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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 2425/94

of 6 October 1994

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EC) No 3179/93⁽²⁾, and in particular Article 16 (2) thereof,

Having regard to Council Regulation (EEC) No 1514/76 of 24 June 1976 on imports of olive oil originating in Algeria⁽³⁾, as last amended by Regulation (EEC) No 1900/92⁽⁴⁾, and in particular Article 5 thereof,

Having regard to Council Regulation (EEC) No 1521/76 of 24 June 1976 on imports of olive oil originating in Morocco⁽⁵⁾, as last amended by Regulation (EEC) No 1901/92⁽⁶⁾, and in particular Article 5 thereof,

Having regard to Council Regulation (EEC) No 1508/76 of 24 June 1976 on imports of olive oil originating in Tunisia⁽⁷⁾, as last amended by Regulation (EEC) No 413/86⁽⁸⁾, and in particular Article 5 thereof,

Having regard to Council Regulation (EEC) No 1180/77 of 17 May 1977 on imports into the Community of certain agricultural products originating in Turkey⁽⁹⁾, as last amended by Regulation (EEC) No 1902/92⁽¹⁰⁾, and in particular Article 10 (2) thereof,

Having regard to Council Regulation (EEC) No 1620/77 of 18 July 1977 laying down detailed rules for the importation of olive oil from Lebanon⁽¹¹⁾,

Whereas by Regulation (EEC) No 3131/78⁽¹²⁾, as amended by the Act of Accession of Greece, the Commission decided to use the tendering procedure to fix levies on olive oil;

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

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

Whereas, pursuant to Article 101 (1) of Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community⁽¹⁴⁾, no levies shall apply on imports of products originating in the overseas countries and territories;

Whereas application of the rules recalled above to the levy rates indicated by tenderers on 3 and 4 October 1994 leads to the minimum levies being fixed as indicated in Annex I to this Regulation;

Whereas the import levy on olives falling within CN codes 0709 90 39 and 0711 20 90 and on products falling within CN codes 1522 00 31, 1522 00 39 and 2306 90 19 must be calculated from the minimum levy applicable on the olive oil contained in these products; whereas, however, the levy charged for olive oil may not be less than an amount equal to 8 % of the value of the

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

⁽²⁾ OJ No L 285, 20. 11. 1993, p. 9.

⁽³⁾ OJ No L 169, 28. 6. 1976, p. 24.

⁽⁴⁾ OJ No L 192, 11. 7. 1992, p. 1.

⁽⁵⁾ OJ No L 169, 28. 6. 1976, p. 43.

⁽⁶⁾ OJ No L 192, 11. 7. 1992, p. 2.

⁽⁷⁾ OJ No L 169, 28. 6. 1976, p. 9.

⁽⁸⁾ OJ No L 48, 26. 2. 1986, p. 1.

⁽⁹⁾ OJ No L 142, 9. 6. 1977, p. 10.

⁽¹⁰⁾ OJ No L 192, 11. 7. 1992, p. 3.

⁽¹¹⁾ OJ No L 181, 21. 7. 1977, p. 4.

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

⁽¹³⁾ OJ No L 331, 28. 11. 1978, p. 6.

⁽¹⁴⁾ OJ No L 263, 19. 9. 1991, p. 1.

imported product, such amount to be fixed at a standard rate ; whereas application of these provisions leads to the levies being fixed as indicated in Annex II to this Regulation;

Article 2

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

HAS ADOPTED THIS REGULATION :

Article 1

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

Article 3

This Regulation shall enter into force on 7 October 1994.

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

Done at Brussels, 6 October 1994.

For the Commission

René STEICHEN

Member of the Commission

ANNEX I

Minimum import levies on olive oil ⁽¹⁾

(ECU/100 kg)

CN code	Non-member countries
1509 10 10	79,00 ⁽²⁾
1509 10 90	79,00 ⁽²⁾
1509 90 00	92,00 ⁽³⁾
1510 00 10	77,00 ⁽³⁾
1510 00 90	122,00 ⁽⁴⁾

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

⁽²⁾ For imports of oil falling within this CN code and produced entirely in one of the countries listed below and transported directly from any of those countries to the Community, the levy to be collected is reduced by :

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

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

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

⁽⁴⁾ For imports of oil falling within this CN code :

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

ANNEX II

Import levies on other olive oil sector products ⁽¹⁾

(ECU/100 kg)

CN code	Non-member countries
0709 90 39	17,38
0711 20 90	17,38
1522 00 31	39,50
1522 00 39	63,20
2306 90 19	6,16

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

COMMISSION REGULATION (EC) No 2426/94

of 6 October 1994

amending Regulation (EEC) No 1727/92 laying down detailed rules for implementation of the specific arrangements for the supply of cereal products to the Azores and Madeira and establishing the forecast supply balance

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

Having regard to Council Regulation (EEC) No 1600/92 of 15 June 1992 concerning specific measures for the Azores and Madeira relating to certain agricultural products ⁽¹⁾, as last amended by Commission Regulation (EEC) No 1974/93 ⁽²⁾, and in particular Article 10 thereof,

Whereas, pursuant to Article 2 of Regulation (EEC) No 1600/92, Commission Regulation (EEC) No 1727/92 ⁽³⁾, as last amended by Regulation (EC) No 1740/94 ⁽⁴⁾, establishes the forecast supply balance for cereal products for the Azores and Madeira for July, August and September 1994 only, on the basis of the quantities determined for the 1993/94 marketing year, pending additional information to be provided by the competent authorities and in order to ensure the continuity of the specific supply arrangements; whereas, as that information has been received, the forecast supply balance provided for in Article 2 of Regulation (EEC) No 1600/92 should be esta-

blished for the 1994/95 marketing year; whereas the Annex to Regulation (EEC) No 1727/92 should be amended accordingly;

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

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EEC) No 1727/92 is hereby replaced by the Annex hereto.

Article 2

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

It shall apply with effect from 1 July 1994.

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

Done at Brussels, 6 October 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 173, 27. 6. 1992, p. 1.

⁽²⁾ OJ No L 180, 23. 7. 1993, p. 26.

⁽³⁾ OJ No L 179, 1. 7. 1992, p. 101.

⁽⁴⁾ OJ No L 182, 16. 7. 1994, p. 16.

ANNEX

Azores and Madeira : supply balance for cereals for the period July 1994 to June 1995

<i>(tonnes)</i>			
Product	CN code	Azores	Madeira
Breadmaking common wheat	1001 90	34 000	23 000
Fodder wheat	1001 90	2 000	2 000
Barley	1003	46 000	7 000
Durum wheat	1001 10	3 000	7 000
Maize	1005	64 000	35 000
Malt	1107	1 000	2 200
Total		150 000	76 200

COMMISSION REGULATION (EC) No 2427/94

of 6 October 1994

amending Regulation (EEC) No 1728/92 laying down detailed rules for implementation of the specific arrangements for the supply of cereal products to the Canary Islands and establishing the forecast supply balance

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

Having regard to Council Regulation (EEC) No 1601/92 of 15 June 1992 concerning specific measures for the Canary Islands with regard to certain agricultural products ⁽¹⁾, as last amended by Commission Regulation (EEC) No 1974/93 ⁽²⁾, and in particular Article 3 (4) thereof,

Whereas, pursuant to Article 2 of Regulation (EEC) No 1601/92, Commission Regulation (EEC) No 1728/92 ⁽³⁾, as last amended by Regulation (EC) No 1740/94 ⁽⁴⁾, establishes the forecast supply balance for cereal products for the Canary Islands for July, August and September 1994 only, on the basis of the quantities determined for the 1993/94 cereals year, pending the conclusions to be drawn from an examination of the additional information provided by the competent authorities and in order to ensure the continuity of the specific supply arrangements; whereas, for the same reasons, the forecast supply balance provided for in Article 2 of Regulation (EEC) No

1601/92 for October and November 1994 should be established on the basis of the quantities determined for 1993/94; whereas the Annex to Regulation (EEC) No 1728/92 should be amended accordingly;

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

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EEC) No 1728/92 is hereby replaced by the Annex hereto.

Article 2

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

It shall apply from 1 October 1994.

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

Done at Brussels, 6 October 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 173, 27. 6. 1992, p. 13.

⁽²⁾ OJ No L 180, 23. 7. 1993, p. 26.

⁽³⁾ OJ No L 179, 1. 7. 1992, p. 104.

⁽⁴⁾ OJ No L 182, 16. 7. 1994, p. 16.

ANNEX

Canary Islands : supply balance for cereals for October and November 1994

(tonnes)		
Product	CN code	Canary Islands
Common wheat	1001 90	25 667
Durum wheat	1001 10	667
Barley	1003	3 167
Oats	1004	167
Maize	1005	30 000
Durum wheat meal	1103 11 10	717
Maize meal	1103 13	3 333
Meal of other cereals	1103 19	200
Pellets	1103 21 to 1103 29	250
Malt	1107	2 750
Total		66 918

COMMISSION REGULATION (EC) No 2428/94

of 6 October 1994

amending Regulation (EEC) No 2175/92 laying down detailed rules for the application of the specific measures for the supply of processed fruit and vegetables to the Canary Islands and to determine the forecast supply balance for the period 1 October to 30 November 1994

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1601/92 of 15 June 1992 concerning specific measures for the Canary Islands with regard to certain agricultural products ⁽¹⁾, as last amended by Regulation (EEC) No 1974/93 ⁽²⁾, and in particular Article 3 (4) thereof,

Whereas the quantities of products eligible for the specific supply arrangements are determined by means of periodic forecast balances which may be revised according to the essential requirements of the market taking into account local production and traditional trade flows;

Whereas Commission Regulation (EEC) No 2175/92 ⁽³⁾, as last amended by Regulation (EC) No 1848/94 ⁽⁴⁾, lays down the detailed rules for the application of the specific measures for the supply of processed fruit and vegetables to the Canary Islands, in particular the forecast balance fixing the quantities eligible for the specific supply arrangements for the period from 1 July to 30 September 1994;

Whereas, pending the conclusions of the examination of further information supplied by the competent authori-

ties, and in order to guarantee continuity of the specific supply arrangements, the balance laid down in Article 2 of Regulation (EEC) No 1601/92 should be adopted for a period limited to two months on the basis of the quantities determined for the 1993/94 marketing year;

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

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EEC) No 2175/92 is replaced by the Annex to this Regulation

Article 2

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

It shall apply with effect from 1 October 1994.

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

Done at Brussels, 6 October 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 173, 27. 6. 1992, p. 13.

⁽²⁾ OJ No L 180, 23. 7. 1993, p. 26.

⁽³⁾ OJ No L 217, 31. 7. 1992, p. 67.

⁽⁴⁾ OJ No L 192, 28. 7. 1994, p. 21.

ANNEX

ANNEX I

Forecast supply balance covering processed fruit and vegetable products for the Canary Islands over the period 1 October to 30 November 1994

		(tonnes)
CN code	Description	Quantity
Part I		
2007 99	Preparations other than homogenized, containing fruit other than citrus fruit	500
Part II		
2008	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included :	
2008 20	— Pineapples	400
2008 30	— Citrus fruit	83
2008 40	— Pears	267
2008 50	— Apricots	37
2008 70	— Peaches	1 267
2008 80	— Strawberries	17
	— Other, including mixtures other than those of subheading 2008 19 :	
2008 92	— — Mixtures	275,5
2008 99	— — Other than palm hearts and mixtures	108
		<u>2 454'</u>

COMMISSION REGULATION (EC) No 2429/94

of 6 October 1994

concerning imports of certain processed mushroom products originating in third countries

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

Having regard to Council Regulation (EEC) No 1796/81 of 30 June 1981 on measures applicable to imports of mushrooms of the species *Agaricus* spp. falling within CN codes 0711 90 40, 2003 10 20 and 2003 10 30 ⁽¹⁾, as last amended by Regulation (EEC) No 1122/92 ⁽²⁾, and in particular Article 6 thereof,

Whereas Article 3 (3) of Regulation (EEC) No 1796/81 lays down that the quantity which may be imported free of the additional amount must be allocated among the supplier countries, account being taken of traditional trade flows and of new suppliers;

Whereas Article 3 (3) of Commission Regulation (EEC) No 1707/90 of 22 June 1990 laying down detailed rules for the application of Regulation (EEC) No 1796/81 on imports of preserved cultivated mushrooms from third countries ⁽³⁾, as last amended by Regulation (EC) No 1901/94 ⁽⁴⁾, allocates the quantity which may be imported free of the additional amount among the supplier countries; whereas Article 3 (1) of that Regulation provides for the possibility of reviewing the allocation on the basis of the certificates issued during the first six months of the year in question; whereas the supply situation as revealed by certificates issued at 30 June 1994 appears to justify a new allocation of the quantity concerned for the current year;

Whereas Commission Regulation (EC) No 1415/94 of 21 June 1994 on the issuing of import licences for certain

processed mushroom products originating in China ⁽⁵⁾, suspends the issuing of licences which may qualify for exemption from the additional amount provided for in Article 2 of Regulation (EEC) No 1796/81; whereas that Regulation should be repealed;

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

HAS ADOPTED THIS REGULATION:

Article 1

Until 31 December 1994, the allocation of the overall quantity laid down in Article 3 of Regulation (EEC) No 1796/81 and set out in Annex I to Regulation (EEC) No 1707/90 shall be adjusted in accordance with the Annex hereto.

Article 2

Regulation (EC) No 1415/94 is hereby repealed.

Article 3

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

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

Done at Brussels, 6 October 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 183, 4. 7. 1981, p. 1.

⁽²⁾ OJ No L 117, 1. 5. 1992, p. 98.

⁽³⁾ OJ No L 158, 23. 6. 1990, p. 34.

⁽⁴⁾ OJ No L 194, 29. 7. 1994, p. 15.

⁽⁵⁾ OJ No L 155, 22. 6. 1994, p. 1.

*ANNEX**ANNEX I*

<i>(tonnes)</i>	
Supplier country	Quantity
Poland	31 080
People's Republic of China	27 630
Republic of Korea	50
Taiwan	100
Others	1 000'

COMMISSION REGULATION (EC) No 2430/94

of 6 October 1994

amending Regulation (EEC) No 2999/92 laying down detailed rules for the application of the specific measures for the supply of processed fruit and vegetables to Madeira and to determine the forecast supply balance for the period 1 July 1994 to 30 June 1995

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

Having regard to Council Regulation (EEC) No 1600/92 of 15 June 1992 concerning specific measures for the Azores and Madeira with regard to certain agricultural products ⁽¹⁾, as last amended by Regulation (EEC) No 1974/93 ⁽²⁾, and in particular Article 10 thereof,

Whereas the quantities of products eligible for the specific supply arrangements are determined by means of periodic forecast balances which may be revised according to the essential requirements of the market taking into account local production and traditional trade flows;

Whereas Commission Regulation (EEC) No 2999/92 ⁽³⁾, as last amended by Regulation (EC) No 1846/94 ⁽⁴⁾, lays down the detailed rules for the application of the specific measures for the supply of processed fruit and vegetables to Madeira and the forecast balance fixing the quantities eligible for the specific supply arrangements for the period from 1 July to 30 September 1994;

Whereas valuation of the requirements of the Madeiran market for the period from 1 July 1994 to 30 June 1995

has led to the establishment of a forecast supply balance as in the Annex;

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

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EEC) No 2999/92 is replaced by the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 6 October 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 173, 27. 6. 1992, p. 1.

⁽²⁾ OJ No L 180, 23. 7. 1993, p. 26.

⁽³⁾ OJ No L 301, 17. 10. 1992, p. 7.

⁽⁴⁾ OJ No L 192, 28. 7. 1994, p. 18.

ANNEX

Forecast supply balance covering processed fruit and vegetable products for Madeira for the period 1 July 1994 to 30 June 1995

		(tonnes)
CN code	Description	Quantity
2008	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included	
2008 20	– Pineapples	300
2008 30	– Citrus fruit	40
2008 40	– Pears	80
2008 60	– Cherries	60
2008 70	– Peaches	300
	– Other, including mixtures other than those of subheading 2008 19	
2008 92	– – Mixtures	50
2008 99	– – Other than palm hearts and mixtures	30
Total		860

COMMISSION REGULATION (EC) No 2431/94

of 6 October 1994

fixing the intervention thresholds for oranges, mandarins, satsumas and clementines for the 1994/95 marketing year

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables⁽¹⁾, as last amended by Regulation (EC) No 3669/93⁽²⁾, and in particular Articles 16a (5) and Article 16b (4) thereof,

Having regard to Council Regulation (EEC) No 2240/88 of 19 July 1988 fixing, for peaches, lemons and oranges, the rules for applying Article 16b of Regulation (EEC) No 1035/72 on the common organization of the market in fruit and vegetables⁽³⁾, as last amended by Regulation (EEC) No 1623/91⁽⁴⁾, and in particular Article 1 (3) thereof,

Whereas, pursuant to Article 1 (1) of Regulation (EEC) No 2240/88, the intervention threshold for oranges is to be equal, as from the 1991/92 marketing year, to 10 % of the average production intended to be consumed fresh in the last five marketing years for which data are available ; whereas, however, pursuant to Article 9 of Council Regulation (EC) No 3119/93 of 8 November 1993 laying down special measures to encourage the processing of certain citrus fruits⁽⁵⁾, the threshold for oranges thus calculated must be increased by a quantity equal to the average quantity of oranges in respect of which financial compensation was paid during the 1984/85 to 1988/89 marketing years inclusive ;

Whereas, pursuant to Article 16a (2) of Regulation (EEC) No 1035/72, the intervention thresholds for mandarins, satsumas and clementines are to be equal, as from the 1991/92 marketing year, to 10 % of the average production intended to be consumed fresh in the last five

marketing years for which data are available ; whereas, however, pursuant to Article 9 of the abovementioned Regulation (EC) No 3119/93, the quantities of mandarins and clementines delivered for processing under that Regulation are to be treated as production intended to be consumed fresh for the purposes of fixing the intervention thresholds for those products ; whereas the threshold for satsumas thus calculated must be increased by a quantity equal to the average quantity of satsumas in respect of which financial compensation was paid during the 1989/90 to 1991/92 marketing years inclusive ;

Whereas the intervention thresholds for the products in question should be fixed for the 1994/95 marketing year in accordance with the abovementioned provisions ;

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

HAS ADOPTED THIS REGULATION :

Article 1

The intervention thresholds for oranges, mandarins, satsumas and clementines for the 1994/95 marketing year shall be as follows :

— oranges :	1 179 900 tonnes
— mandarins :	36 300 tonnes
— satsumas :	177 200 tonnes
— clementines :	130 600 tonnes.

Article 2

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

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

Done at Brussels, 6 October 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽²⁾ OJ No L 338, 31. 12. 1993, p. 26.

⁽³⁾ OJ No L 198, 26. 7. 1988, p. 9.

⁽⁴⁾ OJ No L 150, 15. 6. 1991, p. 8.

⁽⁵⁾ OJ No L 279, 12. 11. 1993, p. 17.

COMMISSION REGULATION (EC) No 2432/94**of 6 October 1994****amending Regulation (EEC) No 1609/88 as regards the latest date by which butter must have been taken into storage in order to be sold under Regulations (EEC) No 3143/85 and (EEC) No 570/88**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1880/94 ⁽²⁾, and in particular Article 6 (7) thereof,

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

Whereas, pursuant to Article 1 of Commission Regulation (EEC) No 3143/85 of 11 November 1985 on the sale at reduced prices of intervention butter intended for direct consumption in the form of concentrated butter ⁽⁵⁾, as last amended by Regulation (EC) No 1970/94 ⁽⁶⁾, the butter put up for sale must have been taken into storage before a date to be determined; whereas the same applies to butter sold under the arrangements laid down in Commission Regulation (EEC) No 570/88 of 16 February 1988 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other food stuffs ⁽⁷⁾, as last amended by Regulation (EC) No 3049/93 ⁽⁸⁾;

Whereas, in view of butter stocks and quantities available, the dates in Article 1 of Commission Regulation (EEC)

No 1609/88 ⁽⁹⁾, setting the latest time of entry into storage for butter sold under Regulation (EEC) No 3143/85 and (EEC) No 570/88, as last amended by Regulation (EC) No 2285/94 ⁽¹⁰⁾, should be amended;

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

HAS ADOPTED THIS REGULATION:

Article 1

In Article 1 of Regulation (EEC) No 1609/88, the first and second subparagraphs are hereby replaced by the following:

'The butter referred to in Article 1 (1) of Regulation (EEC) No 3143/85 must have been taken into storage before 1 November 1992.

The butter referred to in Article 1 of Regulation (EEC) No 570/88 must have been taken into storage before 1 November 1992.'

Article 2

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

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

Done at Brussels, 6 October 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 197, 30. 7. 1994, p. 21.

⁽³⁾ OJ No L 169, 18. 7. 1968, p. 1.

⁽⁴⁾ OJ No L 187, 13. 7. 1991, p. 1.

⁽⁵⁾ OJ No L 298, 12. 11. 1985, p. 9.

⁽⁶⁾ OJ No L 198, 30. 7. 1994, p. 112.

⁽⁷⁾ OJ No L 55, 1. 3. 1988, p. 31.

⁽⁸⁾ OJ No L 273, 5. 11. 1993, p. 7.

⁽⁹⁾ OJ No L 143, 10. 6. 1988, p. 23.

⁽¹⁰⁾ OJ No L 248, 23. 9. 1994, p. 7.

COMMISSION REGULATION (EC) No 2433/94

of 6 October 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 last amended by Regulation (EC) No 1866/94 ⁽²⁾, and in particular Articles 10 (5) and 11 (3) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy ⁽³⁾, 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 1937/94 ⁽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 5 October 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 1937/94 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 7 October 1994.

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

Done at Brussels, 6 October 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 197, 30. 7. 1994, p. 1.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 320, 22. 12. 1993, p. 32.

⁽⁵⁾ OJ No L 198, 30. 7. 1994, p. 36.

ANNEX

to the Commission Regulation of 6 October 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	92,47 ⁽²⁾ ⁽³⁾
0712 90 19	92,47 ⁽²⁾ ⁽³⁾
1001 10 00	17,99 ⁽¹⁾ ⁽³⁾ ⁽¹¹⁾
1001 90 91	56,56
1001 90 99	56,56 ⁽⁹⁾ ⁽¹¹⁾
1002 00 00	106,39 ⁽⁶⁾
1003 00 10	91,75
1003 00 90	91,75 ⁽⁹⁾
1004 00 00	91,89
1005 10 90	92,47 ⁽²⁾ ⁽³⁾
1005 90 00	92,47 ⁽²⁾ ⁽³⁾
1007 00 90	95,54 ⁽⁴⁾
1008 10 00	32,08 ⁽⁹⁾
1008 20 00	39,63 ⁽⁴⁾ ⁽⁹⁾
1008 30 00	2,91 ⁽⁵⁾
1008 90 10	⁽⁷⁾
1008 90 90	2,91
1101 00 00	118,98 ⁽⁹⁾
1102 10 00	186,95
1103 11 10	62,68
1103 11 90	140,74
1107 10 11	111,56
1107 10 19	86,10
1107 10 91	174,20 ⁽¹⁰⁾
1107 10 99	132,91 ⁽⁹⁾
1107 20 00	153,09 ⁽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.

⁽¹¹⁾ The levy for the products falling within this code in accordance with Regulation (EC) No 774/94 is restricted under the conditions of this Regulation.

COMMISSION REGULATION (EC) No 2434/94

of 6 October 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 last amended by Regulation (EC) No 1866/94 ⁽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 (EC) No 1938/94 ⁽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 5

October 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 7 October 1994.

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

Done at Brussels, 6 October 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 197, 30. 7. 1994, p. 1.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 320, 22. 12. 1993, p. 32.

⁽⁵⁾ OJ No L 198, 30. 7. 1994, p. 39.

ANNEX

to the Commission Regulation of 6 October 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 10	1st period 11	2nd period 12	3rd period 1
0709 90 60	0	1,07	0	0
0712 90 19	0	1,07	0	0
1001 10 00	0	0	0	0
1001 90 91	0	0	0	12,92
1001 90 99	0	0	0	12,92
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	1,07	0	0
1005 90 00	0	1,07	0	0
1007 00 90	0	0	0	0
1008 10 00	0	0	0	0
1008 20 00	0	0	0	0
1008 30 00	0	0	0	0
1008 90 90	0	0	0	0
1101 00 00	0	0	0	18,09
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 10	1st period 11	2nd period 12	3rd period 1	4th period 2
1107 10 11	0	0	0	23,00	23,00
1107 10 19	0	0	0	17,18	17,18
1107 10 91	0	0	0	0	0
1107 10 99	0	0	0	0	0
1107 20 00	0	0	0	0	0

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 21 September 1994

relating to a proceeding pursuant to Article 85 of the EC Treaty and Article 53 of the EEA Agreement

(IV/34.600 — Night Services)

(Only the German, English, French and Dutch texts are authentic)

(Text with EEA relevance)

(94/663/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EEC) No 1017/68 of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway⁽¹⁾, as amended by the Act of Accession of Greece, and in particular Article 5 thereof,

Having regard to the application for exemption under Article 5 of Regulation (EEC) No 1017/68, submitted on 29 January 1993 in respect of certain agreements on the carriage of passengers by rail via the Channel Tunnel,

Having regard to the summary of the relevant agreement it published in accordance with Article 12 (2) of Regulation (EEC) No 1017/68⁽²⁾,

Having regard to the Commission's decision of 23 August 1993 to express serious doubts within the meaning of Article 12 (3) of Regulation (EEC) No 1017/68,

Having regard to the notice in which it announced that it was considering exempting the agreement and invited interested third parties to submit their observations⁽³⁾,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions in the Transport Industry,

Whereas :

I. THE FACTS

A. The notification

- (1) On 29 January 1993 the Commission received an application from European Night Services Ltd (ENS), British Rail (BR), Deutsche Bundesbahn (DB), NV Nederlandse Spoorwegen (NS), Société nationale des chemins de fer français (SNCF) and Société nationale des chemins de fer belges (SNCB) seeking a declaration that Article 2 of Regulation (EEC) No 1017/68 did not apply to a number of agreements concerning the carriage of passengers by rail via the Channel Tunnel or, failing that, the exemption of the agreements under Article 5 of the Regulation.

⁽¹⁾ OJ No L 175, 23. 7. 1968, p. 1.

⁽²⁾ OJ No C 149, 29. 5. 1993, p. 10.

⁽³⁾ OJ No C 153, 4. 6. 1994, p. 15.

B. The parties

- (2) BR, EPS, NS, DB, SNCF and SNCB are railway undertakings (hereinafter also referred to as 'railways') within the meaning of Council Directive 91/440/EEC⁽¹⁾.
- (3) At the time of the notification European Passenger Services (EPS) was a wholly owned subsidiary of BR. Since 10 May 1994 it, too, has ranked as a railway undertaking, controlled by the public authorities in the United Kingdom. It replaces BR as supplier of international passenger services. At the same time, BR's holding in ENS was transferred to EPS.
- (4) German Rail UK Ltd (GR UK) is a wholly owned subsidiary of DB.
- (5) Transmanche Night Travel Ltd (TNT) is a wholly owned subsidiary of France Rail, which is itself a wholly owned subsidiary of SNCF.
- (6) ENS is a joint venture set up between BR (now EPS), DB, NS and SNCF.

C. The markets

- (7) The relevant markets are the markets in the transport of business travellers and of leisure travellers on each of the following routes:
- London-Amsterdam,
 - London-Frankfurt/Dortmund,
 - Paris-Glasgow/Swansea,
 - Brussels-Glasgow/Plymouth.

D. The agreements

- (8) The first agreement concerns the formation of ENS, which is a private company limited by shares and incorporated in the United Kingdom; its shareholders are:
- EPS: 61,5 %,
 - TNT (SNCF): 11,5 %,
 - GR UK (DB): 13,5 %,
 - NS: 13,5 %.
- (9) The business of ENS will be to provide and operate overnight passenger rail services between points in the United Kingdom and the Continent through the Channel Tunnel.

It is planned that from 1995/1996 there will be one such train every night in each direction on each of the following routes:

- London-Amsterdam,
- London-Frankfurt/Dortmund,
- Paris-Glasgow/Swansea,
- Brussels-Glasgow/Plymouth.

- (10) The overnight services are intended to meet the needs of three categories of traveller:
- business travellers, expecting a comfortable bed and privacy, high levels of quality and service and convenient departure and arrival times,
 - leisure travellers expecting a level of comfort the same as or similar to that of business travellers,
 - leisure travellers who are more price-sensitive and will be satisfied with comfortable reclining seats designed for overnight travel.
- (11) The second group of agreements consists of operating agreements concluded by ENS on 30 June 1992 with each of the railways which are parties to the ENS agreement and with SNCB.
- (12) Under the operating agreements ENS will be responsible for issuing rail tickets in its own name on each route; each of the railways concerned agrees to provide the following services:
- traction over its network: provision of locomotive, train crew and path,
 - cleaning services on board: cleaning of the rolling stock used, sleeper services, terminal operations and on-board personnel,
 - daily servicing, daily maintenance, safety checks, emergency repairs on rolling stock arriving at the railway terminal,
 - passenger-handling services for such of the night services as include commercial stops at a station on the railway's network, passenger security and safety at terminals or on trains, use of reservation systems, distribution of reservation systems through sales outlets,
 - marketing services in cooperation with ENS, but excluding the distribution of tickets.
- (13) In addition to those services, EPS and SNCF agree to provide traction through the Channel Tunnel, including locomotive, train crew and path.
- (14) The service will require specialized rolling stock which is suitable for running on different rail systems and which meets the safety requirements for passage through the Tunnel.

⁽¹⁾ OJ No L 237, 24. 8. 1991, p. 25.

- (15) For the procurement of this rolling stock the participating railways BR, DB, NS and SNCF, through ENS, have entered into a sale and lease-back arrangement under which the lessors agree to lease the rolling stock to ENS for an initial period of 20 years.

II. ASSESSMENT

A. Relevant legal provisions

- (16) The undertakings which are parties to the agreement have requested exemption under Article 5 of Regulation (EEC) No 1017/68 only. However, as the agreement is likely to have effects extending into the European Economic Area, it should also be assessed pursuant to Article 53 of the EEA Agreement. Thus the discussion below of Articles 85 and 86 of the Treaty applies equally to the equivalent provisions of that Agreement.

B. The relevant market

(a) *The market in services*

- (17) The Court of Justice has held that 'the concept of the relevant market in fact implies that there can be effective competition between the products which form part of it and this presupposes that there is a sufficient degree of interchangeability between all the products forming part of the same market in so far as a specific use of such products is concerned' ⁽¹⁾.
- (18) In the case of passenger transport, then, the mere fact that different modes of a transport are technically substitutable does not suffice to show that they belong to one and the same market.
- (19) It must be considered to what extent the different modes of transport are sufficiently interchangeable in the eyes of users.
- (20) In this case the services offered by ENS are aimed essentially at two different categories of customer: those who travel in the course of their business and those who travel for leisure purposes.
- (21) The first category seeks a rapid form of transport offering a high level of comfort, and with frequencies and timetables suited to business constraints. The price is not a decisive factor in the choice.

- (22) Those on leisure trips, who bear their own costs, attach greater importance to the price. Speed, comfort and frequency are not decisive factors.

- (23) This distinction in behaviour has been pointed out elsewhere, notably by the Institute of Air Transport in its study of rail/air complementarity in Europe ⁽²⁾.

- (24) In the same study the Institute also concluded that high-speed trains and air transport are in competition mainly over distances between 350 and 1 000 km.

- (25) In this case, therefore, there are two service markets.

- (26) One is the market for the transport of business travellers, for whom scheduled air travel and high-speed rail travel are interchangeable modes of transport.

The overnight trains to be operated by ENS will also be a possible substitute, because of their level comfort and their timetables, which are especially suited to business trips.

- (27) On the other hand there is the market in the transport of leisure travellers, for whom substitute services may well include economy-class air travel, train, coach and possibly private motor car.

(b) *The geographic market*

- (28) In its judgment in Case 66/86, *Abmed Saed Flugreisen*, the Court of Justice found that the carriage of travellers did not form one market ⁽³⁾.

The Court there concluded that 'the test to be employed is whether the scheduled flight on a particular route can be distinguished from the possible alternatives by virtue of specific characteristics as a result of which it is not interchangeable with those alternatives and is affected only to an insignificant degree by competition from them.'

- (29) The Commission accordingly takes the view that the relevant geographic market does not include the whole of the United Kingdom, France, Germany and the Benelux countries, but is confined to the routes actually served by ENS, namely:

- London-Amsterdam,
- London-Frankfurt/Dortmund,
- Paris-Glasgow/Swansea,
- Brussels-Glasgow/Plymouth.

⁽¹⁾ Case 85/76, *Hoffmann-La Roche v. Commission*, [1979] ECR paragraph 28, p. 461.

⁽²⁾ ITA/Paris, December 1991.

⁽³⁾ [1989] ECR, paragraph 40, p. 803.

C. The agreement

- (30) ENS is a company incorporated in the United Kingdom with a capital of £100 000, shared between:

— EPS:	61,5 %,
— TNT (SNCF):	11,5 %,
— GR UK (DB):	13,5 %,
— NS:	13,5 %.

Although EPS is the majority shareholder, each of the railways is represented by one member on ENS's Board, and most important decisions require the agreement of all the members.

- (31) ENS is thus an undertaking which is controlled jointly by four undertakings which are either railway undertakings or subsidiaries of railway undertakings. It is therefore a joint venture within the meaning of the Commission notice concerning the assessment of cooperative joint ventures⁽¹⁾.
- (32) ENS is to operate on a lasting basis and to perform all the functions of an autonomous economic entity.
- (33) The parent undertakings are not withdrawing permanently from the relevant market. Their technical and financial resources would enable them easily to set up an international grouping within the meaning of Article 3 of Directive 91/440/EEC in order to provide overnight passenger transport services.
- (34) EPS, SNCF, DB and NS continue to operate primarily on a market upstream from ENS's market, namely the market in necessary rail services which the railways sell to transport operators, including ENS.
- (35) The Commission consequently takes the view that the joint venture ENS has as its object or effect the coordination of the competitive behaviour of undertakings which remain independent.
- (36) ENS is accordingly a cooperative joint venture caught by Article 85 of the EC Treaty.
- (37) The operating agreements between ENS and each of the railways EPS, NS, DB, SNCF and SNCB constitute agreements within the meaning of Article 85.

D. The restrictions of competition

(a-1) *Restrictions on competition between parents and effects on third parties*

- (38) For a proper understanding of existing and potential restrictions of competition, we must bear in mind the legal framework in which railways offer their services.
- (39) Under Article 10 of Directive 91/440/EEC international groupings of railway undertakings providing passenger transport have a right of access to the railway infrastructures of the Member States of establishment of their constituent railways and transit rights on the infrastructures of other Member States in order to enable them to provide international services.
- (40) The opportunities are open to existing railways, but also to new undertakings, including subsidiaries of existing ones.
- (41) The Directive allows the Member States to enact domestic legislation which is more generous in the access it allows to infrastructure.
- (42) This means that DB or NS would be entitled to form an international grouping with a railway in the United Kingdom, and to operate international transport services by buying from the infrastructure manager, Eurotunnel, the paths necessary to pass through the Channel Tunnel.
- (43) Any railway party to the agreement would also be entitled to set up a subsidiary specializing as a transport operator, which would provide international transport services by buying the necessary rail services from the railways concerned.
- (44) Lastly, a railway could itself take on the role of transport operator, and provide international services by buying the necessary rail services from the railways concerned.
- (45) By entrusting the operation and marketing of these services to ENS, the railway undertakings EPS, SNCF, DB and NS have eliminated or appreciably restricted the scope for competition here.
- (46) ENS's parent companies continue to hold a dominant position in the supply of rail services in their Member States of origin, especially as regards special locomotives for the Channel Tunnel, and ENS will have direct access to those services under the operating agreements concluded with EPS, SNCF, DB, NS and SNCB. The existence of a

⁽¹⁾ OJ No C 43, 16. 2. 1993, p. 2.

special relationship between the parent companies and ENS might place other operators at a disadvantage in competition for necessary rail services.

(47) The usage contract concluded between Eurotunnel, BR and SNCF has also to be taken into consideration. Even if in this case Community law would prevent BR and SNCF from holding all the available paths for international trains, they will nevertheless control an appreciable proportion of those paths in order to be able to operate international trains and to meet their commitments to Eurotunnel.

(48) Given the commercial strength of the parents, therefore, the formation of ENS may impede access to the market by transport operators in a position to compete with it.

(a-2) Tighter restrictions caused by the presence of networks of joint ventures

(49) In general, networks of joint ventures can have a particularly restrictive effect on competition because they intensify the effects of individual joint ventures on the policy of the parents and on the market position of third parties.

(50) Every new joint venture set up strengthens the links between the parents, and consequently weakens what competition there still is between them. This is the case where the parents form several joint ventures providing complementary or non-complementary services.

(51) The Commission takes the view that that is happening here. BR/EPS, SNCF, DB and NS are taking part to varying degrees in a network of joint ventures for the operation of goods and passenger transport services, in particular through the Channel Tunnel. BR and SNCF are parties to the formation of Allied Continental Intermodal, which is to provide combined transport of goods, and BR and SNCB are parties to the formation of Autocare Europe, which is to provide rail transport for motor vehicles.

(52) The formation of ENS has to be seen against the background of this network of joint ventures; it further limits competition between the parties.

(53) From what has been said in paragraphs 38 to 52, therefore, it has to be concluded that the ENS agreements have as their object and effect the

restriction of competition contrary to Article 85 (1) of the EC Treaty.

E. Effect on trade between Member States

(54) The purpose of ENS is to operate transport services between points in the United Kingdom and on the Continent. The agreement therefore affects trade between Member States.

F. Article 3 of Regulation (EEC) No 1017/68

(55) It is clear from the wording of Article 3 of Regulation (EEC) No 1017/68 that it applies to agreements the sole object and sole effect of which is:

— to apply technical improvements,

or

— to achieve technical cooperation,

by the means set out in points (a) to (g) of the same Article.

(56) According to the notification submitted by the parties, the main object of the joint venture is to market passenger transport services between the United Kingdom and the Continent.

(57) The joint venture also has the following commercial objectives:

— to exploit the commercial opportunities for passenger transport created by the opening of the Channel Tunnel,

— to enable EPS and SNCF to operate international trains through the Channel Tunnel in accordance with their obligations under the usage contract that they have concluded with Eurotunnel,

— to share the financial risk associated with the operation of regular train services as soon as the Tunnel opens.

(58) The Commission accordingly takes the view that the ENS agreement is not an agreement the sole object and sole effect of which is to apply technical improvements or to achieve technical cooperation, so that the test of Article 3 of Regulation (EEC) No 1017/68 are not satisfied.

G. Article 5 of Regulation (EEC) No 1017/68

(a) Contribution to economic progress

(59) The formation of ENS facilitates the introduction of new high-quality transport services to accompany the opening of the Channel Tunnel.

For business travellers ENS offers a service which provides a substitute for air transport which has not previously existed.

In certain circumstances, therefore, the services offered by ENS are likely to increase competition between modes of transport.

- (60) By promoting traffic between the United Kingdom and the Continent the agreement will contribute to the success of the Channel Tunnel.

Thus the formation of ENS is likely to facilitate economic progress.

(b) *Benefits to users*

- (61) Users will benefit directly from the formation of ENS, which will offer them new high-quality transport services. Users will also profit from competition between these new services and air transport.

(c) *Restrictions indispensable*

- (62) The legal framework which governs the market would allow the railways to supply those services in other ways.
- (63) However, account has to be taken of the specific features of the case: in particular, the services involved are completely new, and, if they are to succeed, trains covering several routes on a regular basis must be laid on immediately; this means that the financial risks are substantial and could be borne by a single undertaking only with great difficulty.
- (64) The pooling of the know-how each of the railways has acquired on its own territory is also important for the success of the project.
- (65) The Commission accordingly takes the view that the restrictions of competition associated with the formation of ENS are necessary, at least for a transitional period, in view of the specific features of the relevant market.
- (66) The Commission ought, however, to impose a condition enabling it to satisfy itself that the restrictions remain within what is indispensable, and ensuring the presence on the market of rail transport operators competing with ENS.

(d) *Competition not eliminated*

- (67) In the case of business travellers alternative services are offered by airline companies.

- (68) For their part leisure travellers have alternatives in air transport, coach transport and sea transport.

- (69) Other transport operators similar to ENS should be able to supply competing services by buying the necessary rail services from railways.

- (70) Thus, the formation of ENS does not eliminate all competition on the relevant market.

H. Terms of the exemption

- (71) Article 13 of Regulation (EEC) No 1017/68 states that an exemption decision must indicate the period for which it is to be valid, and that conditions and obligations may be attached.

- (72) When considering whether to grant an exemption the Commission has to analyse an agreement in the economic context in which it is to apply.

- (73) The duration of the exemption will therefore depend *inter alia* on the period for which it can reasonably be supposed that market conditions will remain substantially the same.

- (74) Such an assessment is difficult in this case, especially as the service is new and conditions on the rail transport market have changed substantially following the adoption of Directive 91/440/EEC.

- (75) Account should also be taken of the fact that the parties have carried out major investments which will yield profitable returns only after several years; the scale of investment cannot, however, be allowed to become a decisive factor in determining the duration of the exemption. There is no necessary link between the joint acquisition of plant and machinery and the commercial use to which it is to be put.

- (76) In connection with the combined transport of goods, which likewise requires specialized and expensive equipment, the railways have informed the Commission that a period of five years is needed in order to set up the new services and ensure their viability.

- (77) In this case it may be supposed that the commercial risk is greater, particularly because the service is one which in terms of quality is completely new.

- (78) The Commission takes the view that the duration of the exemption can be set at eight years, that is to say, until 31 December 2002. The decision, however, takes effect from the date of notification of the agreements, namely 29 January 1993.

- (79) The exemption must, however, be subject to certain conditions aimed at preventing the restrictions of competition from going beyond what is indispensable.
- (80) New entrants to the market, whether groupings of railways or transport operators, if they are not able themselves to supply some or all of the necessary railway services, must be able to acquire from the railways party to the ENS agreement the same necessary rail services as those railways have undertaken to sell to their subsidiary.
- (81) Those services consist of the provision of the locomotive, train crew and path on each national network and in the Channel Tunnel. The railways party to the agreement should not, however, be required to provide a path if the applicant is a grouping of railway undertakings within the meaning of Article 10 of Directive 91/440/EEC, so that it would be able to request a path itself from the infrastructure managers.
- (82) On their own networks the railways must supply these services on the same technical and financial terms as they allow to ENS.
- (83) The railways should not be required to supply these services if the new entrant is able to supply them itself, or if the railways do not have the necessary traction available.
- (84) These obligations are independent of the general obligations imposed on the railways by Article 86 of the EC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 5 of Regulation (EEC) No 1017/68 and Article 53 (3) of the EEA Agreement, Article 85 (1) of the EC Treaty and Article 53 (1) of the EEA Agreement are hereby declared inapplicable to the agreements relating to European Night Services Ltd (hereinafter 'ENS') from 29 January 1993 to 31 December 2002.

Article 2

The exemption set out in Article 1 is subject to the condition that the railway undertakings party to the ENS agreements shall supply to any international grouping of railway undertakings or any transport operator wishing to operate night passenger trains through the Channel Tunnel the same necessary rail services as they have agreed to supply to ENS. These services consist of the provision of the locomotive, train crew and path on each national network and in the Channel Tunnel. The railway undertakings must supply these services on their networks on the same technical and financial terms as they allow to ENS.

Article 3

This Decision is addressed to the following undertakings:

- European Passenger Services
ESP House
Waterloo Station
UK-London SE1 8SE,
- SNCF
88, rue Saint Lazare
F-75009 Paris,
- Deutsche Bahn AG
Friedrich-Ebert-Anlage, 43-45
D-60327 Frankfurt am Main,
- NV Nederlandse Spoorwegen
Hoofddirectie
Moreelsepark
Postbus 2025
NL-3500 HA Utrecht,
- European Night Services Ltd
Mercury House
117, Waterloo Road
UK-London SE1 8UL.

Done at Brussels, 21 September 1994.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION**of 27 September 1994**

amending the information contained in the list in the Annex to Commission Regulation (EEC) No 55/87 establishing the list of vessels exceeding eight metres length overall permitted to use beam trawls within certain coastal areas of the Community

(94/664/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3094/86 of 7 October 1986 laying down certain technical measures for the conservation of fishery resources⁽¹⁾, as last amended by Regulation (EEC) No 3919/92⁽²⁾,

Having regard to Commission Regulation (EEC) No 55/87 of 30 December 1986 establishing the list of vessels exceeding eight metres length overall permitted to use beam trawls within certain coastal areas of the Community⁽³⁾, as last amended by Regulation (EC) No 3410/93⁽⁴⁾, and in particular Article 3 thereof,

Whereas authorities of the Member States concerned have applied for the information in the list provided for in Article 9 (3) (b) of Regulation (EEC) No 3094/86 to be amended; whereas the said authorities have provided all the information supporting their applications pursuant to Article 3 of Regulation (EEC) No 55/87; whereas it has been found that the information complies with the re-

quirements; whereas, therefore, the information in the list annexed to the Regulation should be amended,

HAS ADOPTED THIS DECISION:

Article 1

The information in the list annexed to Regulation (EEC) No 55/87 is amended as shown in the Annex hereto.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 27 September 1994.

For the Commission

Yannis PALEOKRASSAS

Member of the Commission

⁽¹⁾ OJ No L 288, 11. 10. 1986, p. 1.

⁽²⁾ OJ No L 397, 31. 12. 1992, p. 1.

⁽³⁾ OJ No L 8, 10. 1. 1987, p. 1.

⁽⁴⁾ OJ No L 310, 14. 12. 1993, p. 27.

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

Matrícula y folio	Nombre del barco	Indicativo de llamada de radio	Puerto base	Potencia del motor (kW)
Havnekendings-bogstaver og -nummer	Fartøjets navn	Radio-kaldesignal	Registreringshavn	Maskin-effekt (kW)
Äußere Identifizierungskennbuchstaben und -nummern	Name des Schiffes	Rufzeichen	Registrierhafen	Motorstärke (kW)
Εξωτερικά στοιχεία και αριθμοί αναγνώρισης	Όνομα σκάφους	Αριθμός κλήσης ασυρμάτου	Λιμένας νηολόγησης	Ισχύς κινητήρος (kW)
External identification letters + numbers	Name of vessel	Radio call sign	Port of registry	Engine power (kW)
Numéro d'immatriculation lettres + chiffres	Nom du bateau	Indicatif d'appel radio	Port d'attache	Puissance motrice (kW)
Identificazione esterna lettere + numeri	Nome del peschereccio	Indicativo di chiamata	Porto di immatricolazione	Potenza motrice (kW)
Op de romp aangebrachte identificatieletters en -cijfers	Naam van het vaartuig	Roepletters	Haven van registratie	Motorvermogen (kW)
Identificação externa letras + números	Nome do navio	Indicativo de chamada	Porto de registo	Potência motriz (kW)
1	2	3	4	5

A. Datos que se retiran de la lista — Oplysninger, der skal slettes i listen — Aus der Liste herauszunehmende Angaben — Στοιχεία που διαγράφονται από τον κατάλογο — Information to be deleted from the list — Renseignements à retirer de la liste — Dati da togliere dall'elenco — Inlichtingen te schrappen uit de lijst — Informações a retirar da lista

BÉLGICA / BELGIEN / BELGIEN / ΒΕΛΓΙΟ / BELGIUM / BELGIQUE / BELGIO / BELGIË / BÉLGICA

O	32	Jessica	OPBF	Oostende	99
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ALEMANIA / TYSKLAND / DEUTSCHLAND / ΓΕΡΜΑΝΙΑ / GERMANY / ALLEMAGNE / GERMANIA / DUITSLAND / ALEMANHA

ACC	6	Godenwind	DCCA	Accumersiel	175
DOR	12	Sirius	DESC	Dorum	165
TÖN	1	Paloma	DJET	Tönning	74
WRE	3	Falke	DESJ	Wremen	169

DINAMARCA / DANMARK / DÄNEMARK / ΔΑΝΙΑ / DENMARK / DANEMARK / DANIMARCA / DENEMARKEN / DINAMARCA

R	75	Connie Vinther	OWNQ	Hvide Sande	220
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1	2	3	4	5
PAÍSES BAJOS / NEDERLANDENE / NIEDERLANDE / ΚΑΤΩ ΧΩΡΕΣ / NETHERLANDS / PAYS-BAS / PAESI BASSI / NEDERLAND / PAÍSES BAIXOS				
BR 35	Broedertrouw	PDGH	Oostburg-Breskens	221
BR 39	Elena	PDVE	Oostburg-Breskens	188
HA 92			Harlingen	162
HD 9	Nieuwe Diep	PGGP	Den Helder	162
HD 14	Skagerak	PHMI	Den Helder	221
KG 12	Jozias Tannetje	PFFI	Kortgene	221
OD 18	Johannes Lars		Ouddorp	221
TH 22	Levina		Tholen	118
UK 321	Hessel van Urk	PERF	Urk	221
WL 21	Annie	PERZ	Westdongeradeel	134
WR 15	Pieter Cornelis	PGSW	Wieringen	134
WR 16			Wieringen	96
WR 243	De Noordster		Wieringen	24
YE 137	Neeltje		Yerseke	221
ZK 3	Geja		Ulrum-Lauwersoog	121

B. Datos que se añaden a la lista — Oplysninger, der skal anføres i listen — In die Liste hinzuzufügende Angaben — Στοιχεία που προστίθενται στον κατάλογο — Information to be added to the list — Renseignements à ajouter à la liste — Dati da aggiungere all'elenco — Inlichtingen toe te voegen aan de lijst — Informações a aditar à lista

BÉLGICA / BELGIEN / BELGIEN / ΒΕΛΓΙΟ / BELGIUM / BELGIQUE / BELGIO / BELGIË / BÉLGICA

O 229	Liberty	OPIU	Oostende	218
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ALEMANIA / TYSKLAND / DEUTSCHLAND / ΓΕΡΜΑΝΙΑ / GERMANY / ALLEMAGNE / GERMANIA / DUTSLAND / ALEMANHA

ACC 6	Godewind	DCCA	Accumersiel	175
CUX 15	Paloma	DJET	Cuxhaven	74
DOR 12	Sirius	DESC	Dorum	162
NC 306	Michiel	DFOL	Cuxhaven	220
WRE 3	Falke	DESJ	Wremen	184

DINAMARCA / DANMARK / DÄNEMARK / ΔΑΝΙΑ / DENMARK / DANEMARK / DANIMARCA / DENEMARKEN / DINAMARCA

HV 5	Nordlys	OZZY	Havneby	199
RI 75	Connie Vinther	OWNQ	Hvide Sand	220

PAÍSES BAJOS / NEDERLANDENE / NIEDERLANDE / ΚΑΤΩ ΧΩΡΕΣ / NETHERLANDS / PAYS-BAS / PAESI BASSI / NEDERLAND / PAÍSES BAIXOS

BR 35	Broedertrouw	PFDU	Oostburg-Breskens	221
BR 39	Elena	PDVE	Oostburg-Breskens	188
HD 9	Nieuwe Diep	PGGP	Den Helder	221
OD 18	Johannes Lars	PDGH	Ouddorp	221
WL 21	Annie	PCRZ	Westdongeradeel	134
WR 15	Pieter Cornelis	PGSW	Wieringen	220
WR 16			Wieringen	97
WR 243	De Noordnster		Wieringen	24
YE 137	Wilhelmina		Yerseke	157

COMMISSION DECISION**of 27 September 1994**

amending the information contained in the list in the Annex to Commission Regulation (EC) No 3438/93 establishing, for 1994, the list of vessels exceeding eight metres length overall and permitted to fish for sole within certain areas of the Community using beam trawls whose aggregate length exceeds nine metres

(94/665/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3094/86 of 7 October 1986 laying down certain technical measures for the conservation of fishery resources⁽¹⁾, as last amended by Regulation (EEC) No 3919/92⁽²⁾,

Having regard to Commission Regulation (EEC) No 3554/90 of 10 December 1990 adopting provisions for the establishment of the list of vessels exceeding eight metres overall which are permitted to fish for sole within certain areas of the Community using beam trawls of an aggregate length exceeding nine metres⁽³⁾, as last amended by Regulation (EC) No 3407/93⁽⁴⁾, and in particular Article 2 thereof,

Whereas Commission Regulation (EC) No 3438/93⁽⁵⁾ establishes, for 1994, the list of vessels exceeding eight metres overall which are permitted to fish for sole within certain areas of the Community using beam trawls of an aggregate length exceeding nine metres as provided in Article 9 (3) (c) of Regulation (EEC) No 3094/86;

Whereas the authorities of the Member States concerned have applied for the information in the list provided for in Article 9 (3) (c) of Regulation (EEC) No 3094/86 to be

amended; whereas the said authorities have provided all the information supporting their applications pursuant to Article 2 of Regulation (EEC) No 3554/90; whereas it has been found that the information complies with the requirements; whereas, therefore, the information in the list annexed to the Regulation should be amended,

HAS ADOPTED THIS DECISION:

Article 1

The information in the list annexed to Regulation (EC) No 3438/93 is amended as shown in the Annex hereto.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 27 September 1994.

For the Commission

Yannis PALEOKRASSAS

Member of the Commission

⁽¹⁾ OJ No L 288, 11. 10. 1986, p. 1.

⁽²⁾ OJ No L 397, 31. 12. 1992, p. 1.

⁽³⁾ OJ No L 346, 11. 12. 1990, p. 11.

⁽⁴⁾ OJ No L 310, 14. 12. 1993, p. 19.

⁽⁵⁾ OJ No L 314, 16. 12. 1993, p. 17.

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

Matrícula y folio	Nombre del barco	Indicativo de llamada de radio	Puerto base	Potencia del motor (kW)
Havnekendings-bogstaver og -nummer	Fartøjets navn	Radio-kaldesignal	Registreringshavn	Maskin-effekt (kW)
Äußere Identifizierungskennbuchstaben und -nummern	Name des Schiffes	Rufzeichen	Registrierhafen	Motorstärke (kW)
Εξωτερικά στοιχεία και αριθμοί αναγνώρισης	Όνομα σκάφους	Αριθμός κλήσης ασυρμάτου	Λιμένας νηολόγησης	Ισχύς κινητήρος (kW)
External identification letters + numbers	Name of vessel	Radio call sign	Port of registry	Engine power (kW)
Numéro d'immatriculation lettres + chiffres	Nom du bateau	Indicatif d'appel radio	Port d'attache	Puissance motrice (kW)
Identificazione esterna lettere + numeri	Nome del peschereccio	Indicativo di chiamata	Porto di immatricolazione	Potenza motrice (kW)
Op de romp aangebrachte identificatieletters en -cijfers	Naam van het vaartuig	Roepletters	Haven van registratie	Motorvermogen (kW)
Identificação externa letras + números	Nome do navio	Indicativo de chamada	Porto de registo	Potência motriz (kW)
1	2	3	4	5

A. Datos que se retiran de la lista — Oplysninger, der skal slettes i listen — Aus der Liste herauszunehmende Angaben — Στοιχεία που διαγράφονται από τον κατάλογο — Information to be deleted from the list — Renseignements à retirer de la liste — Dati da togliere dall'elenco — Inlichtingen te schrappen uit de lijst — Informações a retirar da lista

ALEMANIA / TYSKLAND / DEUTSCHLAND / ΓΕΡΜΑΝΙΑ / GERMANY / ALLEMAGNE / GERMANIA / DUTSLAND / ALEMANHA

ACC 6	Godenwind	DCCA	Accumersiel	175
DOR 12	Sirius	DESC	Dorum	165
NEU 226	Keen Tied	DCBQ	Neuharlingersiel	147
NEU 227	Störtebeker	DLYJ	Neuharlingersiel	175
NEU 233	Jan van Gent	DGWK	Neuharlingersiel	176
SC 20	Wiking Bank	DISA	Büsum	220
TÖN 1	Paloma	DJET	Tönning	74

1	2	3	4	5
PAÍSES BAJOS / NEDERLANDENE / NIEDERLANDE / ΚΑΤΩ ΧΩΡΕΣ / NETHERLANDS / PAYS-BAS / PAESI BASSI / NEDERLAND / PAÍSES BAIXOS				
OD 18	Johannes Lars		Ouddorp	221
WR 57	Jacoba	PEYI	Wieringen	220
WR 89	Geja Anjo		Wieringen	175
WR 98	Else Jeanette		Wieringen	221
WR 177	Neeltje Alida	PGEU	Wieringen	221
ZK 36	Lauwers		Ulrum-Zoutkamp	110

B. Datos que se añaden a la lista — Oplysninger, der skal anføres i listen — In die Liste hinzuzufügende Angaben — Στοιχεία που προστίθενται στον κατάλογο — Information to be added to the list — Renseignements à ajouter à la liste — Dati da aggiungere all'elenco — Inlichtingen toe te voegen aan de lijst — Informações a aditar à lista

ALEMANIA / TYSKLAND / DEUTSCHLAND / ΓΕΡΜΑΝΙΑ / GERMANY / ALLEMAGNE / GERMANIA /
DUITSLAND / ALEMANHA

ACC 6	Godewind	DCCA	Accumersiel	175
CUX 15	Paloma	DJET	Cuxhaven	74
DOR 12	Sirius	DESC	Dorum	162
NC 306	Michiel	DFOL	Cuxhaven	220
SC 20	Wiking Bank	DISA	Büsum	220

PAÍSES BAJOS / NEDERLANDENE / NIEDERLANDE / ΚΑΤΩ ΧΩΡΕΣ / NETHERLANDS / PAYS-BAS /
PAESI BASSI / NEDERLAND / PAÍSES BAIXOS

OD 18	Johannes Lars	PDGH	Ouddorp	221
WR 15	Pieter Cornelis	PGSW	Wieringen	220
WR 102	Limanda		Wieringen	221
WR 129	Grietje Hendrika	PEKX	Wieringen	221
WR 244	Texelstroom	PHXZ	Wieringen	220
ZK 40	Morgenster		Ulrum-Zoutkamp	221

CORRIGENDA**Corrigendum to the Agreement between the European Economic Community and the Republic of Slovenia in the field of transport**

(Official Journal of the European Communities No L 189 of 29 July 1993)

On page 164 Article 12 (2) shall be replaced by the following :

'2. The Contracting Parties hereby agree to grant unrestricted access to Community transit traffic through Slovenia and to Slovenian traffic through the Community with effect from the date on which the present agreement enters into force.'
