lotto levies. In 1982, the Minister for the Budget extended the deferral to 30 days;
6. the racecourse undertakings making up the PMU were exempted from the one-month delay rule for VAT deductions as from 1 August 1969. The French Government considers that this advantage was offset from 1989 onwards by a permanent deposit which the racecourse undertakings had to lodge with the Treasury. The measure was abolished as from 1 July 1993;
7. under French legislation, employers have to contribute to the building of subsidized housing through a tax levied on their payroll. The rate of the tax has varied from 0,8 % in 1980 to 0,65 % in 1990. The PMU was exempted from the contribution. The revenue which the French State thus waived has varied from FF 5 165 million in 1986 to FF 3 858 million in 1990.

The French authorities justify this exemption on the grounds that all agricultural activities in France are exempted from the contribution and that the State deems racing activities to be agricultural in nature. They base this view on a 1962 Decree of the Council of State confirming the agricultural nature of such activities. Although a judgment by the Court of Cassation took the opposite view in 1966, the Ministry of Finance considers that it is obliged to follow the approach adopted by the Council of State, since the rules laid down by the administrative jurisdiction are mandatory for any administrative authority.

The French Government informed the Commission that proceedings have been initiated to abolish the exemption as from 1 January 1994.

The latter three measures are the ones which the Commission, by a Decision adopted in June 1991, required the French Government to suspend in respect of the PMU.

V

It should first be considered separately for each of the seven measures described under Section IV whether they fulfil the criteria for applying the provisions of Article 92 (1) of the EEC Treaty, and more particularly whether the measures derogate from the normal application either of tax provisions specific to the PMU or of general taxation.

1. In so far as the amounts deriving from unclaimed winnings have always been considered to be normal resources, they form part of the non-public levies. The fact that Decree No 83-878 of 4 October 1983 in particular provides that the sums not entirely used up by the racecourse undertakings should be paid back to the State, thus restricting their use, does not in any way alter the fact that such resources are a non-public levy. The use of such resources to finance social security expenditure in particular cannot therefore be regarded as State aid within the meaning of Article 92 (1), since the State-resources criterion is not met.
2. The amount deriving from the practice of rounding bettors' winnings down to the nearest 10 centimes forms part of the public levy. The waiving from 1982 to 1985 of part of the levy so as to allow the racecourse undertakings to finance the computerization of the PMU's operations must be regarded as aid within the meaning of Article 92 (1), since it was a measure limited in time and intended to solve a specific problem. It was through the resources which the State temporarily waived that the PMU was able to strengthen its market position.
3. The change made to the levy in 1984 does not, by contrast, appear to be an *ad hoc* operation designed to solve a specific problem, since the change has been maintained since then. It must also be viewed in the light of the opinion which the Commission sent the French authorities in March 1991, which states that :

'The tax arrangements applicable to horse-races are the responsibility of the national authorities ; consequently, any upward or downward adjustments made to the rates of tax set do not amount to the granting of State aid provided that the changes resulting from such adjustments are applicable uniformly to all the undertakings concerned.

However, the existence of State aid cannot be ruled out where a significant reduction in the rate of taxation results in the strengthening of the financial situation of an undertaking in a monopoly position ; in such circumstances, the reduction in the rate of taxation would have to be assessed in the context of Article 92 (1) of the Treaty.'

The measure involved a limited reduction (some 1,6 %) in the public levy, a reduction which was subsequently maintained. The public authorities did not therefore finance a specific *ad hoc* operation, but made an adjustment to the levies acting within the frame-

work of their powers and responsibilities. Since they were acting within this framework with the aim of increasing the resources of the recipients of the non-public levies on a permanent basis and taking account of the particularity of the recipients' situation (see Section IV), the measure does not constitute aid within the meaning of Article 92 (1) of the EEC Treaty. It is equivalent to a reform in the form of a 'tax' adjustment that is justified by the nature and economy of the system in question.

4. The exemption from corporation tax enjoyed by the PMU must be considered to stem from the normal application of the general tax system. Corporation tax cannot apply to the PMU since its legal form is that of an economic interest grouping ('Groupement d'Intérêt Economique').
5. The cash resource advantages deriving from the deferral allowed in the paying to the State of its share in the levies do not fulfil the conditions for the application of Article 92 (1) either. This measure has had the effect of increasing the share of the non-public levy continuously since 1981. It does not therefore involve a temporary waiving of resources by the public authorities nor a specific *ad hoc* measure. Its assessment in the light of the provisions of Article 92 (1) is the same as that of the measure referred to in point 3.
6. Exemption from the one-month delay rule for deducting VAT does, by contrast, constitute a cash resources advantage that must be regarded as State aid, since, even though provided for under Community legislation, it derogates from the normal arrangements for payment of VAT. However, this advantage has since 1989 been offset by a permanent deposit lodged with the Treasury.
7. As mentioned previously (see Section IV, point 7), the French authorities consider that the activities of the PMU and of the racecourse undertakings are agricultural activities and that the PMU and the racecourse undertakings do not therefore have to pay the housing levy, since such activities are generally exempt from that tax. The French authorities base their view on a Decree adopted by the Council of State.

The Decree concerns two racecourse undertakings that are not members of the PMU and does not in any way concern their activities relating to the taking of bets on horse-races. While the Commission could perhaps accept the position of the Ministry of Finance as regards the racecourse undertakings, it cannot accept its position as regards the PMU. The PMU's activity, namely the organization and processing of betting and the payment of winnings, is quite clearly not an agricultural activity. The fact that the PMU's shareholders, namely the racecourse undertakings, are recognized as exercising such an activity cannot of itself confer on the PMU the status of being a professional agricultural body. Such reasoning would mean that any undertaking handling business in a non-agricultural area would have to be recognized as being agricultural if the majority of its shareholders had such status. Consequently, the tax exemption which the PMU enjoys must be regarded as not being justified by its status

and as conferring on it aid within the meaning of Article 92 (1), since the exemption derogates from the general tax system.

The Commission therefore considers that the following measures must be deemed to be State aid within the meaning of Article 92 (1) of the EEC Treaty:

- the waiving from 1982 to 1985 of amounts deriving from the practice of rounding bettors' winnings down to the nearest 10 centimes,
- exemption from the one-month delay rule for the deduction of VAT,
- exemption from the employers' contribution to building and construction work.

As was shown above, there is some competition in the Community market in this sector, and it can reasonably be stated that there is trade between Member States in the taking of bets, notably through the exchange of television pictures. The PMU decided, through the PMI, to extend its activities abroad, and in the Community in particular, as from 1989. The export activities of the PMU and of the racecourse undertakings — its shareholders — were clearly confirmed at a press conference held by its chairman in January 1991. The PMU's policy, he said in substance, was to export its technical expertise in the taking and computerized processing of bets and thus to engage in international competition. The conclusion which should be drawn is that competition and trade in this market will increase, while undertakings operating in this sector will endeavour to increase their market shares or to consolidate them.

It should also be noted in this respect that the PMU is in a privileged position in that its activity is protected in the second-largest market in terms of betting volume in this sector, namely France.

Having regard to the above considerations, the measures referred to in points 2, 6 and 7 are State aid that is liable to affect trade between Member States and distort competition, and they consequently fulfil the conditions of Article 92 (1) of the EEC Treaty.

VI

The aid referred to in points 2, 6 and 7 of point V of this Decision should have been notified to the Commission pursuant to Article 93 (3) of the EEC Treaty. Since the French Government failed to do so, the Commission was unable to express its views on the measure before it was

implemented. Consequently, the aid has been unlawful under Community law since the time it was granted, since the provisions of Article 93 (3) were not complied with.

It should be noted that, given the mandatory nature of the procedural rules laid down in Article 93 (3) of the EEC Treaty, which are also important from the point of view of public policy, and whose direct effect the Court of Justice recognized in its judgments of 19 June 1973 in Case 77/72 ⁽¹⁾, of 11 December 1973 in Case 120/73 ⁽²⁾, of 22 March 1977 in Case 78/76 ⁽³⁾ and of 21 November 1991 in Case C-354/90 ⁽⁴⁾ the unlawfulness of the aid cannot be corrected retrospectively.

Furthermore, where aid is incompatible with the common market, the Commission can make use of an option made available to it by a judgment delivered by the Court of Justice on 12 July 1973 in Case 70/72 ⁽⁵⁾ upheld by the judgments of 24 February 1987 and 20 September 1990 respectively in Case 310/85 ⁽⁶⁾ and Case C-5/89 ⁽⁷⁾ by requiring Member States to recover from recipients any aid granted unlawfully.

VII

Article 92 (1) of the EEC Treaty provides that aid having the characteristics it defines is in principle incompatible with the common market.

As far as the derogations from this principle are concerned, those set out in Article 92 (2) of the EEC Treaty are inapplicable in this instance, given the nature and objectives of the aid in question. The French Government has not claimed this derogation, in any case.

Article 92 (3) specifies which types of aid may be considered to be compatible with the common market. The compatibility of aid with the Treaty has to be assessed in the context of the Community as a whole and not that of a single Member State. So as to ensure the proper functioning of the common market and compliance with Article 3 (f) of the Treaty, the derogations from the principle laid down in Article 92 (1) that are set out in Article 92 (3) should be interpreted strictly in examining any proposed aid scheme or individual grant of aid.

⁽¹⁾ [1973] ECR, p. 611.

⁽²⁾ [1973] ECR, p. 1471.

⁽³⁾ [1977] ECR, p. 595.

⁽⁴⁾ [1991] ECR, p. I-5505.

⁽⁵⁾ [1973] ECR, p. 813.

⁽⁶⁾ [1987] ECR, p. 901.

⁽⁷⁾ [1990] ECR, p. I-3437.

In particular, the derogations are applicable only if the Commission is able to establish that, if the aid were not granted, market forces alone would not induce the potential recipient to behave in a way that would help to achieve one of the abovementioned objectives.

Allowing derogations for aid which does not in any way contribute to such an objective or which is not necessary for that purpose would amount to granting an unfair advantage to industries or firms in certain Member States by simply improving their financial position, and would be liable to affect trading conditions between Member States adversely and to distort competition, without any Community interest as justification, as is required by Article 92 (3).

As far as the derogation pursuant to Article 92 (3) (b) is concerned, the aid was clearly not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the French economy. Aid for betting is not apt to solve the type of situation described in Article 92 (3) (b).

As far as the derogation pursuant to Article 92 (3) (a) and (c) on aid to promote the development of certain regions is concerned, the aid granted to the PMU does not have any regional objective, nor has the French Government cited any such grounds in order to justify the aid.

Lastly, as regards the derogation provided for in Article 92 (3) (c) for aid to facilitate the development of certain economic activities, the following points should be taken into consideration :

1. the FF 315 million in aid which the PMU received for the computerization of its bet-taking and processing operations covered almost 29 % of the cost of such computerization. Computerization had become essential in order to speed up and improve the processing of bets. The intensity of the aid is high. The Commission accepts similar rates of investment aid in the Community's less-developed regions. Such a situation clearly does not obtain here. In addition, there is growing competition in the sector. Before applying the derogation provided for in Article 92 (3) (c) in such circumstances, the Commission must assess whether the aid distorts or threatens to distort competition and the growing trade in the sector to an extent contrary to the common interest or whether, on the contrary, its disruptive effect on the Community market is too small to outweigh the beneficial effect of the aid on the development of the sector. In this instance, the Commission considers that, given the state of development of competition and trade before the setting-up of

the PMI in January 1989, the aid granted between 1982 and 1985 for the computerization of the PMU did not produce any disruptive effects on the market contrary to the common interest, bearing in mind the direct and indirect effects of the aid in developing all the economic factors making up the sector, including the improvement in horse-breeding. The aid was therefore compatible with the common market pursuant to Article 92 (3) (c) of the Treaty;

2. the measure in the form of exemption from the one-month delay rule for VAT deductions resulted in a cash resources facility. In this instance too, since the aid ranks as operating aid that is potentially more harmful to competition than that described in point 1, the Commission must assess whether the aid could, in view of the market situation, have produced disruptive effects that would have outweighed any beneficial effects on the development of the sector. For the same reason as that described in the previous point, the Commission considers that, up to January 1989, the aid was compatible with the common market pursuant to Article 92 (3) (c). As described above, the aid was after 1989 offset in full by a permanent deposit which the racecourse undertakings had to lodge with the Treasury;
3. the exemption from the employers' contribution to building and construction work conferred cash resources facilities on the PMU. Like the aid granted through exemption from the one-month delay rule for deduction of VAT, this aid granted to the PMU qualifies up to 1989 for the derogation provided for in Article 92 (3) (c), but, given the development of trade thereafter, must be considered incompatible with the common market after 1989.

VIII

As mentioned in Section VI, since the aid granted by the French Government to the PMU was not notified in accordance with Article 93 (3) of the EEC Treaty, the Commission may require the aid to be repaid if it deems it ineligible for any of the derogations pursuant to Article 92 (3). Consequently, the aid in the form of exemption from the contribution to building and construction work received by the PMU should be repayable as from 1989, the date on which the PMU started to operate in other Community countries.

Nevertheless, the Commission considers that repayment as from that date should not be required in view of the French authorities' argument that the contribution could not be levied because of the 1962 Decree of the Council

of State referred to in Section IV, point 7. However, this argument cannot be accepted as from the time when the initiation of proceedings was notified to the French authorities, namely on 11 January 1991.

The Commission has not been given the means to quantify for itself the aid element to be recovered in respect of this latter measure. For this reason, in adopting the implementing measures required to comply with this Decision, the French Government must be required to determine itself and communicate to the Commission the amount of aid to be recovered.

Such recovery must be carried out in accordance with the procedures and provisions of French law, notably as regards interest on arrears owed to the State, with such interest starting to run as from 11 January 1991, the date on which the Commission notified the French authorities of its decision to initiate proceedings,

HAS ADOPTED THIS DECISION:

Article 1

The aid granted by the French authorities to the *Pari mutuel urbain* (PMU) in the form of:

- the financial yield from the rounding-down of winnings to the nearest 10 centimes, granted from 1982 to 1985,
- exemption from the one-month delay rule for the deduction of VAT prior to 1989,
- exemption from the employers' contribution to building and construction work,

are hereby declared unlawful, since they were granted in breach of the provisions of Article 93 (3) of the EEC Treaty. The aid referred to in the first two indents, and the aid referred to in the third indent granted before 1 January 1989, are compatible with the common market

pursuant to Article 92 of the EEC Treaty. However, the aid referred to in the third indent granted since 1 January 1989 is incompatible with the common market pursuant to Article 92 (1) of the EEC Treaty.

Article 2

France shall abolish forthwith the aid in the form of exemption from the employers' contribution to building and construction work referred to in the third indent of Article 1.

Article 3

France shall require the PMU to repay the aid granted as from 11 January 1991 in the form of exemption from the employers' contribution to building and construction work referred to in the third indent of Article 1.

The aid shall be recovered in accordance with the procedures and provisions of French law, notably as regards interest on arrears owed to the State, with such interest starting to run as from 11 January 1991.

Article 4

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

Article 5

This Decision is addressed to the French Republic.

Done at Brussels, 22 September 1993.

For the Commission

Karel VAN MIERT

Vice-President