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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1131/94
of 16 May 1994
amending Regulation (EEC) No 337/75 establishing a European Centre for the
Development of Vocational Training

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 235 thereof,

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

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

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas the representatives of the governments of the Member States, meeting at Head of State and Government level, on adopting the Decision of 29 October 1993 on the location of the seats of certain bodies and departments of the European Communities and of Europol ⁽⁴⁾, also adopted a declaration by common agreement, regarding the location of the seat of the European Centre for the Development of Vocational Training;

Whereas Council Regulation (EEC) No 337/75 of 10 February 1975 establishing a European Centre for the Development of Vocational Training ⁽⁵⁾ should be amended as regards the seat of the Centre;

Whereas the aspects of the proposal which concern the staff of the Centre should be acted upon at a later stage; whereas this Regulation does not prejudice the position of the Centre's staff,

HAS ADOPTED THIS REGULATION:

Article 1

The third paragraph of Article 1 of Regulation (EEC) No 337/75 is hereby replaced by the following:

"The Centre shall be non-profit making. It shall have its seat in Thessaloniki."

Article 2

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

It shall apply from 1 September 1994.

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

Done at Brussels, 16 May 1994.

For the Council

The President

Th. PANGALOS

⁽¹⁾ OJ No C 74, 12. 3. 1994, p. 12.

⁽²⁾ OJ No C 128, 9. 5. 1994.

⁽³⁾ Opinion delivered on 27 April 1994 (not yet published in the Official Journal).

⁽⁴⁾ OJ No C 323, 30. 11. 1993, p. 1.

⁽⁵⁾ OJ No L 39, 13. 2. 1975, p. 1. Regulation as last amended by Regulation (EEC) No 1946/93 (OJ No L 181, 23. 7. 1993, p. 11).

COMMISSION REGULATION (EC) No 1132/94

of 18 May 1994

fixing the export refunds on white sugar and raw sugar exported in its unaltered state

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector⁽¹⁾, as last amended by Regulation (EC) No 133/94⁽²⁾, and in particular point (a) of the first subparagraph of Article 19 (4) thereof,

Whereas Article 19 of Regulation (EEC) No 1785/81 provides that the difference between quotations or prices on the world market for the products listed in Article 1 (1) (a) of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Council Regulation (EEC) No 766/68 of 18 June 1968 laying down general rules for granting export refunds on sugar⁽³⁾, as last amended by Regulation (EEC) No 1489/76⁽⁴⁾, provides that when refunds on white and raw sugar, undenatured and exported in its unaltered state are being fixed account must be taken of the situation on the Community and world markets in sugar and in particular of the price and cost factors set out in Article 3 of that Regulation; whereas the same Article provides that the economic aspect of the proposed exports should also be taken into account;

Whereas the refund on raw sugar must be fixed in respect of the standard quality; whereas the latter is defined in Article 1 of Council Regulation (EEC) No 431/68 of 9 April 1968 determining the standard quality for raw sugar and fixing the Community frontier crossing point for calculating cif prices for sugar⁽⁵⁾; whereas, furthermore, this refund should be fixed in accordance with Article 5 (2) of Regulation (EEC) No 766/68; whereas candy sugar is defined in Commission Regulation (EEC) No 394/70 of 2 March 1970 on detailed rules for granting export refunds on sugar⁽⁶⁾, as last amended by Regulation (EEC) No 1684/92⁽⁷⁾; whereas the refund thus calculated for sugar containing added flavouring or colouring matter must apply to their sucrose content and, accordingly, be fixed per 1 % of the said content;

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

Whereas, in special cases, the amount of the refund may be fixed by other legal instruments;

Whereas Council Regulation (EEC) No 990/93⁽⁸⁾ prohibits trade between the European Community and the Federal Republic of Yugoslavia (Serbia and Montenegro); whereas this prohibition does not apply in certain situations as comprehensively listed in Articles 2, 4, 5 and 7 thereof; whereas account should be taken of this fact when fixing the refunds;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92⁽⁹⁾, as amended by Regulation (EC) No 3528/93⁽¹⁰⁾, are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93⁽¹¹⁾, as amended by Regulation (EC) No 547/94⁽¹²⁾;

Whereas the refund must be fixed every two weeks; whereas it may be altered in the intervening period;

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

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

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (1) (a) of Regulation (EEC) No 1785/81, undenatured and exported in the natural state, are hereby fixed to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 19 May 1994.

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 22, 27. 1. 1994, p. 7.

⁽³⁾ OJ No L 143, 25. 6. 1968, p. 6.

⁽⁴⁾ OJ No L 167, 26. 6. 1976, p. 13.

⁽⁵⁾ OJ No L 89, 10. 4. 1968, p. 3.

⁽⁶⁾ OJ No L 50, 4. 3. 1970, p. 1.

⁽⁷⁾ OJ No L 176, 30. 6. 1992, p. 31.

⁽⁸⁾ OJ No L 102, 28. 4. 1993, p. 14.

⁽⁹⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽¹⁰⁾ OJ No L 320, 22. 12. 1993, p. 32.

⁽¹¹⁾ OJ No L 108, 1. 5. 1993, p. 106.

⁽¹²⁾ OJ No L 69, 12. 3. 1994, p. 1.

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

Done at Brussels, 18 May 1994.

For the Commission

René STEICHEN

Member of the Commission

ANNEX

to the Commission Regulation of 18 May 1994 fixing the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Amount of refund ⁽¹⁾
	— ECU/100 kg —
1701 11 90 100	31,00 ⁽¹⁾
1701 11 90 910	29,69 ⁽¹⁾
1701 11 90 950	⁽²⁾
1701 12 90 100	31,00 ⁽¹⁾
1701 12 90 910	29,69 ⁽¹⁾
1701 12 90 950	⁽²⁾
	— ECU/1 % of sucrose × 100 kg —
1701 91 00 000	0,3370
	— ECU/100 kg —
1701 99 10 100	33,70
1701 99 10 910	32,91
1701 99 10 950	32,91
	— ECU/1 % of sucrose × 100 kg —
1701 99 90 100	0,3370

⁽¹⁾ Applicable to raw sugar with a yield of 92 % ; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 5 (3) of Regulation (EEC) No 766/68.

⁽²⁾ Fixing suspended by Commission Regulation (EEC) No 2689/85 (OJ No L 255, 26. 9. 1985, p. 12), as amended by Regulation (EEC) No 3251/85 (OJ No L 309, 21. 11. 1985, p. 14).

⁽³⁾ Refunds on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) may be granted only where the conditions laid down in Regulation (EEC) No 990/93 are observed.

COMMISSION REGULATION (EC) No 1133/94**of 17 May 1994****establishing unit values for the determination of the customs value of certain perishable goods**

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

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾,

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽²⁾, as last amended by Regulation (EC) No 655/94 ⁽³⁾, and in particular Article 173 (1) thereof,

Whereas Articles 173 to 177 of Regulation (EEC) No 2454/93 provide that the Commission shall periodically establish unit values for the products referred to in the classification in Annex 26 to that Regulation;

Whereas the result of applying the rules and criteria laid down in the abovementioned Articles to the elements

communicated to the Commission in accordance with Article 173 (2) of Regulation (EEC) No 2454/93 is that unit values set out in the Annex to this Regulation should be established in regard to the products in question,

HAS ADOPTED THIS REGULATION :

Article 1

The unit values provided for in Article 173 (1) of Regulation (EEC) No 2454/93 are hereby established as set out in the table in the Annex hereto.

Article 2

This Regulation shall enter into force on 20 May 1994.

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

Done at Brussels, 17 May 1994.

For the Commission

Christiane SCRIVENER

Member of the Commission

⁽¹⁾ OJ No L 302, 19. 10. 1992, p. 1.

⁽²⁾ OJ No L 253, 11. 10. 1993, p. 1.

⁽³⁾ OJ No L 82, 25. 3. 1994, p. 15.

ANNEX

Code	CN code	Description	Amount of unit values per 100 kg net									
			ECU	Bfrs/Lfrs	Dkr	DM	FF	Dr	£ Irl	Lit	Fl	£
1.10	0701 90 51 0701 90 59	New potatoes	40,06	1 593	302,77	77,40	265,47	11 432	31,67	74 047	86,88	30,91
1.20	0702 00 10 0702 00 90	Tomatoes	76,85	3 056	580,80	148,48	509,24	21 931	60,76	142 042	166,66	59,29
1.30	0703 10 19	Onions (other than seed)	39,52	1 571	298,69	76,36	261,89	11 278	31,25	73 048	85,71	30,49
1.40	0703 20 00	Garlic	156,02	6 204	1 179,09	301,44	1 033,83	44 523	123,36	288 363	338,35	120,38
1.50	ex 0703 90 00	Leeks	55,11	2 191	416,83	106,38	362,51	15 522	43,90	105 358	119,58	42,20
1.60	ex 0704 10 10 ex 0704 10 90	Cauliflowers	57,81	2 331	438,81	113,34	385,48	15 133	43,14	104 614	127,38	45,06
1.70	0704 20 00	Brussels sprouts	53,71	2 172	405,33	104,22	354,64	14 950	41,74	101 870	116,85	40,02
1.80	0704 90 10	White cabbages and red cabbages	17,14	681	129,98	33,09	113,00	4 877	13,79	31 888	37,18	13,32
1.90	ex 0704 90 90	Sprouting broccoli or calabrese (<i>Brassica oleracea</i> var. <i>italica</i>)	79,26	3 206	598,09	153,78	523,30	22 060	61,59	150 316	172,41	59,05
1.100	ex 0704 90 90	Chinese cabbage	36,78	1 463	279,14	71,12	243,78	10 454	29,10	68 223	79,83	28,31
1.110	0705 11 10 0705 11 90	Cabbage lettuce (head lettuce)	40,96	1 632	310,06	79,27	269,67	11 511	32,39	78 153	88,99	31,08
1.120	ex 0705 29 00	Endives	21,82	877	162,70	42,58	143,89	5 690	17,51	39 262	47,92	17,72
1.130	ex 0706 10 00	Carrots	16,90	673	128,33	32,72	111,98	4 793	13,36	31 281	36,73	12,98
1.140	ex 0706 90 90	Radishes	60,46	2 405	458,53	116,76	398,62	17 204	48,65	112 485	131,17	47,01
1.150	0707 00 11 0707 00 19	Cucumbers	43,82	1 744	332,56	84,73	290,43	12 454	34,67	81 278	95,10	33,73
1.160	0708 10 10 0708 10 90	Peas (<i>Pisum sativum</i>)	357,38	14 210	2 700,78	690,47	2 368,03	101 983	282,57	660 511	775,02	275,74
1.170		Beans :										
1.170.1	0708 20 10 0708 20 90	Beans (<i>Vigna</i> spp., <i>Phaseolus</i> spp.)	124,37	4 945	939,91	240,29	824,11	35 491	98,33	229 868	269,72	95,96
1.170.2	0708 20 10 0708 20 90	Beans (<i>Phaseolus</i> ssp., <i>vulgaris</i> var. <i>Compressus Savi</i>)	131,62	5 233	994,70	254,30	872,15	37 560	104,07	243 268	285,44	101,55
1.180	ex 0708 90 00	Broad beans	92,83	3 894	734,40	189,09	645,42	21 793	71,04	142 837	212,96	66,61
1.190	0709 10 00	Globe artichokes	61,64	2 453	467,78	119,18	408,52	17 518	48,77	114 325	133,77	47,45
1.200		Asparagus :										
1.200.1	ex 0709 20 00	— green	290,76	11 561	2 197,33	561,76	1 926,61	82 972	229,89	537 387	630,55	224,33
1.200.2	ex 0709 20 00	— other	176,40	7 185	1 343,87	339,07	1 171,98	48 656	140,62	335 619	380,68	133,56
1.210	0709 30 00	Aubergines (egg-plants)	95,92	3 814	724,88	185,31	635,57	27 371	75,84	177 278	208,01	74,00
1.220	ex 0709 40 00	Ribbed celery (<i>Apium graveolens</i> var. <i>dulce</i>)	67,44	2 683	511,76	130,38	446,93	19 165	53,35	125 075	146,35	51,91
1.230	0709 51 30	Chantarelles	597,24	24 693	4 608,56	1 140,32	3 976,20	164 183	486,99	1 109 159	1 280,76	465,59
1.240	0709 60 10	Sweet peppers	155,74	6 193	1 176,98	300,90	1 031,97	44 443	123,14	287 846	337,74	120,16
1.250	0709 90 50	Fennel	73,55	2 966	558,22	144,18	490,38	19 251	54,88	133 083	162,05	57,33
1.260	0709 90 70	Courgettes	29,03	1 156	220,33	56,18	192,26	8 230	22,94	53 707	63,06	22,28
1.270	ex 0714 20 10	Sweet potatoes, whole, fresh (intended for human consumption)	40,81	1 626	309,78	78,99	270,31	11 571	32,25	75 511	88,66	31,33
2.10	ex 0802 40 00	Chestnuts (<i>Castanea</i> spp.), fresh	83,78	3 378	639,04	164,08	560,82	21 691	62,54	145 547	184,60	66,87
2.20												
2.30	ex 0804 30 00	Pineapples, fresh	43,34	1 723	327,54	83,73	287,19	12 368	34,27	80 106	93,99	33,44
2.40	ex 0804 40 10 ex 0804 40 90	Avocados, fresh	108,69	4 322	821,41	209,99	720,20	31 016	85,94	200 886	235,71	83,86

Code	CN code	Description	Amount of unit values per 100 kg net									
			ECU	Bfrs/Lfrs	Dkr	DM	FF	Dr	£ Irl	Lit	Fl	£
2.50	ex 0804 50 00	Guavas and mangoes, fresh	138,81	5 519	1 049,02	268,18	919,77	39 611	109,75	256 551	301,02	107,10
2.60		Sweet oranges, fresh :										
2.60.1	0805 10 11 0805 10 21 0805 10 31 0805 10 41	— Sanguines and semi-sanguines	47,61	1 894	361,32	92,05	315,55	13 531	37,67	88 307	103,33	36,65
2.60.2	0805 10 15 0805 10 25 0805 10 35 0805 10 45	— Navelines, Navelines, Navelines, Salustianas, Vernas, Valencia lates, Maltese, Shamoutis, Ovalis, Trovita and Hamlins	37,83	1 504	285,93	73,10	250,70	10 797	29,91	69 929	82,05	29,19
2.60.3	0805 10 19 0805 10 29 0805 10 39 0805 10 49	— Others	33,52	1 356	252,99	65,04	221,35	9 331	26,05	63 583	72,93	24,97
2.70		Mandarins (including tangerines and satsumas), fresh ; clementines, wilkings and similar citrus hybrids, fresh :										
2.70.1	ex 0805 20 10	— Clementines	96,21	3 827	729,66	185,80	634,33	27 377	77,43	179 000	208,74	74,80
2.70.2	ex 0805 20 30	— Monreales and Satsumas	70,78	2 814	534,90	136,75	468,99	20 198	55,96	130 816	153,49	54,61
2.70.3	ex 0805 20 50	— Mandarins and wilkings	92,63	3 683	700,02	178,96	613,78	26 433	73,24	171 200	200,88	71,47
2.70.4	ex 0805 20 70 ex 0805 20 90	— Tangerines and others	67,46	2 682	509,84	130,34	447,03	19 252	53,34	124 690	146,30	52,05
2.80	ex 0805 30 10	Lemons (<i>Citrus limon</i> , <i>Citrus limonum</i>), fresh	66,82	2 657	504,98	129,10	442,76	19 068	52,83	123 499	144,91	51,55
2.85	ex 0805 30 90	Limes (<i>Citrus aurantifolia</i>), fresh	134,09	5 332	1 013,38	259,07	888,53	38 266	106,02	247 836	290,80	103,46
2.90		Grapefruit, fresh :										
2.90.1	ex 0805 40 00	— white	35,75	1 421	270,17	69,07	236,89	10 202	28,26	66 075	77,53	27,58
2.90.2	ex 0805 40 00	— pink	56,07	2 229	423,77	108,33	371,56	16 001	44,33	103 638	121,60	43,26
2.100	0806 10 11 0806 10 15 0806 10 19	Table grapes	118,13	4 697	892,73	228,23	782,74	33 710	93,40	218 328	256,17	91,14
2.110	0807 10 10	Water-melons	41,27	1 641	311,88	79,73	273,46	11 777	32,63	76 276	89,49	31,84
2.120		Melons (other than water-melons) :										
2.120.1	ex 0807 10 90	— Amarillo, Cuper, Honey dew (including Cantalene), Onteniente, Piel de Sapo (including Verde Liso), Ro-chet, Tendral, Futuro	76,82	3 054	580,53	148,41	509,01	21 921	60,73	141 977	166,59	59,27
2.120.2	ex 0807 10 90	— other	126,38	5 025	955,12	244,18	837,44	36 066	99,93	233 587	274,08	97,51
2.130	0808 10 31 0808 10 33 0808 10 39 0808 10 51 0808 10 53 0808 10 59 0808 10 81 0808 10 83 0808 10 89	Apples	63,75	2 535	481,79	123,17	422,44	18 193	50,40	117 830	138,25	49,18
2.140		Pears										
2.140.1	0808 20 31 0808 20 33 0808 20 35 0808 20 39	Pears — Nashi (<i>Pyrus pyrifolia</i>)	139,55	5 549	1 054,60	269,61	924,67	39 822	110,33	257 916	302,63	107,67
2.140.2	0808 20 31 0808 20 33 0808 20 35 0808 20 39	Other	66,62	2 649	503,46	128,71	441,43	19 010	52,67	123 127	144,47	51,40

Code	CN code	Description	Amount of unit values per 100 kg net									
			ECU	Bfrs/Lfrs	Dkr	DM	FF	Dr	£ Irl	Lit	Fl	£
2.150	0809 10 00	Apricots	154,35	6 189	1 165,71	300,24	1 018,91	43 202	120,39	291 030	336,44	115,54
2.160	0809 20 20 0809 20 40 0809 20 60 0809 20 80	Cherries	105,23	4 219	794,77	204,70	694,68	29 455	82,08	198 422	229,38	78,77
2.170	ex 0809 30 90	Peaches	125,98	5 009	952,08	243,40	834,78	35 951	99,61	232 843	273,21	97,20
2.180	ex 0809 30 10	Nectarines	207,11	8 235	1 565,19	400,15	1 372,35	59 102	163,75	382 787	449,15	159,80
2.190	0809 40 11 0809 40 19	Plums	142,55	5 668	1 077,28	275,41	944,55	40 678	112,71	263 463	309,13	109,98
2.200	0810 10 10 0810 10 90	Strawberries	129,34	5 146	981,42	250,04	857,09	36 754	102,32	239 858	280,66	99,56
2.205	0810 20 10	Raspberries	1 232,1	49 408	9 305,36	2 396,74	8 133,50	344 866	961,01	2 323 153	2 685,64	922,33
2.210	0810 40 30	Fruit of the species <i>Vaccinium myrtillus</i>	102,94	4 142	776,64	201,08	684,00	27 469	82,98	185 034	226,07	78,92
2.220	0810 90 10	Kiwi fruit (<i>Actinidia chinensis</i> Planch.)	108,18	4 301	817,52	209,00	716,80	30 870	85,53	199 935	234,59	83,46
2.230	ex 0810 90 80	Pomegranates	48,29	1 953	364,38	93,69	318,81	13 439	37,52	91 577	105,04	35,97
2.240	ex 0810 90 80	Khakis (including Sharon fruit)	313,41	12 462	2 368,50	605,52	2 076,69	89 436	247,80	579 247	679,66	241,81
2.250	ex 0810 90 30	Lychees	658,74	26 193	4 978,15	1 272,69	4 364,82	187 978	520,84	1 217 470	1 428,54	508,25

COMMISSION REGULATION (EC) No 1134/94

of 18 May 1994

establishing a provisional quantitative limit on imports into the Community of certain textile products (category 28) originating in the Islamic Republic of Pakistan

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3030/93 of 12 October 1993 on common rules for imports of certain textile products from third countries⁽¹⁾, as last amended by Commission Regulation (EC) No 195/94⁽²⁾, and in particular Article 10 thereof,

Whereas Article 10 of Regulation (EEC) No 3030/93 lays down the conditions under which quantitative limits may be established;

Whereas imports into the Community of certain textile products (category 28) specified in the Annex hereto and originating in the Islamic Republic of Pakistan (herein after referred to as 'Pakistan') have exceeded the level referred to in Article 10 (1) in conjunction with Annex IX of Regulation (EEC) No 3030/93;

Whereas, in accordance with Article 10 (3) of Regulation (EEC) No 3030/93, on 25 March 1994 Pakistan was notified of a request for consultations;

Whereas, pending a mutually satisfactory solution, the Commission has requested Pakistan for a provisional period of three months to limit its exports to the Community of products falling within category 28 to the provisional quantitative limit set out in the Annex with effect from the date of the request for consultations;

Whereas pending the outcome of the requested consultations a quantitative limit identical to the one requested of the supplier country should be applied provisionally to imports of the category of products in question;

Whereas it is appropriate to apply to imports into Community of products for which the quantitative limit is introduced the provisions of Regulation (EEC) No 3030/93 which are applicable to imports of products subject to the quantitative limits set out in Annex V of the said Regulation;

Whereas the products in question exported from Pakistan between 25 March 1994 and the date of entry into force of this Regulation must be set off against the quantitative limit which has been introduced;

Whereas this quantitative limit should not prevent the importation of products covered by it shipped from

Pakistan before the date of entry into force of this Regulation;

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

HAS ADOPTED THIS REGULATION:

Article 1

Without prejudice to the provisions of Article 2, imports into the Community of the category of products originating in Pakistan and specified in the Annex hereto shall be subject to the provisional quantitative limit set out in that Annex.

Article 2

1. Products referred to in Article 1 shipped from Pakistan to the Community before the date of entry into force of this Regulation and not yet released for free circulation, shall be so released subject to the presentation of a bill of lading or other transport document proving that shipment actually took place during that period.

2. Imports of products shipped from Pakistan to the Community after the entry into force of this Regulation shall be subject to the provisions of Regulation (EEC) No 3030/93 which apply to imports into the Community of products subject to the quantitative limits set out in Annex V of the said Regulation.

3. All quantities of products shipped from Pakistan to the Community on or after 25 March 1994 and released for free circulation shall be deducted from the quantitative limit laid down. This provisional limit shall not, however, prevent the importation of products covered by them but shipped from Pakistan before the date of entry into force of this Regulation.

Article 3

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

It shall apply until 24 June 1994.

⁽¹⁾ OJ No L 275, 8. 11. 1993, p. 1.

⁽²⁾ OJ No L 29, 2. 2. 1994, p. 1.

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

Done at Brussels, 18 May 1994.

For the Commission

Leon BRITTAN

Member of the Commission

ANNEX

Category	CN code	Description	Third country	Unit	Quantitative limits from 25 March 1994 to 24 June 1994
28	6103 41 10 6103 41 90 6103 42 10 6103 42 90 6103 43 10 6103 43 90 6103 49 10 6103 49 91 6104 61 10 6104 61 90 6104 62 10 6104 62 90 6104 63 10 6104 63 90 6104 69 10 6104 69 91	Trousers, bib and brace overalls, breechers and shorts (other than swimwear), knitted or crocheted, of wool, of cotton or of Man-made fibres	Pakistan	1 000 pieces	6 248

COMMISSION REGULATION (EC) No 1135/94

of 18 May 1994

establishing a provisional quantitative limit on imports into the Community of certain textile products (category 28) originating in the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3030/93 of 12 October 1993 on common rules for imports of certain textile products from third countries⁽¹⁾, as last amended by Commission Regulation (EC) No 195/94⁽²⁾, and in particular Article 10 thereof,

Whereas Article 10 of Regulation (EEC) No 3030/93 lays down the conditions under which quantitative limits may be established;

Whereas imports into the Community of certain textile products (category 28) specified in the Annex hereto and originating in the People's Republic of China (hereinafter referred to as 'China') have exceeded the level referred to in Article 10 (1) in conjunction with Annex IX of Regulation (EEC) No 3030/93;

Whereas, in accordance with Article 10 (3) of Regulation (EEC) No 3030/93, on 25 March 1994 China was notified of a request for consultations;

Whereas, pending a mutually satisfactory solution, the Commission has requested China for a provisional period of three months to limit its exports to the Community of products falling within category 28 to the provisional quantitative limit set out in the Annex with effect from the date of the request for consultations;

Whereas pending the outcome of the requested consultations a quantitative limit identical to the one requested of the supplier country should be applied provisionally to imports of the category of products in question;

Whereas it is appropriate to apply to imports into Community of products for which the quantitative limit is introduced the provisions of Regulation (EEC) No 3030/93 which are applicable to imports of products subject to the quantitative limits set out in Annex V of the said Regulation;

Whereas the products in question exported from China between 25 March 1994 and the date of entry into force

of this Regulation must be set off against the quantitative limit which has been introduced;

Whereas this quantitative limit should not prevent the importation of products covered by it shipped from China before the date of entry into force of this Regulation;

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

HAS ADOPTED THIS REGULATION:

Article 1

Without prejudice to the provisions of Article 2, imports into the Community of the category of products originating in China and specified in the Annex hereto shall be subject to the provisional quantitative limit set out in that Annex.

Article 2

1. Products referred to in Article 1 shipped from China to the Community before the date of entry into force of this Regulation and not yet released for free circulation, shall be so released subject to the presentation of a bill of lading or other transport document proving that shipment actually took place during that period.

2. Imports of products shipped from China to the Community after the entry into force of this Regulation shall be subject to the provisions of Regulation (EEC) No 3030/93 which apply to imports into the Community of products subject to the quantitative limits set out in Annex V of the said Regulation.

3. All quantities of products shipped from China to the Community on or after 25 March 1994 and released for free circulation shall be deducted from the quantitative limit laid down. This provisional limit shall not, however, prevent the importation of products covered by them but shipped from China before the date of entry into force of this Regulation.

Article 3

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

It shall apply until 24 June 1994.

⁽¹⁾ OJ No L 275, 8. 11. 1993, p. 1.

⁽²⁾ OJ No L 29, 2. 2. 1994, p. 1.

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

Done at Brussels, 18 May 1994.

For the Commission

Leon BRITTAN

Member of the Commission

ANNEX

Category	CN code	Description	Third country	Unit	Quantitative limits from 25 March 1994 to 24 June 1994
28	6103 41 10 6103 41 90 6103 42 10 6103 42 90 6103 43 10 6103 43 90 6103 49 10 6103 49 91 6104 61 10 6104 61 90 6104 62 10 6104 62 90 6104 63 10 6104 63 90 6104 69 10 6104 69 91	Trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted, of wool, of cotton or of Man-made fibres	China	1 000 pieces	8 753

**COMMISSION REGULATION (EC) No 1136/94
of 18 May 1994**

**establishing a provisional quantitative limit on imports into the Community of
certain textile products (category 68) originating in the People's Republic of
China**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3030/93 of 12 October 1993 on common rules for imports of certain textile products from third countries⁽¹⁾, as last amended by Commission Regulation (EC) No 195/94⁽²⁾, and in particular Article 10 thereof,

Whereas Article 10 of Regulation (EEC) No 3030/93 lays down the conditions under which quantitative limits may be established;

Whereas imports into the Community of certain textile products (category 68) specified in the Annex hereto and originating in the People's Republic of China (hereinafter referred to as 'China') have exceeded the level referred to in Article 10 (1) in conjunction with Annex IX of Regulation (EEC) No 3030/93;

Whereas, in accordance with Article 10 (3) of Regulation (EEC) No 3030/93, on 25 March 1994 China was notified of a request for consultations;

Whereas, pending a mutually satisfactory solution, the Commission has requested China for a provisional period of three months to limit its exports to the Community of products falling within category 68 to the provisional quantitative limit set out in the Annex with effect from the date of the request for consultations;

Whereas pending the outcome of the requested consultations a quantitative limit identical to the one requested of the supplier country should be applied provisionally to imports of the category of products in question;

Whereas it is appropriate to apply to imports into Community of products for which the quantitative limit is introduced the provisions of Regulation (EEC) No 3030/93 which are applicable to imports of products subject to the quantitative limits set out in Annex V of the said Regulation;

Whereas the products in question exported from China between 25 March 1994 and the date of entry into force

of this Regulation must be set off against the quantitative limit which has been introduced;

Whereas this quantitative limit should not prevent the importation of products covered by it shipped from China before the date of entry into force of this Regulation;

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

HAS ADOPTED THIS REGULATION:

Article 1

Without prejudice to the provisions of Article 2, imports into the Community of the category of products originating in China and specified in the Annex hereto shall be subject to the provisional quantitative limit set out in that Annex.

Article 2

1. Products referred to in Article 1 shipped from China to the Community before the date of entry into force of this Regulation and not yet released for free circulation, shall be so released subject to the presentation of a bill of lading or other transport document proving that shipment actually took place during that period.

2. Imports of products shipped from China to the Community after the entry into force of this Regulation shall be subject to the provisions of Regulation (EEC) No 3030/93 which apply to imports into the Community of products subject to the quantitative limits set out in Annex V of the said Regulation.

3. All quantities of products shipped from China to the Community on or after 25 March 1994 and released for free circulation shall be deducted from the quantitative limit laid down. This provisional limit shall not, however, prevent the importation of products covered by them but shipped from China before the date of entry into force of this Regulation.

Article 3

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

It shall apply until 24 June 1994.

⁽¹⁾ OJ No L 275, 8. 11. 1993, p. 1.

⁽²⁾ OJ No L 29, 2. 2. 1994, p. 1.

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

Done at Brussels, 18 May 1994.

For the Commission

Leon BRITTAN

Member of the Commission

ANNEX

Category	CN code	Description	Third country	Unit	Quantitative limits from 25 March 1994 to 24 June 1994
68	6111 10 90 6111 20 90 6111 30 90 ex 6111 90 00 ex 6209 10 00 ex 6209 20 00 ex 6209 30 00 ex 6209 90 00	Babies' garments and clothings accessories, excluding babies' gloves, mittens and mitts of categories 10 and 87, and babies' stockings, socks and sock-ettes, other than knitted or crocheted, of category 88	China	tonnes	3 204

COMMISSION REGULATION (EC) No 1137/94

of 18 May 1994

amending Regulation (EEC) No 1362/87 laying down detailed rules for the application of Regulation (EEC) No 777/87 with respect to the buying-in and the granting of aid for the private storage of skimmed-milk powder

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION :

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk products ⁽¹⁾, as last amended by Regulation (EEC) No 230/94 ⁽²⁾, and in particular Article 7 a (1), first subparagraph and (3) thereof,

Article 1

Article 1 (1) and (2) of Regulation (EEC) No 1362/87 are hereby replaced by following :

Whereas Article 1 of Commission Regulation (EEC) No 1362/87 of 18 May 1987 ⁽³⁾, as last amended by Regulation (EEC) No 1756/93 ⁽⁴⁾, lays down the conditions under which the suspension of the buying-in of skimmed-milk powder, provided for in Article 7 (1) of Regulation (EEC) No 804/68, may be decided on ; whereas application of these provisions, and in particular the time limit laid down for suspension, involves the risk of massive and speculative offers to sell thus making the buffer provided for pointless ; whereas, therefore, these provisions should be strengthened to enable buying-in to be suspended immediately the necessary conditions are met ;

'1. As soon as it is observed that the condition referred to in Article 1 (2) of Regulation (EEC) No 777/87 has been fulfilled, the buying-in provided for in Article 7 (1) of Regulation (EEC) No 804/68 may be suspended by Commission decision.

2. Where buying-in is suspended, offers for sale may not, under any circumstances, be registered by the intervention agencies later than the day on which the decision referred to in paragraph 1 takes effect.'

Whereas, in view of recent trends in the buying-in of skimmed-milk powder, these amendments should be applied forthwith ;

Article 2

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

This Regulation shall enter into force on the 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, 18 May 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 30, 3. 2. 1994, p. 1.

⁽³⁾ OJ No L 129, 19. 5. 1987, p. 9.

⁽⁴⁾ OJ No L 161, 2. 7. 1993, p. 48.

COMMISSION REGULATION (EC) No 1138/94
of 18 May 1994
fixing the import levies on white sugar and raw sugar

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas the import levies on white sugar and raw sugar were fixed by Commission Regulation (EEC) No 1695/93 ⁽⁵⁾, as last amended by Regulation (EC) No 1122/94 ⁽⁶⁾;

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

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

Whereas, in order to make it possible for the levy arrangements to function normally, the representative market rate established during the reference period from 17 May 1994, as regards floating currencies, should be used to calculate the levies,

HAS ADOPTED THIS REGULATION :

Article 1

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

Article 2

This Regulation shall enter into force on 19 May 1994.

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

Done at Brussels, 18 May 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 22, 27. 1. 1994, p. 7.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 320, 22. 12. 1993, p. 32.

⁽⁵⁾ OJ No L 159, 1. 7. 1993, p. 40.

⁽⁶⁾ OJ No L 122, 17. 5. 1994, p. 24.

ANNEX

to the Commission Regulation of 18 May 1994 fixing the import levies on white sugar and raw sugar

(ECU/100 kg)

CN code	Levy ⁽²⁾
1701 11 10	33,29 ⁽¹⁾
1701 11 90	33,29 ⁽¹⁾
1701 12 10	33,29 ⁽¹⁾
1701 12 90	33,29 ⁽¹⁾
1701 91 00	39,07
1701 99 10	39,07
1701 99 90	39,07 ⁽²⁾

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

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

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

COMMISSION REGULATION (EC) No 1139/94

of 18 May 1994

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

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

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals⁽¹⁾, as amended by Commission Regulation (EEC) No 2193/93⁽²⁾, and in particular Article 10 (5) and Article 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⁾, as amended by Regulation (EC) No 3528/93⁽⁴⁾,

Whereas the import levies on cereals, wheat and rye flour, and wheat groats and meal were fixed by Commission Regulation (EC) No 819/94⁽⁵⁾ 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 17 May 1994, as regards floating currencies, should be used to calculate the levies;

Whereas it follows from applying the detailed rules contained in Regulation (EC) No 819/94 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 19 May 1994.

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

Done at Brussels, 18 May 1994.

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 320, 22. 12. 1993, p. 32.

⁽⁵⁾ OJ No L 94, 13. 4. 1994, p. 16.

ANNEX

to the Commission Regulation of 18 May 1994 fixing the import levies on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)

CN code	Third countries ⁽⁸⁾
0709 90 60	97,01 ⁽²⁾ ⁽³⁾
0712 90 19	97,01 ⁽²⁾ ⁽³⁾
1001 10 00	25,68 ⁽¹⁾ ⁽⁵⁾
1001 90 91	89,55
1001 90 99	89,55 ⁽⁹⁾
1002 00 00	122,37 ⁽⁶⁾
1003 00 10	125,96
1003 00 90	125,96 ⁽⁹⁾
1004 00 00	100,83
1005 10 90	97,01 ⁽²⁾ ⁽³⁾
1005 90 00	97,01 ⁽²⁾ ⁽³⁾
1007 00 90	105,85 ⁽⁷⁾
1008 10 00	32,63 ⁽⁹⁾
1008 20 00	50,69 ⁽⁴⁾ ⁽⁹⁾
1008 30 00	0 ⁽⁷⁾
1008 90 10	⁽⁷⁾
1008 90 90	0
1101 00 00	162,92 ⁽⁷⁾
1102 10 00	208,87
1103 11 10	73,26
1103 11 90	186,87
1107 10 11	170,28
1107 10 19	129,98
1107 10 91	235,09 ⁽¹⁰⁾
1107 10 99	178,41 ⁽⁹⁾
1107 20 00	206,12 ⁽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 or Hungary under the Agreements concluded between those countries and the Community and under the Interim Agreement between the Czech Republic, the Slovak Republic, Bulgaria and Romania and the Community and in respect of which EUR.1 certificates issued in accordance with Regulation (EC) No 121/94 or (EC) No 335/94 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 1140/94
of 18 May 1994

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

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

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals ⁽¹⁾, as amended by Commission 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⁾, as amended by Regulation (EC) No 3528/93 ⁽⁴⁾,

Whereas the premiums to be added to the levies on cereals and malt were fixed by Commission Regulation (EEC) No 1681/93 ⁽⁵⁾ 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 17 May 1994, as regards floating currencies, should be used to calculate the levies;

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 19 May 1994.

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

Done at Brussels, 18 May 1994.

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 320, 22. 12. 1993, p. 32.

⁽⁵⁾ OJ No L 159, 1. 7. 1993, p. 11.

ANNEX

to the Commission Regulation of 18 May 1994 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

(ECU/tonne)

CN code	Current 5	1st period 6	2nd period 7	3rd period 8
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	1,18	3,48	2,62
1001 90 99	0	1,18	3,48	2,62
1002 00 00	0	0	0	0
1003 00 10	0	0	0	0
1003 00 90	0	0	0	0
1004 00 00	0	0	0	0
1005 10 90	0	0	0	0
1005 90 00	0	0	0	0
1007 00 90	0	0	0	0
1008 10 00	0	0	0	0
1008 20 00	0	0	0	0
1008 30 00	0	0	0	0
1008 90 90	0	0	0	0
1101 00 00	0	1,65	4,87	3,66
1102 10 00	0	0	0	0
1103 11 10	0	0	0	0
1103 11 90	0	0	0	0

B. Malt

(ECU/tonne)

CN code	Current 5	1st period 6	2nd period 7	3rd period 8	4th period 9
1107 10 11	0	2,10	6,19	4,66	4,66
1107 10 19	0	1,57	4,63	3,48	3,48
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 1141/94
of 18 May 1994

fixing the maximum export refund for white sugar for the 49th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EEC) No 1144/93

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector⁽¹⁾, as last amended by Regulation (EC) No 133/94⁽²⁾, and in particular the first subparagraph of Article 19 (4) (b) thereof,

Whereas Commission Regulation (EEC) No 1144/93 of 10 May 1993 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar⁽³⁾ requires partial invitations to tender to be issued for the export of this sugar;

Whereas, pursuant to Article 9 (1) of Regulation (EEC) No 1144/93, a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question;

Whereas, following an examination of the tenders submitted in response to the 49th partial invitation to tender, the provisions set out in Article 1 should be adopted;

Whereas Council Regulation (EEC) No 990/93⁽⁴⁾ prohibits trade between the European Community and the

Federal Republic of Yugoslavia (Serbia and Montenegro); whereas this prohibition does not apply in certain situations as comprehensively listed in Articles 2, 4, 5 and 7 thereof; whereas account should be taken of this fact when fixing the refunds;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. For the 49th partial invitation to tender for white sugar issued pursuant to Regulation (EEC) No 1144/93 the maximum amount of the export refund is fixed at ECU 35,443 per 100 kilograms.
2. Refunds on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) may be granted only where the conditions laid down in Regulation (EEC) No 990/93 are observed.

Article 2

This Regulation shall enter into force on 19 May 1994.

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

Done at Brussels, 18 May 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 22, 27. 1. 1994, p. 7.

⁽³⁾ OJ No L 116, 12. 5. 1993, p. 5.

⁽⁴⁾ OJ No L 102, 28. 4. 1993, p. 14.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 27 April 1994

on a procedure relating to the application of Council Regulation (EEC) No 2408/92

(Case VII/AMA/II/93 — TAT — Paris (Orly)-London)

(Only the French text is authentic)

(94/290/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes⁽¹⁾, and in particular Article 8 (3) thereof,

After consulting the Advisory Committee,

Whereas :

(i) declare illegal the refusal by the French authorities to grant it traffic rights to operate on the Paris (Orly)-London route ;

(ii) call on the French authorities to grant it speedily the traffic rights in question ;

(iii) call on the French authorities to draw up and publish rules for access to the Paris airport system in order to put an end to the present discriminatory arrangements ;

(iv) take all steps necessary to give practical effect to the relevant provisions.

BACKGROUND

I

On 10 September 1993 TAT European Airlines (whose registered office is at 47, rue Christiaan Huygens, 37100 Tours, France), sent a request to the Commission, based on Article 175 of the Treaty and Articles 3 (1) and 8 (1) and (3) of Regulation (EEC) No 2408/92, asking the Commission to :

By letter of 26 July 1993 to the French Ministry of Transport's Directorate-General of Civil Aviation (hereinafter 'DGAC'), TAT European Airlines ('TAT'), pursuant to Article 3 (1) of Regulation (EEC) No 2408/92, requested permission to exercise traffic rights on the Paris (Orly)-London (Gatwick) route from 31 October 1993. TAT's operating schedule was enclosed with the letter. It showed that the airline wished to operate four return services daily on the Orly-Gatwick route using Fokker 100 aircraft with a capacity of 102 seats.

By letter of 18 August 1993 the DGAC replied to TAT that it was unable to approve the airline's application to operate. This refusal was based on Article 8 of Regulation (EEC) No 2408/92 which leaves Member States free to regulate, without discrimination on grounds of nationality or identity of the air carrier, the distribution of traffic between the airports within an airport system. The Direc-

⁽¹⁾ OJ No L 240, 24. 8. 1992, p. 8.

tor-General of Civil Aviation made clear that, as part of the airport allocation policy for the Paris region, scheduled international services to most European countries, and the United Kingdom in particular, had been authorized only from Charles-de-Gaulle airport ('CDG'). He added that consideration had been given to changing these rules, but this had not yet been done.

In a further letter of 26 October 1993 to TAT the French authorities confirmed that they were not able to approve the schedule filed by the airline for operation on the Paris (Orly)-London (Garwick) route for the winter season 1993/94. The letter also referred, however, to the speech by the French Minister of Transport to the Conseil Supérieur de l'Aviation Marchande on 14 October 1993 in which he expressed his intention to authorize the operation of services between Orly airport and London airports in April 1994, subject to certain conditions.

The complaint filed by TAT with the Commission on 10 September 1993 is directed against this refusal of permission by the French authorities on 18 August 1993, confirmed on 26 October 1993.

II

In support of its complaint to the Commission, TAT maintains that the French authorities have in this case misapplied the provisions of Article 8 (1) of Regulation (EEC) No 2408/92. It first points out in this connection that Article 3 (1) of that Regulation lays down a general principle of freedom of access and that any exception to this principle pursuant to Article 8 (1) of the same Regulation must be based on transparent, objective, consistent and non-discriminatory criteria. It then makes four separate submissions.

Firstly, it points to the discriminatory character of the difference in treatment between the Paris-London route and French domestic flights. According to the complainant there is no objective reason for making a distinction between French domestic routes, for which the French authorities permit use of both Orly and CDG, and the Paris-London route, for which the French authorities insist that all flights be concentrated on one airport, namely CDG. In particular neither the fact that there are competing surface means of transport, nor the relative importance of the routes in terms of passenger flows, nor yet the presence of several competing airlines can justify

this difference in treatment. TAT adds that the rules for traffic distribution within the Paris airport system are in fact very flexible, since 36 international destinations, of which nine are Community destinations, are served direct from both Orly and CDG. For example, Pakistan Airlines was permitted to exercise fifth-freedom traffic rights on the Paris (Orly)-London (Heathrow) route for its weekly flight PK 781, Karachi-London via Paris.

Secondly, TAT points out that the French rules on traffic distribution within the Paris airport system, even assuming that they exist, cannot in any event be invoked against it because they have not been given any clear expression which is of general application, and have not been published.

Thirdly, the complainant points out that no express reasons, duly substantiated by practical or legal considerations, have been given for the refusal received by it, in so far as the letter of 18 August 1993 from the Director-General of Civil Aviation does no more than restate that Regulation (EEC) No 2408/92 does not affect the right of Member States to regulate the distribution of traffic between airports within the same airport system.

Lastly, TAT points out that no objective criteria, such as congestion at Orly airport, can justify the contested refusal. It makes clear that it has all the slots necessary to operate the route in question in accordance with the schedule submitted to the DGAC.

III

In order to enable it to investigate the complaint from TAT, the Commission asked the French authorities, by letter of 1 October 1993, to answer the following questions within 15 days:

- What are the present rules governing traffic distribution between the airports of the Paris airport system? Please supply a copy or copies of the instruments laying down these rules.
- Have these rules been published? If so, where?
- What are the grounds for the decision by the French authorities to prohibit the operation of scheduled air services between London and Orly airport? More generally, what are the justification and basis for the rules governing the distribution of traffic within the Paris airport system? Please supply all relevant information on this subject.

- Why did Pakistan Airlines obtain the right to operate scheduled air services between Paris (Orly) and London (Heathrow)? What is the frequency of this service? Do other airlines have similar rights?

Since no reply to this request for information reached the Commission within the time limit of 15 days, a letter of reminder, setting a fresh time limit of five days, was sent to the French authorities by the Commission on 22 October 1993. The required information was sent to the Commission by the French authorities by letter of 9 November 1993.

IV

The replies from the French authorities to the four questions put by the Commission in its letter of 1 October 1993 can be summarized as follows:

- As to the first and second questions: In his speech to the Conseil Supérieur de l'Aviation Marchande ('CSAM') on 14 October 1993 the French Minister of Transport stated that he had decided to clarify policy for the distribution of Community traffic between Orly and Roissy-Charles de Gaulle and to make it public in the form legally required by Community law. The draft decree on traffic allocation between Paris airports would accordingly be submitted for the opinion of the CSAM on 24 November 1993.
- As to the third question: The French authorities took the view that they could not grant the request from TAT to operate a scheduled air service between Paris (Orly) and London (Gatwick) because the rules applying to all carriers had not yet been published. The refusal was not discriminatory because at the time when it had been given to TAT no Community airline was authorized to serve that route.
- As to the fourth question: Pakistan Airlines' traffic rights on the Paris (Orly)-London (Heathrow) route resulted from the bilateral air transport agreement between France and Pakistan, which grants Pakistan Airlines fifth-freedom rights to London and other European capitals from Paris. The use of these fifth-freedom rights was characterized by a marked lack of regularity, with at present a frequency of one flight a week on the route in question. The French authorities were of the opinion that it would be unreasonable on these grounds alone to consider moving Pakistan Airlines to CDG. This airline has always served Orly and its services to London were — quite obviously —

characterized by an insignificant, once-weekly frequency. Other non-Community airlines were in the same situation, though they were isolated cases with no impact on the internal market. For example, Aéro-mexico and Air Mauritius operated on the Paris (Orly)-Frankfurt route once a week. Other non-Community airlines held rights of this kind but were not using them at present.

V

On 6 December 1993 the French Minister of Transport did indeed adopt a decree on the distribution of intra-Community air traffic within the Paris airport system. Published in the *Official Journal of the European Communities* on 10 December 1993, it includes the following provisions:

'Article 1: This Decree lays down the distribution of intra-Community air services among the airports making up the Paris airport system as defined by the abovementioned Regulation (EEC) No 2408/92 — that is, Orly, Charles-de-Gaulle and Le Bourget airports.

Article 3: Air services to or from French airports situated either in metropolitan France or overseas Departments may be operated at Orly and Charles-de-Gaulle airports on condition that the exercise of the corresponding traffic rights has been authorized in accordance with the abovementioned Regulation (EEC) No 2408/92.

Article 4: Intra-Community international air services shall be operated at Charles-de-Gaulle airport.

Article 5: Notwithstanding Article 4, the following air services may be operated at Orly airport:

- scheduled air services to or from Spain, Greece and Portugal with a frequency exceeding three outward and return flights weekly for a period of not less than one IATA season,
- non-scheduled international air services to or from Community airports, performed by carriers whose principal place of business is Orly airport, limited to seasonal flights operating for less than four months a year or series of flights with a frequency not exceeding three outward and return flights weekly,

- scheduled international air services to or from Community airports performed, in accordance with applicable international agreements, by non-Community carriers allocated to Orly airport, provided that trade between Member States is not affected thereby.

Article 7: This Decree will be revised not later than 31 March 1994 in order in particular to specify the conditions under which the operation of scheduled air services between Orly airport and airports within the London airport system may be authorized.

An explanatory memorandum setting out the grounds for the Decree was also sent to the Commission by the French authorities, on 30 November 1993. It includes the following sections:

- '1. All discussions and thinking on the subject clearly showed that it was well-nigh impossible in the short term to depart to any significant extent from current practice, for the following reasons:

- The first objective reason is that account must be taken of the existing situation.

The abrupt application of a new airport policy cannot be countenanced in view of previous investment, both in commercial and in physical terms, by the airlines concerned. Initially, therefore, a new policy approach can only be implemented with regard to new services, and to measures of an incentive and progressive nature.

- The second objective reason concerns the saturation of facilities at both Orly and Charles-de-Gaulle airports. Here it must be made clear that "capacity" means not just runway capacity but extends as well to the capacity of all other facilities: terminal buildings; rows of check-in desks; police and customs checkpoints, ramps (aprons) and contact stations; baggage reclaim facilities; etc. While Orly airport's saturation is well known owing to the impossibility of securing landing and take-off slots at certain times of day, Charles-de-Gaulle ("CDG") also has operating difficulties. The Paris airport system has no significant spare capacity at this time.

There will be spare capacity at CDG airport when an additional terminal-building module is opened (in 1997) and when a third runway is brought into service (winter 1997/98).

2. The French Government has made clear the long-term objectives of its airport policy:

- To make CDG "the gateway to Europe" and the airport for flight transfers.
- To confirm Orly in its role as "the gateway to Paris".
- To settle business aviation at Le Bourget airport.

Those general objectives relate as much to extra-Community services as to intra-Community services. In connection with intra-Community services, and in view of the constraints described at the beginning of this Memorandum, and the uncertainties affecting developments in traffic in the new context of the third Community air-transport package, it was clearly wise to give the airport allocation rules a limited life and make provision for them to be revised by 1 April 1997. That will be the conclusion of the transitional period under the third package; 1997 is also the year in which the next significant capacity extension is scheduled to come into service.

3. Even before this new capacity is brought into service, however, the French Government firmly intends to move matters forward by 1997 along the policy lines already announced.

CDG airport, the gateway to Europe

- The French Government has decided that all intra-Community services may be operated at this airport from now on, in order to promote flight transfers.

In particular, the previous rule denying any one airline permission to operate on the same intra-Community route both from Orly airport and from CDG has been dropped.

Orly airport, the gateway to Paris

- The French Government has accordingly decided progressively to open up Orly Airport to high-density intra-Community routes (serving the principal cities of Europe). Initially the experiment should be limited to opening routes between Orly airport and airports within the London airport system, subject to certain conditions still to be laid down.

- Orly airport also remains open to scheduled international services now operated there, for any Community air carrier, of whatever nationality or identity. This applies to routes serving destinations in Spain, Greece and Portugal.

Airlines currently operating on these routes have not expressed any wish to transfer to CDG airport and there is no question of obliging them to do so.

It is likely that, as CDG becomes well established in its role as the airport for transfers (connecting flights), moves will be initiated to transfer part of that traffic there. Concurrently, new services or routes to the main cities of Europe could be developed at Orly airport for point-to-point traffic.

- Domestic routes are already open at CDG and Orly with no restrictions pursuant to Article 8 of Regulation (EEC) No 2408/92, subject to the related traffic rights being granted to the Community carriers concerned pursuant to Articles 3, 4 and 5 of that Regulation. Because point-to-point traffic is better suited to the facilities at Orly airport, however, it is in practice — and will remain — the hub of the domestic network.

With particular regard to low-density routes, which are regarded as vital to regional development in the economic and other spheres, the traffic generated by them chiefly terminates at Paris and is for passengers on same-day round trips.

The French authorities are of the opinion that it should be natural for Community carriers to use CDG when :

- the route generates heavy connecting traffic, despite the direct services developed elsewhere originating from large provincial airports,
- connecting traffic becomes preponderant owing to competition from other modes of transport for traffic to and from Paris.'

that the Decree did not enable it to operate on the Paris (Orly)-London route, and consequently upheld the conclusions contained in its complaint; TAT also made two submissions regarding the provisions of Articles 3, 4 and 5 of the Decree :

- on the one hand, contravention of Articles 6 and 59 of the Treaty and infringement of Regulation (EEC) No 2408/92 in that, by allowing only international intra-Community air services to or from Spain, Greece and Portugal to be operated at Orly, the Decree discriminated between (a) Greek, Spanish and Portuguese carriers and (b) carriers from the other Member States,
- on the other hand, partiality inasmuch as the distinction between domestic routes, which may be operated at Orly and at CDG, and international intra-Community routes, which may be operated only at CDG, is based solely on the concept of a national frontier, which is precisely something which the Treaty aims to eliminate.

On 21 January 1994, moreover, TAT sent the Commission a supplement to its original request of 10 September 1993, also based on Article 6 and 59 of the Treaty, and explicitly directed at the Decree adopted by the French Minister of Transport on 6 December 1993. In addition to its original request, TAT asked the Commission to :

- (i) declare the Decree illegal ;
- (ii) call on the French authorities to bring the rules for access to the Paris airport system into line with the applicable Community provisions and to put an end to the present discriminatory arrangements.

In support of this supplement to its original complaint, TAT put forward the two submissions made in the above-mentioned letter of 22 December 1993. It added the following arguments :

- the Decree is a measure which applies distinctly within the Community according to the origin of the services or their provider and is a barrier to the freedom of TAT to offer its services on the London-Paris route from or to Orly airport in disregard of decisions of the Court of Justice on freedom to provide services,

VI

By letter of 22 December 1993 TAT informed the Commission's Director-General of Transport, of its observations on the Decree of 6 December 1993. It pointed out

- the rules for traffic distribution within the Paris airport system are not applied consistently because, on the one hand, 36 international destinations are at present served both from Orly and CDG airports, and, on the other hand, the intention to amend the Decree in order to authorize services between Paris (Orly) and London has already been announced,
- the conditions which the French authorities would lay down for authorization to operate on the Paris (Orly)-London route after 31 March 1994 are discriminatory (use of aircraft with more than 200 passenger seats; introduction of the concept of 'effective control').

VII

By letter of 24 January 1994 the Commission's Director-General of Transport sent the French authorities preliminary comments, taking into account the information in his possession, on the provisions of the Decree of 6 December 1993. This letter referred extensively to the distinction made in Articles 3, 4 and 5 of the Decree between, on the one hand, air services to or from airports in metropolitan France and French overseas departments, and, on the other hand, international intra-Community air services other than those to and from Greece, Portugal and Spain. The Director-General of Transport pointed out that it was difficult to accept this distinction because:

- it was based on the concept of a national frontier, while the Community air transport market constituted an area without internal frontiers, and it had not been established that the amount of transfer traffic differed substantially between French domestic air services and intra-Community international services,
- such sweeping and outright separation displayed disproportion between its extent and its desired effects,
- in conjunction with the provisions of Article 3 (2) of Regulation (EEC) No 2408/92, it resulted in discrimination between Spanish, Greek and Portuguese carriers, on the one hand, and on the other, carriers from other Member States.

In conclusion, the letter of 24 January 1994 asked the French authorities, if they so wished, to reply to the comments summarized above. It was also made clear that this correspondence arose in connection with the complaint made by TAT on 10 September 1993. In that connection, the Director-General of Transport wished to know whether Air France, which advertised scheduled

flights between Paris (Orly) and London (Heathrow) in computerized reservation systems from 28 March 1994, had obtained the related traffic rights from the French authorities.

Furthermore, since lodging a supplementary complaint with the Commission on 21 January 1994, TAT had sent a further letter, dated 27 January 1994, to the French authorities. This set out the complainant's fresh submissions challenging the Decree of 6 December 1993. The French authorities were given a time limit of 15 days to supply their comments or all relevant data.

VIII

In reply to the letters of 24 and 27 January 1994 the French authorities sent the Commission on 16 February 1994 a memorandum containing the following points:

- the operation of scheduled air services between Orly airport and the London airports, originally scheduled to commence in April 1994, had been postponed. The reason given for the decision to defer them was the information conveyed to the French civil aviation administration, according to which airlines established in France, with the exception of TAT, were unable to obtain satisfactory time slots at London airports, especially Heathrow. A further reason cited was the Commission's delay in informing the French authorities of their comments on the substance of the Decree of 6 December 1993, which were not sent until 24 January 1994; this precluded a general amendment of the Decree;
- the arguments put forward by TAT were mostly inadmissible because the airline could not dispute the Decree of 6 December 1993 in the context of its complaint, having failed to establish any discrimination against it;
- no Community carrier, particularly Air France, had been authorized by the French authorities to operate services between Paris (Orly) and the airports in the London airport system. Air France had, moreover, removed from computer reservation systems any reference to flights between Orly airport and the London airports following the announcement that the inauguration of this service had been postponed. The complaint from TAT was consequently baseless;
- should the Commission call into question the Decree of 6 December 1993, this would lead the French authorities to draft new rules whose precise scope it was difficult to gauge at that point.

LEGAL ASSESSMENT

IX

On the subject of the distribution of traffic between the airports within an airport system, the Commission has the powers conferred upon it by Article 8 (3) of Council Regulation (EEC) No 2408/92. Having regard in particular to the complaint from TAT, the Commission believes it necessary to use its powers and decide whether France may continue to refuse Community carriers in general, and TAT in particular, traffic rights on the scheduled Paris (Orly)-London route on the basis of the Decree of 6 December 1993. It is important to emphasize that in doing so the Commission is acting on its own initiative, as explicitly provided for in the abovementioned provisions. In this connection, the Commission has full powers to verify the effects of the Decree on all Community carriers. It is in no way restricted to assessing the situation of TAT alone.

According to Article 8 (1) of Regulation (EEC) No 2408/92 'This Regulation shall not affect a Member State's right to regulate without discrimination on grounds of nationality or identity of the air carrier the distribution of traffic between the airports within an airport system'.

As the Commission expressly pointed out in Decision 93/347/EEC of 28 May 1993 on the Viva Air case⁽¹⁾ not disputed by France, application of these provisions may restrict the general principle of freedom of access to Community routes and airports laid down in Article 3 (1) of the same Regulation. Any such restriction must, like every exception to such a principle, be interpreted strictly and be based on criteria which are not only non-discriminatory but also transparent, objective and constant over a certain period. It is for Member States to provide all the relevant grounds.

The provisions of the Decree in question must be examined against these criteria.

Firstly, Articles 3, 4 and 5 (first and second indents) of the abovementioned Decree of 6 December 1993 draw a distinction between air services to or from airports in metropolitan France and French overseas departments, which may be operated concurrently at Orly and CDG airports, on the one hand, and, on the other hand, intra-Community international air services other than scheduled air services to or from Spain, Greece and Portugal,

which may only be operated at CDG airport. Article 4 lays down a general prohibition on the operation of intra-Community international air services at Orly airport. Article 5 of the Decree lays down three exceptions to this general prohibition, including scheduled air services to or from Spain, Greece and Portugal. Consequently, Community carriers may not perform consecutive cabotage services between Orly and the French provinces when they are an extension of or preliminary to services between Orly and Member States other than France, Portugal, Spain and Greece.

Orly against takes the bulk of traffic between Paris and the French provinces. In economic terms, too, extension of intra-Community services by consecutive-cabotage services within France provides Community carriers other than those established in France, and particularly those from northern Europe, with a favourite means of penetrating the French domestic market. This is particularly so where the cabotage service is an extension of or preliminary to a service from or to the State of registration of the carrier. The reason is, firstly, that operation of French domestic routes by consecutive-cabotage services implies little investment by these carriers, secondly, that the main French domestic routes serve destinations in the southern half of France from Orly. In these circumstances, the Decree in question must be regarded as introducing, in practice, discrimination against Community carriers other than those established in France, and, to a lesser extent, other than Greek, Portuguese and Spanish carriers as regards the operation of French domestic routes terminating at Paris.

Furthermore, Article 3 (2) of Regulation (EEC) No 2408/92 provides that cabotage within Member States may be restricted until 1 April 1997 to services which are an extension of a service originating in the State of registration of the carrier or preliminary to a service to that State. France has made use of this restriction. In conjunction with this, the Decree of 6 December 1993 has the result of restricting consecutive-cabotage services on French domestic routes to departures or arrivals at CDG airport only, except where these services are extensions of or preliminaries to a service from or to Spain, Greece or Portugal. Ultimately, only French, Greek, Spanish and Portuguese carriers are actually able, until 1 April 1997, to operate scheduled air services between Orly airport and airports in the French provinces.

It results from the foregoing that the abovementioned provisions of the Decree of 6 December 1993 disregard the principle of lack of discrimination based on the nationality of the air carrier laid down in Article 8 (1) of Regulation (EEC) No 2408/92.

⁽¹⁾ OJ No L 140, 11. 6. 1993, p. 51.

Secondly, the measure is apparently neither objective nor consistent. It is, first of all, based solely on Member States' national frontiers and not based on duly established criteria which could warrant this choice of national frontiers as its basis. The reason: since 1 January 1993 national frontiers as such are no longer among the objective criteria for deciding the distribution of intra-Community traffic within an airport system, because Regulation (EEC) No 2408/92 aims specifically to establish an internal market as 'an area without internal frontiers'. Admittedly, the French authorities in their explanatory memorandum made the point, at least implicitly, that the amount of transfer traffic was substantially greater on intra-Community international routes terminating at Paris than on French domestic routes serving Paris. The French authorities, however, have failed to provide data to justify this argument which, if soundly based for each route in isolation, could justify the choice of national frontiers as the criterion.

The allocation of most intra-Community international air services to CDG airport alone appears all the less objective because not only French domestic routes but also many extra-Community international services, including medium-haul services, are operated concurrently at Orly and CDG airports by French or by non-Community airlines. A total of 27 destinations outside the Community, seven of them medium-haul destinations, are served both from and to Orly and CDG airports.

Although routes between Paris and Mediterranean destinations are chiefly assigned to Orly, routes to and from Italy, for no apparent reason, may be served only at CDG.

In their explanatory memorandum of the Decree, the French authorities also state their intention of progressively opening up Orly to high-density intra-Community international routes. It emerges from Decision 93/347/EEC on the Viva Air case, however, that in the absence of clearly established, published rules, the only rule applicable up to 10 December 1993, the date on which the Decree of 6 December 1993 was published, was the rule of freedom of access pursuant to Article 3 (1) of Regulation (EEC) No 2408/92 and affecting both CDG and Orly airports. The principles of objectivity and consistency run counter to the French authorities' powers under Article 4 of the Decree of 6 December 1993 to suspend freedom of access to Orly airport in this way for a few months before progressively reintroducing it thereafter.

This applies particularly to the Paris (Orly)-London route, which is the subject of the complaint from TAT, for the authorization of which the French authorities intend to revise the Decree in question not later than 31 March 1994, as provided in Article 7 of the Decree. It is important to point out in this connection that restrictions which would apply to operating licences on this route, even

assuming them to be non-discriminatory, objective and consistent, would not in any event be legal until a reasonable period of time had elapsed between their date of publication and their date of entry into force. Such a period of time would be intended to enable airlines to adapt to any such restrictions, and thus avoid any risk of discriminatory effects depending on the nationality or identity of carriers.

X

Furthermore, the Commission is of the opinion that the correctness of the restrictions imposed pursuant to Article 8 (1) of Regulation (EEC) No 2408/92 must also be examined on the basis of the principles governing the freedom to provide services as spelled out by decisions of the Court of Justice⁽¹⁾.

In its judgment on *Parliament v. Council*⁽²⁾, the Court held that the obligations laid upon the Council by Article 75 (1) (a) and (b) of the Treaty included that of instituting freedom to provide services in the transport field and that the scope of that obligation was clearly defined by the Treaty itself, in Articles 59 and 60 in particular. Also according to the Court, the Council has no discretionary power on this point; since the desired outcome is laid down by Articles 59, 60, 61 and 75 (1) (a) and (b) in conjunction, only the detailed rules for bringing about this outcome may provide an occasion for the exercise of a degree of discretion.

In connection with air transport, the same line of argument must be followed. In providing for the Community to adopt measures with the aim of progressively establishing the internal market before 31 December 1992, Article 7a of the Treaty expressly cites Article 84. And Article 84 (2) makes a direct reference to the procedural provisions of Article 75. In air transport particularly, freedom to provide services within the Community was achieved, within the framework of the common transport policy, with the adoption of the third package, which has been in force since 1 January 1993. Regulation (EEC) No 2408/92 is entirely of a piece with the common transport policy and constitutes a measure fully harmonizing access for Community air carriers to intra-Community air routes. In adopting that Regulation, therefore, the Council determined, on the basis of Article 84 (2), the detailed rules for applying the principles laid down by Articles 59 and 62. As a result, on the subject of freedom of access to the

⁽¹⁾ Judgments of the Court of 25 July 1991, Cases C-288/89, *Collettieve Antennevoorziening Gouda* [1991] ECR I-4007 and C-76/90, *Säger v. Denemeyer*, [1991] ECR I-4221.

⁽²⁾ Judgment of the Court of 12 May 1985 in Case 13/83, *Parliament v. Council* [1985] ECR 1513; see also the judgment of the Court of 13 December 1989, Case C-49/89, *Corsica Ferries France v. Direction générale des douanes françaises*, [1989] ECR 4441.

market for Community air carriers, it is henceforth necessary to refer directly to those principles⁽¹⁾, on which the Commission recently issued an imperative communication⁽²⁾.

Here, the Commission would point out that measures restricting the free movement of services include measures affecting the ability of the service-provider to provide the service and measures preventing potential customers from availing themselves of such services as they wish. Furthermore, the concept of a restriction on the free movement of services goes beyond the prohibition of discrimination. Even where they apply without distinction to national service-providers and those from other Member States, barriers to the freedom to provide services are unacceptable if they are not warranted for objective and overriding grounds in the common interest or if the same result can be obtained by means of less-binding rules (the proportionality principle).

It is apparent, firstly, that the distinction made by Articles 3, 4 and 5 of the Decree of 6 December 1993 is a measure restricting the freedom to provide scheduled air services between the Paris airport system and airports in Member States other than Spain, Greece and Portugal. If it affects both the ability of carriers to provide those services at Orly and users wishing to travel within the Community from or to Orly airport. The restriction is an important one, moreover, because customers prefer to use Orly airport, which is closer to the city centre. With about 25 million passengers in 1992, substantially equal to CDG's traffic level, Orly is also among the world's 15 leading airports. Besides this, in the explanatory memorandum introducing the Decree in question, quoted in paragraph V, the French authorities make clear that Orly is both the 'gateway to Paris' and the 'hub of the domestic network'. The measure thus erects barriers to freedom of trade not only between Paris and most of the Member States, but also between those Member States and the French provinces via the Orly hub.

In view of the discrimination on the grounds of carriers' nationality considered in section IX, these obstacles are incompatible with the freedom to provide services. Even aside from this discrimination, however, the Commission is of the opinion that the other requirements set out in the decisions of the Court are not fulfilled in this case.

In their explanatory memorandum, cited in section V, the French authorities pointed to the need to take account of the present situation and of prior investment by the

airlines as justification for the provisions of the Decree of 6 December 1993. In the competitive environment for intra-Community air transport prevailing since 1 January 1993, however, it is for the economic operators alone to decide the optimum allocation of their resources, according in particular to the needs and wishes of their customers. And the liberalization measures which entered into force on 1 January 1993 were preceded by several successive stages from 1987 onwards — including the first and second air-transport packages, when Member States had time to make the necessary adjustments.

The French authorities have also put forward the saturation of facilities, the importance of CDG airport as a hub for transfers (connecting flights), and the long-term objectives of their airport policy. The Commission does not dispute these general objectives, nor the right of the French authorities to operate an airport policy in order to fulfil them. Saturation of facilities, and the pursuit of an airport policy, may be regarded as general overriding requirements such as may warrant traffic allocation measures including, where necessary, a restriction of access to Orly airport. The French authorities, however, did not provide any specific evidence to show that Orly airport was much more congested than CDG. On the contrary, they acknowledge that congestion problems occur at peak hours at both airports. Furthermore, overriding requirements of this kind must be reflected in measures which abide by the principle of proportionality. The Commission does not consider it to be so in this case.

The scope of the measure exceeds what is necessary to attain the objectives put forward by the French authorities in their explanatory memorandum, namely to limit saturation of facilities in the short term and, in the longer term, to promote CDG as a great European transit forum whilst developing Orly as the close-in airport for the Paris conurbation. The restriction in question is indeed drastic and, as pointed out earlier, imposes an important restriction on freedom of access to the market within the Community. About 85 % of French domestic traffic originating or terminating at Paris is concentrated at Orly airport, compared with only 15 % at CDG. Thus, even allowing for the cabotage opportunities available at Orly to Spanish, Greek and Portuguese carriers (only), the restriction imposed by Article 4 of the Decree of 6 December 1993 nullifies, in France, much of the practical effect of the introduction of the cabotage expressly desired and decided upon by the Council from 1 January 1993 towards.

The French authorities have not established, nor even alleged, that the outcome which they seek cannot be obtained by less binding measures and ones less harmful

⁽¹⁾ It must also be emphasized that air transport, like the other modes of transport, is subject to the general rules of the Treaty; see the judgment of the Court of 4 April 1974, Case 167/73, *Commission v. France*, [1974] ECR 359, and of 30 April 1986, *Joined Cases 209 to 213/84, Ministère public v. Lucas Asjes and others* [1986] ECR 1425.

⁽²⁾ OJ No C 334, 9. 12. 1993, p. 3.

to intra-Community trade. The stated intention of the French authorities of progressively opening up Orly airport to high-density intra-Community international services tends, indeed, to show the opposite. Here, the Commission must take into consideration the continuation of charter services at Orly airport under Article 5 of the Decree of 6 December 1993, or again the continuation at Orly of many extra-Community international services — intercontinental services in particular — operated by airlines from non-Community countries or even by Air France. The Commission would also point out that French domestic services may also be operated without restriction by Air Inter from or to Orly airport, which in any case is far from being permanently saturated.

Having regard to all of the foregoing, the Commission is of the opinion that the French authorities have misapplied Article 8 (1) of Regulation (EEC) No 2408/92 by assigning intra-Community international air services to CDG airport alone, by the Decree of 6 December 1993. Consequently, they were wrong in refusing and continuing to refuse Community carriers, in particular TAT, traffic rights on the Paris (Orly)-London route. It is therefore appropriate to decide, pursuant to Article 8 (3) of Regulation (EEC) No 2408/92 that the French authorities may not continue to apply this measure regarding traffic allocation between Orly and CDG airports, as far as the Paris-London route is concerned. This Decision, however, in no way calls into question the rights of the French authorities to pursue an active airport policy, provided

that policy complies with the principles of Community law as set out above,

HAS ADOPTED THIS DECISION:

Article 1

France may not continue to refuse Community carriers permission to exercise traffic rights on the Paris (Orly)-London route on the grounds that Article 4 of the Decree of 6 December 1993 provides that intra-Community international air services from or to Paris must be operated at Charles-de-Gaulle airport.

Article 2

This Decision is addressed to the French Republic. It shall be communicated to TAT European Airlines, the Council of the European Union, the Member States, the Kingdom of Norway and the Kingdom of Sweden.

Done at Brussels, 27 April 1994.

For the Commission

Abel MATUTES

Member of the Commission

COMMISSION DECISION

of 27 April 1994

on a procedure relating to the application of Council Regulation (EEC) No 2408/92

(Case VII/AMA/IV/93 — TAT — Paris(Orly)-Marseille and Paris(Orly)-Toulouse)

(Only the French text is authentic)

(94/291/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2408/92 of 23 July 1992, on access for Community air carriers to intra-Community air routes⁽¹⁾, and in particular Article 8 (3) thereof,

After consulting the Advisory Committee,

Whereas :

made explicit reference to the provisions of Regulation (EEC) No 2408/92, which applied from 1 January 1993, and in particular Article 8 of that Regulation.

In a letter dated 21 July the Director-General of Civil Aviation replied that he was unable to grant TAT's application, basing his refusal on Article 5 of the above Regulation. The Director-General of Civil Aviation wrote : 'Article 5 of this Regulation allows the exclusive concession granted on these routes by virtue of the agreement between the State and Air Inter to be maintained for three years with effect from 1 January 1993. At the current time the Minister has decided to take advantage of this possibility for a large part of the Air Inter network, including the routes in question. I cannot therefore grant your request.'

BACKGROUND**I**

On 28 September 1993 TAT European Airlines (whose registered office is at 47, rue Christiaan Huygens, 37100 Tours, France) requested the Commission to :

- (i) find that, by refusing TAT European Airlines a licence to operate on the Paris-Toulouse and Paris-Marseille routes to and from Orly airport, the French authorities and the Air France Group infringed Council Regulation (EEC) No 2408/92 ;
- (ii) take all necessary steps to put an end to repeated violations and abuse by the authorities and the group concerned and to give the measures in question their full effect.

By letter of 21 June 1993 the General Manager of TAT European Airlines (hereinafter referred to as "TAT") asked the Director-General of Civil Aviation in the French Ministry of Transport to clarify the position of his administration with regard to operation on the Paris(Orly)-Toulouse and Paris(Orly)-Marseille routes by TAT, routes on which his company had applied to operate. The letter

The complaint formally recorded was lodged with the Commission by TAT on 28 September 1993 and by the Commission's Directorate-General for Transport on 29 September, disputes the French authorities' refusal of 21 July 1993.

II

In support of its complaint to the Commission, TAT claimed that there was an infringement of Articles 3 (f), 86 and 90 of the EC Treaty, failure to comply with the Agreement of 30 October 1990 between the Commission of the European Communities, the French Government and Air France following the latter's takeover of UTA (Union des Transports Aériens), and an infringement of Regulation (EEC) No 2408/92. The various submissions made by TAT include the following which are pertinent to this Decision :

- French domestic traffic rights for flights out of Paris are normally granted by the French authorities for all airports in the Paris airport system designated for the operation of scheduled traffic rights, namely Orly and Charles de Gaulle (CDG). As far as domestic services are concerned, the French authorities want to encour-

⁽¹⁾ OJ No L 240, 24. 8. 1992, p. 8.

rage duplication of services, to Orly and CDG, in order to allow airlines wishing to do so to improve their services to Paris. By refusing to allow the same flexibility on the more important routes such as Paris-Marseille and Paris-Toulouse, the French authorities are effectively cornering the truly profitable French air-transport market for the Air France Group — and for Air Inter in particular,

— the Air France Group's monopoly of the Paris(Orly)-Toulouse and Paris(Orly)-Marseille routes should have expired on 1 March 1992; point 1.1.1 of the abovementioned Agreement of 30 October 1990 states that: 'in the light of the applications submitted, the French authorities shall designate at least one airline established in France other than Air France on the following domestic routes: ... Paris-Marseille, Paris-Toulouse ... These routes shall be opened up to multiple designation with effect from the date of entry into force of this arrangement ... the French authorities shall issue the required authorizations by 1 March 1992 at the latest'. Article 5 of Regulation (EEC) No 2408/92 has not altered the necessary interpretation of those provisions,

— Article 5 of Regulation (EEC) No 2408/92 does not apply to the Paris(Orly)-Marseille and Paris(Orly)-Toulouse routes because:

— either the term 'routes' to which the exclusive rights apply within the meaning of Article 5 refers to the routes involving the Paris airport system — in which case Air France does not hold an 'exclusive' concession under Article 5 over the Paris-Toulouse and Paris-Marseille routes, as it is precisely TAT which provides the service on the CDG-Toulouse and CDG-Marseille routes under the terms of the abovementioned agreement of 30 October 1990,

— or the Orly-Toulouse and Orly-Marseille routes should be regarded as the routes to take into account for the purposes of Article 5 — in which case other forms of transport can ensure an 'adequate and uninterrupted service', such as Air Inter and TAT services on the CDG-Toulouse and CDG-Marseille routes. In this case the exclusive concession can no longer be continued,

— the discrimination against TAT cannot be justified by Article 8 (1) of Council Regulation (EEC) No 2408/92.

By letter dated 13 October 1993 to the Director-General of the Commission's Directorate-General for Transport, TAT added further to its previous submissions. It stated

that the effect and intention of the French authorities' misapplication of Article 5 of Regulation (EEC) No 2408/92 was to maintain discriminatory rules governing traffic allocation within the Paris airport system in relation to the Paris-Marseille and Paris-Toulouse routes. According to the complainant, the application of Article 5 was even less justifiable in this case as that Article was only intended to apply to city-city rather than airport-airport routes. TAT therefore requested the Commission to adopt a Decision on the basis of Article 8 (3) of the Regulation concerned, without prejudice to any other action which the Commission might take against the French authorities.

III

The Commission's Director-General of Transport notified the French authorities by letter of 22 October 1993 of his position on this case based on the facts currently in his possession. In this letter he stated explicitly that the provisions of Article 5 of Regulation (EEC) No 2408/92 did not apply to the Paris-Marseille and Paris-Toulouse routes as they should have been opened up to multiple designation by 1 March 1992 at the latest and because Air Inter, as a subsidiary of Air France, could not therefore be regarded as holding an exclusive concession to the two routes. He further stated that the French authorities' refusal to grant TAT traffic rights to the two routes in question to and from Orly airport amounted to discrimination in the allocation of traffic within the Paris airport system, contrary to the provisions of Article 8 (1) of the said Regulation (EEC) No 2408/92.

Furthermore, as part of an examination of the same case in relation to the Community's competition rules, the Commission's Directorate-General for Competition sent a copy of TAT's complaint to the French authorities and to Air France asking for their comments, if any. The two procedures are being dealt with on a completely separate basis.

In reply to the aforementioned correspondence, France's Permanent Representative to the European Communities sent to the Commission the French authorities' observations on the substance of the complaint by TAT, in a letter dated 21 December 1993 which was formally recorded by the Commission's Secretariat-General on 23 December. With reference to the application of Article 5 of Regulation (EEC) No 2408/92, the French authorities first stated that, with the exception of the Paris-Nice route, the abovementioned agreement of 30 October 1990 only laid down multiple designation status for certain French domestic routes to or from CDG. They further

pointed out that the Paris(Orly)-Marseille and Paris(Orly)-Toulouse routes met the criteria laid down for application of the said Article 5, inasmuch as they were domestic routes, Air Inter had been granted an exclusive concession in a clearly identified legal instrument referring explicitly to the routes in question and, lastly, no other forms of transport capable of providing an adequate and uninterrupted service were available on those routes. It should be pointed out here that the French authorities made no reference to Article 8 of Regulation (EEC) No 2408/92 at this stage.

IV

In order to permit a full investigation of this case under the procedure laid down by Article 8 (3) of Regulation (EEC) No 2408/92 and to safeguard the rights of the defence, on 21 January 1994 the Commission sent a further letter to the French authorities in which it set out the arguments made by TAT concerning the alleged failure to observe the provisions of Article 8 (1) of Regulation (EEC) No 2408/92 as follows: 'TAT European Airlines maintain that by the misapplication of Article 5 to the two routes to and from Orly airport alone, the French authorities have acted in a discriminatory manner to the advantage of Air Inter in the allocation of traffic between the airports within the Paris airport system. In this respect TAT European Airlines have pointed out that Article 5 refers to city-city rather than airport-airport links. The company therefore asks the Commission to take a decision based on Article 8 (3) of the Regulation concerned'. The Commission requested the French authorities, in conclusion, to send their comments on the points made by TAT as summed up in the letter, as well as any other information they considered pertinent, within the next two weeks.

In reply to the aforementioned letter of 21 January 1994, the French authorities sent a note to the Commission on 16 February 1994 which included the following points:

- the Commission's document entitled 'Principles of interpretation for the application of Article 5', which was sent to the Member States on 23 September 1993, only represents the Commission's opinion and not the applicable law as it now stands,
- for more than 30 years the French domestic air transport system has been organized in the main around Air Inter's capacity for balancing profitable and unprofitable routes, which it has been granted an exclusive concession to operate. Too rapid a transition from this system to another would jeopardize the future of several domestic services in France and would therefore be at odds with the French authori-

ties' desire to maintain uniform, balanced development of the national territory,

- the concept of 'route' within the meaning of Article 5 of Regulation (EEC) No 2408/92 refers to airport-airport rather than city-city routes, as other Articles in the same Regulation would seem to bear out,
- the Commission's action in applying a procedure on the basis of Article 8 (3) of Regulation (EEC) No 2408/92 is unfounded in this case because there are no grounds for claiming non-compliance with the provisions of the first paragraph of that Article,
- Article 5 of Regulation (EEC) No 2408/92 is applicable to the Paris(Orly)-Marseille and Paris(Orly)-Toulouse routes because: (a) the word 'form' used in that Article refers to modes of transport other than aircraft; and (b) the agreement of 30 October 1990 between the Commission, Air France and the French authorities provides for the routes in question to be opened up to competition only to and from CDG airport.

V

At this point it should be stated that on 6 December 1993 the French Minister of Transport issued a decree, on the allocation of intra-Community traffic within the Paris airport system. Under the terms of Article 3 of this decree, which was published in the *Official Journal of the French Republic* of 10 December 1993: 'Air services to or from French airports, either in metropolitan France or in overseas Departments, may be operated at Orly and Charles-de-Gaulle airports, provided that exercise of the corresponding traffic rights has been authorized pursuant to the abovementioned Regulation (EEC) No 2408/92'.

LEGAL ASSESSMENT

VI

The Commission holds powers for the allocation of traffic between airports within an airport system which are conferred by Article 8 (3) of Council Regulation (EEC) No 2408/92. As far as the complaint lodged by TAT is concerned, the Commission considers it necessary to use those powers to decide whether France may continue to apply the measure refusing Community carriers and TAT in particular, traffic rights on the scheduled routes between Paris(Orly)-Marseille and Paris(Orly)-Toulouse on the grounds that operation of the Paris-Marseille and Paris-Toulouse routes is only authorized from and to CDG airport, as the French authorities have applied Article 5 of the Regulation in question to the same two routes to and from Orly.

Under Article 8 (1) of Regulation (EEC) No 2408/92, 'This Regulation shall not affect a Member State's right to regulate without discrimination on grounds of nationality or identity of the air carrier the distribution of traffic between the airports within an airport system'.

As the Commission expressly pointed out in its Decision 93/347/EEC of 28 May 1993 on the Viva Air case⁽¹⁾, which was not contested by France, the application of these provisions could restrict the general principle of freedom of access to Community air routes and airports laid down in Article 3 (1) of the same Regulation. Any such restriction must, like any exception to a general principle, be interpreted strictly and be based on transparent, objective criteria which remain constant over a given period and are non-discriminatory. It is then for Member States to put forward all the relevant grounds. These grounds must both be based on factual, objective determinants and comply with the principle of proportionality to the scope of the measure.

With particular regard to the principle of non-discrimination, a distinction must be drawn between discrimination on grounds of the carrier's nationality and discrimination on grounds of the carrier's identity.

The prohibition of any form of discrimination based on the carrier's nationality, embodied in Regulation (EEC) No 2408/92, is laid down by Article 6 of the Treaty establishing the European Community. It has given rise to many decisions of the Court of Justice.

In adopting Regulation (EEC) No 2408/92, however, the Council considered that the absence of discrimination on grounds of the carrier's nationality was not sufficient, in view of the structure of air transport in the Community, to ensure the satisfactory working of the internal market in civil air transport and to ensure compliance with the principle of free access to the market laid down in Article 3 (1) of that Regulation. Consequently, it added the principle of non-discrimination on the basis of the air carrier's identity.

The Commission considers that the principle of non-discrimination on grounds of the air carrier's identity prevents a Member State, without objective grounds, from withholding from one or more carriers, whether already operating on a route or applying to do so, the traffic rights granted to a limited number of other carriers who are or can be precisely identified to operate the same service on comparable terms; or, conversely, from gran-

ting to one or more carriers traffic rights a limited number of other carriers who are or can be precisely identified to operate the same service on comparable terms. The limited number and identity of Community carriers who benefit from, or, conversely, are penalized by, the discriminatory measure may emerge directly from that measure or may be ascertained indirectly from the *de facto* circumstances.

These considerations should be taken into account in examining the measure by which the French authorities continue to refuse Community carriers in general, and in particular TAT, traffic rights on the Paris(Orly)-Marseille and Paris(Orly)-Toulouse routes.

First, it has to be said that this measure breaches the principle of non-discrimination on grounds of the carrier's identity as specified above. The French authorities have stated that the operation of scheduled services by Community airlines between Paris and Marseille and between Paris and Toulouse was fully authorized for flights from and to CDG airport in accordance with the provisions of Article 3 (1) of Regulation (EEC) No 2408/92. TAT does in fact operate scheduled services on the Paris(CDG)-Toulouse and Paris(CDG)-Marseille routes, as does Air Inter. However, the French authorities maintain an exclusive concession of Air Inter on the same routes to and from Orly airport under Article 5 of the same Regulation. In doing so they refuse to allow any Community airline other than Air Inter to serve Orly airport as part of its operation of scheduled air services between the Paris airport system and Toulouse or Marseille. This is clearly a case of discrimination to the advantage of Air Inter alone in the allocation of traffic between the airports within the Paris airport system.

Another question to be examined is whether France could legally derogate from the non-discrimination principle laid down by Article 8 (1) of Regulation (EEC) No 2408/92 by applying the provisions of Article 5 of the same Regulation. On this point, the Commission considers that the correct application of Article 5 of the Regulation could not possibly lead to discrimination on the grounds of the carrier's identity as prohibited by Article 8. As will be demonstrated below, maintaining the exclusive concession in question is in fact a roundabout means of allocating traffic within the Paris airport system through the incorrect application of Article 5 of Regulation (EEC) No 2408/92.

According to Article 5 of Regulation (EEC) No 2408/92: 'On domestic routes for which at the time of entry into force of this Regulation an exclusive concession has been granted by law or contract, and where other forms of

⁽¹⁾ OJ No L 140, 11. 6. 1993, p. 51.

transport cannot ensure an adequate and uninterrupted service, such a concession may continue until its expiry date or for three years, whichever comes first'.

In the Commission's opinion, by allowing certain scheduled routes that had previously been operated on an exclusive basis a period of grace in which to adjust to market forces, this Article is designed to ensure the survival of adequate transport services between two points (cities or regions) within the same Member State. The other forms of transport referred to in Article 5 therefore take into account all other facilities for transport between two cities, including intermodal means — that is, mainly transport by train or by bus. It may also include transport by plane in the case of indirect flights or where an alternative airport is available. Here it should be noted that in the wording of Article 5 the expression 'forms of transport' is used rather than 'modes of transport'. In other words, exclusive rights may only be maintained under Article 5 where there is no other way of travelling from one city to another by an adequate and uninterrupted means. In the case of an airport system serving a single town or region, therefore, exclusive rights to a route terminating in that airport system would only serve their purpose where such rights applied to all the airports in the system. They cannot therefore be maintained under Article 5 unless they expressly refer to an entire airport system and not just to a single airport.

In this particular case, moreover, the Agreement of 5 July 1985 by which the French State granted concessions to Air Inter on certain routes, including the two concerned here, itself defines these routes as point-to-point rather than airport-to-airport routes and includes no reference to the different airports of the Paris airport system.

By authorizing TAT to operate on the Paris-Marseille and Paris-Toulouse routes to and from CDG airport with effect from 1 March 1992 and, more recently, by raising no objection to other Community airlines' operating on the same routes, therefore, the French authorities have put an end to the exclusive rights that Air Inter might otherwise have enjoyed between Paris and Marseille or Toulouse. In effect, the measure used against TAT, based on Article 5 which does not apply in this case, appears to be simply a rule governing the allocation of traffic between Orly and CDG airports.

Furthermore, the Commission considers that Article 5 of Regulation (EEC) No 2408/92 is not applicable in this case since, on 1 January 1993 — the date of entry into force of the Regulation — Air Inter did not hold an

exclusive concession for the Paris-Marseille and Paris-Toulouse routes from either airport in the Paris airport system. Firstly, in the case of the Paris-Marseille route, the abovementioned Agreement of 5 July 1985 gave express permission to UTA and Air Afrique to operate the self-same route at the same time as Air Inter, thereby eliminating the exclusive nature of the concession held by that airline. Secondly, as regards the Paris-Toulouse route, and also by extension, Paris-Marseille, the consequence of the provisions of point 1.1.1 of the Agreement of 30 October 1990 referred to in section II, which makes no reference to airport allocations, is that Air Inter's exclusive concession to operate the route ended on 1 March 1992 at the latest.

In view of all the foregoing, the Commission considers that the French authorities have carried out the allocation of traffic rights in the Paris airport system in a discriminatory manner and have therefore infringed the provisions of Article 8 (1) of Regulation (EEC) No 2408/92 by misapplying Article 5 of the Regulation in question and that they have maintained an exclusive concession for Air Inter on the Paris-Marseille and Paris-Toulouse routes to and from Orly airport alone.

It should also be noted here that, even if the concept of 'route' in Article 5 were to be interpreted differently, the conclusion would be the same. Given that an exclusive concession could be properly defined within the meaning of Article 5 on the scheduled air services between Orly and Marseille or Toulouse — an approach rejected by the Commission — there are other forms of transport besides airlines which could ensure an adequate and uninterrupted service between Paris and Marseille and between Paris and Toulouse: the existing direct air services between Paris (CDG) and Marseille and between Paris (CDG) and Toulouse, each of which includes five daily return flights, fulfil the 'adequate and uninterrupted' criteria. This fact, which precludes the use of Article 5 in the case of departures or arrivals at Orly alone on the two routes concerned, also demonstrates that it is impossible to apply Article 5 in respect of these routes except to the entire Paris airport system.

It should finally be stressed that the effects of the discrimination at issue here are considerable. Orly airport is the travellers' choice and accounts for between 85 % and 90 % of all French domestic traffic to and from Paris. The split of domestic traffic between Orly and CDG has been stable for several years at approximately 85 % and 82 % in Orly's favour on the Paris-Marseille and Paris-Toulouse routes respectively. With a regular annual flow

of some two million passengers each, these routes are amongst the busiest in the Community. It is also more expensive to operate them from CDG airport than from Orly, partly for geographical reasons.

To sum up, the Commission considers that the French authorities incorrectly applied Article 8 (1) of Regulation (EEC) No 2408/92 by refusing to allow Community carriers to exercise traffic rights on the Paris-Marseille and Paris-Toulouse routes to and from Orly airport. Consequently it must be decided, in accordance with Article 8 (3) of Regulation (EEC) No 2408/92, that the French authorities may not continue to apply the measure concerned for allocating traffic between Orly and CDG airports. This Decision is not, however, intended in principle to prevent the continuation of an exclusive concession for Air Inter on routes fulfilling the conditions laid down in Article 5, as these are made clear above. It is also important to reiterate that the provisions of Regulation (EEC) No 2408/92, and Article 4 on public service obligations in particular, are a way of ensuring continuity of services throughout the domestic route networks in the Member States, and of serving the objectives of regional development policy. However, since in the particular circumstances of this case this Decision may have major repercussions on the structure and organization of the routes in question, the Commission considers it advisable to allow a delay for adjustment, expiring on 27 October 1994,

HAS ADOPTED THIS DECISION:

Article 1

France may not continue to refuse Community air carriers traffic rights on the Paris(Orly)-Marseille and Paris(Orly)-Toulouse routes on the grounds that the French authorities were applying Article 5 of Regulation (EEC) No 2408/92 on these routes.

Article 2

This Decision is addressed to the French Republic. It shall be communicated to TAT European Airlines, the Council of the European Union, the Member States, the Kingdom of Norway and the Kingdom of Sweden.

Article 3

France is required to give effect to this Decision by 27 October 1994 at the latest.

Done at Brussels, 27 April 1994.

For the Commission

Abel MATUTES

Member of the Commission